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Lawmakers argue appeal over funding during shutdown

By Dan Heilman | February 26 2007
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On the extremely rare occasion when a legislative budget impasse results in a government shutdown, like the one Minnesota endured in 2005 should state offices be allowed to fund essential services without legislative approval? Or would that open a can of worms by which state offices could potentially disburse funding unilaterally?

That was the issue being argued last Wednesday at the Minnesota Judicial Center before a three-judge panel of the Minnesota Court of Appeals

The appeal in *State v. Commissioner of Finance* was filed by attorneys representing the Legislature in response to a June 2005 ruling by Ramsey County Chief District Court Judge Gregg E. Johnson. The ruling held that state officials should be able to fund essential state services in the event of a partial or full government shutdown. That ruling held that such core functions included, but weren't limited to, education funding, public health services, welfare payments and road construction projects.

Pursuant to the ruling, then-state Commissioner of Finance Peggy Ingison made expenditures of state funds independent of the Legislature during the subsequent eight-day government shutdown. The appellants in the case claimed Ingison's office's actions violated their rights as legislators because the expenditures usurped the legislature's exclusive prerogative to appropriate state funds, as provided by the Minnesota Constitution.

The idea of the judicial branch authorizing the executive branch to keep disbursing funds without legislative authority did not sit well with lawmakers, who saw it as an intrusion on their constitutional function. They therefore appealed Johnson's ruling.

Attorney Erick Kardaal, representing the lawmakers, said there are two primary points to the appeal: Whether individual legislators should be able to bring claims regarding violations of their rights as legislators, and whether the Legislature has the exclusive right to appropriate money under any circumstances.

"This is a separation of powers issue," Kardaal told the court. "Those separations are inviolate and must be respected. My clients are upset because they are an important part of the budgeting process and they've been rendered impotent."

Kardaal said that aside from unduly stripping legislators of their duties, the District Court ruling set a dangerous precedent.

"This might be based on a small incident, but it creates a big opening," he said. "If you deny [the appeal], the commissioner can say, 'The court said we could do this.' It won't matter if the commissioner disburses funds according to a court order, the governor's instructions, or his own conscience."

'This will happen again'

Even though the commissioner's actions in 2005 were in response to extraordinary circumstances, the appellants warned that another government shutdown isn't out of the question.

"This will happen again," said Peter Watson, counsel for the Minnesota Senate, during the hearing. "We're urging the court to give some guidance to the lower courts so that the next time there's a legislative impasse, they don't do this again. We can't allow district courts to intervene."

in budget battles "

Kaardal said reversing the District Court's decision would have the welcome consequence of forcing legislators to cooperate when budget battles take place

"This should be part of a bipartisan effort to restore the proper position of the state Legislature," he said

The concern was echoed by Judge Renee L. Worke, one of the three panel members

"Certain individuals might assume that the court can fix legislative disputes," she said. "When you have that escape valve, an impasse becomes more probable, not less so."

A rare occurrence

Representing the commissioner's office, Assistant Attorney General Kenneth Raschke argued that state offices should be able to fund core services independently in case of emergencies such as a government shutdown.

"I would dispute the notion that this will happen again," he said. "This is the only time when our Legislature has allowed budgets for critical government functions to elapse. One time in more than 100 years isn't very often."

Furthermore, Raschke said, nothing in the District Court's ruling gave any state office unilateral power to disburse funding, and that it was a measure needed for a desperate situation.

"There's no claim by the Commissioner of Finance that he or she has the authority to appropriate money without approval," he said. "But the commissioner does stand ready to obey court orders [Actions such as Ingison's] are not a substitute for a biennial budget, but there are certain situations where time is of the essence."

Raschke also insisted that the state and the Legislature "aren't terribly far apart on which state functions are essential," further lessening the possibility of another shutdown, but that the commissioner's office should be able to retain its current latitude just in case.

Moot dispute?

One element of the case the court is considering is whether or not it is moot.

"There's a continuing budget rule," says Mary Jane Morrison, a professor at Hamline Law School who specializes in state constitutional law. "If the Legislature goes out of session without agreeing on a budget, then the preceding budget would continue until it's superseded by the new one. With allowances for continued appropriations, the case becomes moot because this issue couldn't arise again in the future."

Since opponents of the District Court ruling have argued that it raises the specter of "judicial activism," the case could become an issue in the 2008 judicial election, particularly if it is ultimately decided by the Minnesota Supreme Court.

Morrison said that what is meant by 'activist judge' is difficult to quantify.

"I never know what people are talking about when they bring up activist judges," she said. "A judge decides cases brought to them based on the constitution, statutes, evidence, and arguments. If that amounts to activism, I guess it's activism."

The court's decision is due within 90 days of the hearing.

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