

STATE OF MINNESOTA**DISTRICT COURT****COUNTY OF RAMSEY****SECOND JUDICIAL DISTRICT**

Association for Government Accountability,

Petitioner,

Case Type: Civil

v.

Court File No. _____

Myron Frans in his Official Capacity as
Commissioner of Management and Budget
as a agency of the Executive Branch of the
State of Minnesota;
Minnesota House of Representatives Budget
and Accounting Office, and Minnesota Senate
Fiscal Services Department,

Respondents.

PETITION FOR WRIT OF MANDAMUS

INTRODUCTION

The Petitioner Association for Government Accountability, a government watch-dog association, seeks an order from this Court to direct the Commissioner of Management and Budget to pay the Minnesota state legislators their respective salaries of \$45,000 as prescribed by the Legislative Salary Council, mandated by the Minnesota Constitution. The Minnesota House of Representatives Budget and Accounting Office, and Minnesota Senate Fiscal Services Department are interested parties since the moneys for salaries are paid through these legislative departments.

During last year's election, a state constitutional amendment was enacted that created a Legislative Salary Council which established the base salary of state legislators at \$45,000, effective on July 1, 2017. Under Minnesota law, the State's Constitution mandates the funding of constitutional prerogatives of elected officials. Here, the prerogative arises from a constitutional amendment about legislator salaries. Governor Dayton, with his recent line-item veto of funding for the legislative branch of government, brings the issue of funding prerogatives to the forefront and to the brink of a state constitutional crisis.

Because their recent special session has ended, the state legislators have no way to override the veto. With that act, the legislative branch has ground to a halt. Any work between now and the next session is directly impeded and the people are effectively without local representation.

PARTIES

1. The Association of Government Accountability ("AGA") is a state-wide association of citizens and taxpayers concerned about government accountability to the U.S. Constitution, federal statutes and regulation, the Minnesota Constitution, Minnesota statutes and regulations and all other existing codified and common law. The AGA does whatever it can to promote the rule of law.

2. As such, among other things, the AGA commences and participates in lawsuits involving the government where the government has strayed from the rule of law. For example, the AGA sponsored litigation resulting in a court injunction enjoining Wabasha County's legally unauthorized safe driving classes. *See Association for Government*

Accountability, et al. v. Wabasha County, et al., Wabasha County District Court File No. 79-CV-13-751. Exhibit A.

3. Myron Frans is Minnesota's Commissioner of Management and Budget. The office of Management and Budget is an agency of the Minnesota Executive branch of government. Under Minnesota Statutes § 15.06, the governor appoints the Commissioner of Management and Budget with the consent of the Senate. The Commissioner acts as head of the Office of Management and Budget, which provides a number of financial services to the state including payroll for state employees and notably here, the funding to Minnesota House of Representatives Budgeting and Accounting Office and the Minnesota Senate Fiscal Services Department. *See* Exhibit I.

4. The Minnesota House of Representatives and Senate are the legislative branch of the Minnesota government. The State House through its financial department called the House Budgeting and Accounting Office compensates and reimburses its members. The State Senate through its financial department, Senate Fiscal Services Department, compensates and reimburses expenses for its members. The House Budgeting and Accounting Office and Senate Fiscal Services Department are necessary parties to the instant Petition. Payment of state legislator salaries is made through the respective departments within the legislative branch.

5. References to "Government" below are to the Commissioner, State Senate and State House, collectively, unless otherwise specifically stated, because Petitioner alleges that they have a collective constitutional and statutory duty that state legislators' salaries are timely paid.

JURISDICTION

The AGA has standing to bring the petition as having beneficiary interests regarding the funding of salaries for state legislators.

6. The Court has jurisdiction over this petition for writ of mandamus seeking prospective injunctive relief pursuant to Minnesota Statute § 586.01, et seq. and Rule 65.01 of Minnesota Rules Civil Procedure.

7. The AGA has standing to bring this petition for mandamus as “beneficially interested” under Minnesota Statute § 586.02. AGA’s taxpayers and voters are beneficially interested in their legislative representatives being paid their salaries so they are available to them and to enact legislation and conduct oversight on the executive and judicial branches and local government. However, absent their respective salary, members of the state legislature be unable to effectively represent their constituents or will be less available or unavailable to meet with constituents, conduct limited hearings, respond to constituent inquires or complaints about their interaction with other governmental agencies, research issues, or draft legislation in anticipation of the next session.

8. For example, in the 2017 legislative session, members of the AGA successfully lobbied for legislation regarding the prevention of local government’s creation of safe driving classes as a revenue source that is not allowed by state law. The act arose from an earlier AGA district court victory that found Wabasha County’s safe driving class unauthorized by law and permanently enjoined the County from any further use of the program as a revenue source. *See* Exhibit B (House File No. 1, 2017 1st Special Session, Line 152.21 – 153.20 enacted 2017). The AGA expects to continue to lobby to strengthen the law

in the 2017 and in the 2018 legislative session, but it requires interaction with legislators between sessions including possible limited hearings on the issue.

PETITION

A writ of mandamus is necessary because the prescribed salaries arise from a constitutional amendment of which any funding to support is a constitution prerogative of the legislature that cannot be vacated by the executive branch even absent a legislative appropriation.

9. Under Article III of the Minnesota Constitution, “[t]he powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.” Minn. Const., art. III, § 1.

10. The Association of Government Accountability petitions the Court for a writ of mandamus pursuant to Minnesota Statute § 586.01, et seq., requiring the Government commencing on July 1, 2017 to pay Minnesota state legislators the \$45,000 annual salaries “prescribed” by the Legislative Salary Council (“Legislative Council”).

11. The petition is necessary because the state legislative session for 2017 has ended without the Governor signing an appropriation bill funding the Council’s prescribed salaries for state legislators effective July 1, 2017. Governor Dayton specifically used his line-item veto authority to bring the state legislators salaries to zero as a possible retaliatory measure to punish legislators because appropriation bills passed and enacted into law by the Governor, were not what the Governor wanted.

12. The Governor’s office is part of the state executive branch of government.

13. The Minnesota Supreme Court has held that the Constitution mandates the funding of constitutional prerogatives of elected officials. *See State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986) (requiring funding of State Treasurer's constitutional prerogatives). Exhibit H.

14. Amended at the 2016 general election, Minnesota Constitution, Article IV, section 9, requires the Legislative Salary Council (Council) to “prescribe” the salaries of Minnesota state legislators by March 31st of each odd-numbered year:

Sec. 9. Compensation.

The salary of senators and representatives shall be prescribed by a council consisting of the following members: one person who is not a judge from each congressional district appointed by the chief justice of the Supreme Court, and one member from each congressional district appointed by the governor. If Minnesota has an odd number of congressional districts, the governor and the chief justice must each appoint an at-large member in addition to a member from each congressional district. One-half of the members appointed by the governor and one-half of the members appointed by the chief justice must belong to the political party that has the most members in the legislature. One-half of the members appointed by the governor and one-half of the members appointed by the chief justice must belong to the political party that has the second-most members in the legislature. None of the members of the council may be current or former legislators, or the spouse of a current legislator. None of the members of the council may be current or former lobbyists registered under Minnesota law. None of the members of the council may be a current employee of the legislature. None of the members of the council may be a current or former judge. None of the members of the council may be a current or former governor, lieutenant governor, attorney general, secretary of state, or state auditor. None of the members of the council may be a current employee of an entity in the executive or judicial branch. Membership terms, removal, and compensation of members shall be as provided by law. The council must prescribe salaries by March 31 of each odd-numbered year, taking into account any other legislative compensation provided to legislators by the state of Minnesota, with any changes in salary to take effect on July 1 of that

year. Any salary increase for legislators authorized in law by the legislature after January 5, 2015, is repealed.

The constitutional text also provides that “[a]ny salary increase for legislators authorized in law by the legislature after January 5, 2015, is repealed.”

15. Consistently, Minnesota Statute § 15A.0825, subdivision 7, provides that the council, among its duties, prescribe and set the salaries for the legislators:

By March 31 of each odd-numbered year, the council must prescribe salaries for legislators to take effect July 1 of that year. In setting salaries, the council must take into account any other legislative compensation provided to the legislators by the state and the most recent budget forecast. The council must submit a report by March 31 of each odd-numbered year with the prescribed salaries to the governor, the majority and minority leaders of the senate and the house of representatives, the chairs of the committees in the senate and the house of representatives with jurisdiction over the legislature's budget, and the chairs of the committees in the senate and house of representatives with jurisdiction over finance. The report must describe the council's rationale for selecting the prescribed salaries.

16. Accordingly, once the Council prescribes the legislator salaries, the Constitution requires that the Council-prescribed legislator salaries be paid by the Government.

17. The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.

18. Once the Council prescribes the legislator salaries, the Government is constitutionally and statutorily required to pay the prescribed salaries even in the absence of the Governor signing an appropriation act funding the Council's prescribed salaries.

19. In January, February and March of 2017, the Council held about six meetings to prescribe legislator salaries. The Council considered other legislative compensation, the budget forecast, and an extensive amount of other data and analysis.

20. On March 21, 2017, the Council prescribed \$45,000 as the legislator salary effective July 1, 2017:

Based on our consideration of these materials and our extended discussion, the Legislative Salary Council prescribes that salaries of Minnesota senators and representatives be set at \$45,000, effective July 1, 2017.

Attached hereto as Exhibit C is a true and correct copy of the Council's report dated March 21, 2017. In its report, the Council noted that salaries of Minnesota's legislators have been fixed at \$31,140 since 1999. *Id.*

21. Once the Council prescribes the legislative salaries under the Minnesota Constitution, Article IV, Section 9 and Minnesota Statute § 15A.0825, subdivision 7, the Government is obligated to pay the constitutionally-prescribed salaries irregardless of the existence of a state appropriation act funding the same.

22. After the Council's report was issued on March 21, 2017, the Speaker of the House Kurt Daudt wrote a letter instructing the House Budget and Accounting Office not to follow the Council's \$45,000 prescribed salary on July 1, 2017, but stick with the prior salary level of \$31,140, because he argued, erroneously, the state legislature is not required to

fund a Council-prescribed legislative salary increase. *See* Exhibit D (Kurt Daudt's letter dated March 16, 2017 to Jim Reinholdz, Controller for the House of Representatives.)

23. At the time, in response, Senate Majority Leader Paul Gazelka told WCCO differently about the Council's prescribed salaries of \$45,000, "That's what the Constitution directs... I don't know how you can possibly get around that." *See* Exhibit E.

24. In May of 2017, the state legislature passed an appropriation bill including funding for state legislator salaries which the vetoed by Governor's line-item veto authority by the Governor. The Governor wrote in his May 30, 2017 veto letter to President of the Senate Michelle Fischbach:

Dear Madam President:

Please be advised that I have received, approved, signed, and deposited in the Office of the Secretary of State, Chapter 4, Senate File 1, with the exception of the line-item vetoes below:

- Page 2, Line 24: "Subd. 2 Senate 32,299,000 32,105,000"
- Page 2, Line 25: "Subd. 3 House 32,383,000 32,383,000"

See Exhibit F (Governor's May 30, 2017 veto letter to President Fischbach).

25. In additional letter dated May 30, 2017, the Governor wrote to Speaker Daudt and Senate Majority Leader Gazelka:

Thus, I am line-item vetoing the appropriations for the House and Senate in FY 18/19 and FY 20/21. Your job has not been satisfactorily completed...

See Exhibit G (Governor's May 30, 2017 veto letter to Speaker Daudt and Senate Majority Leader Gazelka).

26. There was no opportunity for a legislative override of the Governor's veto because the state legislative session and special session in 2017 ended.

27. No other special legislative session has been called by the Governor.

28. Under these circumstances, absent the legally required appropriation, the Government is constitutionally and statutorily obligated commencing on July 1, 2017, to pay the legislator salaries of \$45,000 per annum.

29. Similarly, the Constitution establishes legislator pay as a constitutional prerogative of state legislators.

30. Accordingly, if there is no legislative appropriation, the Court must order that the legislative salaries be paid anyway. For instance, during recent government shut-downs because of the government impasse to pass necessary appropriations for core functions of the government, the Ramsey County District Court issued orders requiring that specific agencies and programs be funded by the state. Such appropriations of moneys were made through the executive office of Management and Budget. *See e.g., In re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, 62-CV-11-5203 (2011).

31. Here, with the unfunding of legislator salaries has effectively brought the legislative branch of government to a halt. State legislators are unable to fulfill their legislative functions as expected, including but not limited to research issues, draft legislation, meet and confer with constituents, or conduct limited hearings.

32. The Association for Governmental Accountability seeks a writ of mandamus prior or on July 1, 2017 to ensure that the Government commencing on July 1, 2017 fulfills its constitutional and statutory obligation to pay the legislator salaries of \$45,000 per annum.

PRAYER FOR RELIEF

The Petitioners pray for the following relief:

1. For an order to show cause on a hearing scheduled before or on July 1, 2017 for the Government to show why they would refuse to pay the \$45,000 salaries to the state legislators commencing on July 1, 2017;
2. For a writ of mandamus requiring the Government to pay the \$45,000 salaries to the state legislators commencing on July 1, 2017;
3. Award attorney's fees, costs, disbursements and expenses to Petitioner available under the Minnesota Equal Access to Justice Act, Minnesota Statute § 15.472, and other applicable law; and
4. Award other relief that the Court may deem just.

Dated: June 5, 2017.

/s/Erick G. Kaardal

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ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. §549.211, subd. 3, to the party against whom the allegations in this pleading are asserted.