

FILED

September 26, 2017

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA
IN SUPREME COURT
A17-1142

The Ninetieth Minnesota State Senate
and the Ninetieth Minnesota State House
of Representatives,

Respondents,

v.

Mark B. Dayton, in his official capacity as
Governor of the State of Minnesota, and
Myron Frans, in his official capacity as
Commissioner of the Minnesota
Department of Management and Budget,

Appellants,

**RESPONDENTS'
RESPONSE TO APPELLANTS'
AMENDED STATEMENT ON
CARRYOVER FUNDS**

The Governor argues his vetoes are constitutional because the Legislature can deplete its reserve funds and the appropriations to the Legislative Coordinating Commission (LCC) in order to provide some minimal level of legislative function to the people of Minnesota. The Senate and House are facing imminent shutdown and may now be forced to tie the LCC and its 140 employees to their fate. The Governor's amended statement on carryforward funds highlights the fact that he has forced the entire Legislature into survival mode.

Contrary to the Governor's amended statement (and his press release following mediation), he cannot have been surprised that the Legislature may attempt to tap some LCC funds if the Legislature is forced to attempt to operate without its biennial budget for an undetermined period of time. The Governor has consistently argued his line-item vetoes were constitutional because the Senate and House can take the extraordinary, unprecedented step

of accessing the LCC's appropriations. *See ROA 19 at 2, 4 (Governor's Answer); ROA 21 at 4, 16; Apps.' Statement of the Case 5 n.1, July 24, 2017; Apps.' Brief 5 n.4, July 28, 2017; Apps.' Informal Mem. 9 n.2, Sept. 15, 2017.* The district court considered the Governor's argument and dismissed it.¹ The Governor's argument is no more convincing now than in June.

The Legislature's ability to move funds from the LCC to the Senate and House is untested and comes at significant expense to other legislative agencies that serve vital functions. Among other agencies, the LCC appropriations fund the Revisor of Statutes, Legislative Auditor, and Legislative Reference Library. The Legislature's potential use of LCC funds under these circumstances would ultimately be subject to the discretion of the Executive Branch. Any decision to move funds will require approval by the Department of Management and Budget. A taxpayer lawsuit over the transfer of the LCC funds is entirely possible. It is also unclear what portion of the LCC funds are transferrable. The law governing such transfers requires numerous decisions and procedural steps for which there is no legal precedent. *See Minn. Stat. § 3.305, subd. 2.*

More importantly, depleting the LCC funds will put the LCC and its 140 employees in the same posture as the Senate and House employees. Legislative and LCC functions will both be pared back significantly until the Legislature can pass new appropriations and override the Governor's anticipated vetoes. The Legislature will need to limit its operations in order to

¹ "Governor Dayton argued that the vetoes did not abolish or defund the Legislature because he did not veto funding for the Legislative Coordinating Commission and carry-over funds are available. However, it is undisputed that funding of the Legislative Coordinating Commission does not cover legislative salaries, staff, building rental, or office administration. It is equally undisputed that even with carry-over funds, the House would cease operations by September 1, 2017 and the Senate by July 27, 2017." *Add. 15 n.4 (citations omitted).*

continue, and will therefore be unable to conduct its legislative function in an ordinary manner. It will not be business as usual.

The LCC's operating budget is approximately one-quarter the size of the Legislature's. *See ROA 19 at Ex. B.* The inescapable fact is that at some point in the near future, with or without access to the LCC's funds, the Legislature will run out of funds and the people of Minnesota will be deprived of their constitutional right to three independent, functioning branches of government. If the Legislature is forced to attempt to access the LCC funds, the practical effect is to extend the impact of the Governor's line-item vetoes to include the LCC.

The Court did not ask the parties to supply information regarding the LCC's financial standing, and the Legislature disagrees with these new numbers presented by the Governor.² The parties were unable to agree on the answers to all the Court's questions. However, the parties were able to agree that the Senate will exhaust its carryforward funds on December 1, 2017, and the House will follow on February 1, 2017.

² For example, the numbers presented by the Governor include funds that have already been spent by the LCC, and some portions of the LCC's appropriations are statutorily prohibited from being transferred.

Attorneys for Respondents

KELLEY, WOLTER & SCOTT, P.A.

Dated: September 26, 2017

By: Douglas A. Kelley

Douglas A. Kelley (#54525)

Steven E. Wolter, (#170707)

Kevin M. Magnuson (#306599)

Brett D. Kelley (#397526)

Centre Village Offices, Suite 2530

431 South Seventh Street

Minneapolis, MN 55415

(612) 371-9090

and

MASLON LLP

David F. Herr (#44441)

3300 Wells Fargo Center

90 South Seventh Street

Minneapolis, MN 55401-4140

(612) 672-8350