

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SCOTT

FIRST JUDICIAL DISTRICT

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In re Government Shutdown Litigation,

Case Type: Civil  
Chief Judge Kathleen Gearin  
Court File No. 70-CV-11-13433

Canterbury Park Holding Corporation, a  
Minnesota company, and Minnesota  
Horsemen's Benevolent & Protective  
Association, Inc., a Minnesota company

**ORDER**

Plaintiffs,

v.

State of Minnesota and Jim Schowalter,  
Commissioner of Minnesota Management  
& Budget,

Defendants.

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This matter came before the undersigned, on July 1, 2011, pursuant to a complaint filed by Plaintiffs Canterbury Park Holding Corporation ("Canterbury Park") and Minnesota Horsemen's Benevolent & Protective Association, Inc. against the State of Minnesota and Jim Schowalter, the Commissioner of Minnesota Management & Budget ("Commissioner Schowalter"). Minnesota Supreme Court Chief Justice Lori Gildea appointed the undersigned to hear this case as well as all cases filed in any district court in the State that seek or oppose funds of the executive or legislative branch functions during the current government shutdown. Governor Mark Dayton subsequently filed a motion for limited intervention.

Cort Holten, Esquire, and Gary Luloff, Esquire, appeared on behalf of Plaintiff Canterbury Park.

Kristyn Anderson, an Assistant Attorney General, and Joan Eichhorst, an Assistant Attorney General, appeared on behalf of Defendant Commissioner Schowalter.

David Lillehaug, Esquire, appeared on behalf of Governor Mark Dayton.

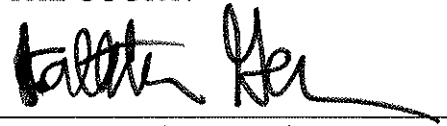
Based upon the files, pleadings, and proceedings herein, the Court makes the following Order:

1. Governor Dayton's motion for limited intervention is granted.
2. The motion to dismiss Minnesota Horsemen's Benevolent & Protective Association, Inc. as a plaintiff, in this matter, is granted.
3. The motion to dismiss the State of Minnesota as a defendant, in this matter, is granted.
4. The motion for a temporary injunction is denied.

DATED:

7-2-11  
2:15 PM

BY THE COURT:



Honorable Kathleen Gearin  
Chief Judge, Second Judicial District

The state treasury has an account that contains all revenues from licensing and other fees imposed by the Minnesota Racing Commission. Minn. Stat. 240.155 requires a biennial appropriation from the legislature before these funds can be made available to the commission. That statute also requires that the legislature set a cap on what amount may be spent on regulating racing and card playing. The appropriation bill appropriating \$899,000 in fiscal year 2012 (July 1, 2011-June 30, 2012) to the commission from the special account did not become law. The court cannot ignore the exact words of the statute and order the Commissioner of the Minnesota Office of Management and Budget to appropriate funds from this account for a non-essential function. Minn. Stat. 240.03 (10) requires the commission to make a biennial budget request to the legislature. That provision further supports the court's analysis.

Minn.Stat 240.155 creates a racing "reimbursement account" to cover the costs of "services provided by veterinarians, stewards and medical testing of horses". Plaintiffs argue that this statute makes this narrow special revenue fund a standing appropriation that does not require biennial consideration and appropriation by the legislature. After reviewing the entire statute, the court disagrees.