Filed in Second Judicial District Court
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Ramsey County, MN

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Case Type: Civil - Other
File No.: 62-CV-17-3396
Judge: John H. Guthmann

Association for Government Accountability,

Petitioner,

v.

Myron Frans in his Official Capacity as Commissioner of Management and Budget as an 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.

ORDER DISMISSING PETITION FOR WRIT OF MANDAMUS WITHOUT PREJUDICE

Petitioner's ex parte Petition for an alternative writ of mandamus was filed on June 5, 2017. On June 12, 2017, the court issued an Order to Show Cause, directing the parties to submit written briefs addressing several issues and to attend a hearing. The hearing was held at 9:00 a.m. on June 26, 2017, before the Honorable John H. Guthmann, Chief Judge of the Second Judicial District, at the Ramsey County Courthouse, St. Paul, Minnesota. Erick G. Kaardal, Esq., appeared on behalf of petitioner. Jacob Campion, Esq., appeared on behalf of respondent Myron Frans. Amy L. Schwartz, Esq., appeared on behalf of respondent Minnesota House of Representatives. Thomas S. Bottern, Esq., appeared on behalf of respondent Minnesota Senate Fiscal Services Department. Based upon all of the files, records, submissions and arguments of counsel herein, the court issues the following:

STATEMENT OF UNDISPUTED FACTS

None of the parties suggest or argue that there is a genuine issue of fact that is material to the legal issues before the court. Accordingly, the court compiled the following Statement of Undisputed Facts from the party submissions:

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1. Petitioner Association for Government Accountability ("AGA") is a state-wide association of citizens and taxpayers that lobbies for and against legislation. (Pet. for Writ of Mandamus, ¶¶ 1-2; Kaardal Decl. ¶¶ 3-4.) The record contains no information about any individual members of the AGA or their specific activities.

2. The Minnesota House of Representatives and Senate are the legislative branch of Minnesota's government. The House of Representatives compensates and reimburses its members through its financial department—the House Budgeting and Accounting Office. (Pet. for Writ of Mandamus, ¶ 4.) The Senate compensates and reimburses its members through its financial department—the Senate Fiscal Services Department. Payment of state legislator salaries is made through the respective departments within the Legislative Branch. (*Id*.)

3. Myron Frans is the Commissioner of the Minnesota Department of Management and Budget, also known as Minnesota Management and Budget ("MMB"). (*See* Pet. for Writ of Mandamus, Ex. I.) The Commissioner acts as head of MMB, which provides a number of financial services to the state. (*Id*.) Among those services are issuing the payroll payments for state employees, providing funding to the House of Representatives Budgeting and Accounting Office, and providing funding to the Senate Fiscal Services Department. (*Id*.)

4. The Legislative Salary Council ("the Council") was established after the 2016 general election when the people of Minnesota voted to amend the Minnesota Constitution. According to the amendment: "The salary of senators and representatives shall be *prescribed* by a council . . .." MINN. CONST. art. IV, § 9 (emphasis added).

5. Contingent upon, and effective with, passage of the proposed constitutional amendment, the Minnesota Legislature passed enabling legislation in 2014. Act of May 21, 2014, ch. 282, § 1, 2014 Minn. Laws at 1311-14 (codified as Minn. Stat. § 15A.0825). The enabling

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legislation created the Council and directs the Council to meet and "prescribe" legislator salaries by March 31 of each odd-numbered year. Minn. Stat. § 15A.0825, subds. 1, 7 (2016). The salaries take effect on July 1 of each odd-numbered year. Minn. Stat. § 15A.0825, subd. 7 (2016); *see* MINN. CONST. art. IV, § 9.

6. The Council held hearings in January, February, and March of 2017 to discuss and research legislative salaries. On March 17, 2017, the Council's report prescribed $45,000 as the annual legislative salary for members of both houses. (Pet. for Writ of Mandamus, Ex. C.)

7. On March 16, 2017, Speaker of the House Kurt Daudt wrote a letter to the House Budget and Accounting Office indicating that he would not appropriate funds to the House based on a $45,000 salary, and would stay with the $31,140 salary currently in effect. (*Id*., Ex. D.) Senate Majority Leader Paul Gazelka stated publicly that the Senate would appropriate senator salaries according to the Council prescription. (*Id*., Ex. E.)

8. On May 26, 2017, a special session of the Minnesota Legislature passed the Omnibus State Government Appropriations Bill, which included funding for the Minnesota House and the Minnesota Senate for fiscal years 2018 and 2019. The appropriations were not itemized. Rather, the appropriation for each house for each fiscal year was stated in a single lump sum.

9. The Legislature adjourned the 2017 special session and the budget bills that passed were presented to Governor Dayton, as provided by the Minnesota Constitution. MINN. CONST. art. IV, § 23.

10. On May 30, 2017, Governor Dayton line-item vetoed the lump-sum appropriations for the Senate and House for each fiscal year. (Pet. for Writ of Mandamus, Ex. F.)

11. The line-item veto eliminates $64,404,000 appropriated to the Senate and $64,766,000 appropriated to the House of Representatives over the course of two fiscal years. (*Id*.)

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12. The legislative session has ended so the Legislature may not meet to consider overriding the line-item vetoes, but Governor Dayton has the authority to call a special session at any time. MINN. CONST. art. IV, § 12.

13. Petitioner contends that respondents are constitutionally required to pay the legislative salaries prescribed by the Council regardless of whether an appropriation of funds to pay those salaries was enacted into law.

14. Petitioner commenced the instant litigation seeking issuance of a Writ of Mandamus requiring the Respondents to pay the prescribed $45,000 salary to all state legislators commencing on July 1, 2017.

15. The only harm petitioner alleges to itself or its members is the complete shut-down of the legislative branch. Petitioner cites no harm to it associated with the failure to pay the salary increase prescribed by the Council.

16. Because the appropriations vetoed by the Governor are not itemized, it is not possible to determine from the vetoed legislation whether legislative pay increases were or were not funded by the Legislature.

17. Until there is an appropriation of funds for the next two fiscal years, and until legislative salaries are paid from those appropriations, it is not possible to determine whether the salaries prescribed by the Council will or will not be paid by each house of the Minnesota Legislature.

18. On June 26, 2017, this court issued an order providing for the emergency funding of the legislative branch at fiscal-year 2017 levels pending court consideration of a lawsuit challenging the validity of Governor Dayton's line-item veto, which was brought by the legislative branch against Governor Dayton.

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19. At this time, the court's June 26, 2017 Order eliminates all harm that petitioner cited in its pleadings.

CONCLUSIONS OF LAW

1. Petitioner alleged no harm to itself or any individual association member that is different than or unique from the potential harm suffered by the general public.

2. Petitioner failed to demonstrate that respondents, by not paying a prescribed salary unsupported by an appropriation, failed to perform "an act which the law specially enjoins as a duty resulting from an office, trust, or station." Minn. Stat. § 586.01 (2016).

3. Petitioner failed to demonstrate that it, or any individual member of the association, has or will sustain a direct or imminent injury due to the failure of legislators to receive the level of pay prescribed by the Council.

4. Petitioner demonstrates no more than a hypothetical injury because it is not known whether the prescribed pay increase will not be paid when funds are appropriated to operate the Legislature.

5. The Petition for Writ of Mandamus fails to allege a justiciable controversy.

ORDER

1. The Petition for issuance of a Writ of Mandamus is **DENIED**.

2. The Petition is **DISMISSED WITHOUT PREJUDICE** because petitioner fails to present a justiciable controversy to the court. Petitioner lacks standing and the subject matter of the Petition is not ripe for judicial review.

3. The following Memorandum is made part of this Order.

THERE BEING NO JUST REASON FOR DELAY, LET JUDGMENT BE ENTERED ACCORDINGLY.

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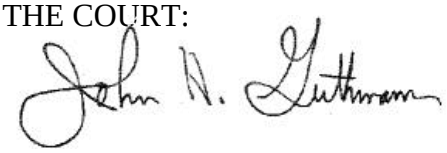
Dated: July 19, 2017

BY THE COURT:



Guthmann, John (Judge)
Jul 19 2017 10:02 AM

John H. Guthmann
Chief Judge, Second Judicial District

M E M O R A N D U M

I. LEGAL UNDERPINNINGS OF MANDAMUS ACTIONS

Although it has common-law origins, the mandamus remedy in Minnesota is statutory. *State v. Wilson*, 632 N.W.2d 225, 227 (Minn. 2001). Minnesota's district courts have "exclusive original jurisdiction in all cases of mandamus." Minn. Stat. § 586.01 (2012).[1] According to the legislature:

> The writ of mandamus may be issued to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station. It may require an inferior tribunal to exercise its judgment or proceed to the discharge of any of its functions, but it cannot control judicial discretion.

Id. § 586.01. A writ of mandamus "shall issue on the information of the party beneficially interested, but it shall not issue in any case where there is a plain, speedy, and adequate remedy in the ordinary course of law." *Id.* § 586.02.

"Mandamus is an extraordinary legal remedy awarded, not as a matter of right, but in the exercise of sound judicial discretion and upon equitable principles." *County of Swift v. Boyle*, 481 N.W.2d 74, 77 (Minn. 1992) (quoting *State ex rel. Hennepin County Welfare Bd. v. Fitzsimmons*, 239 Minn. 407, 422, 58 N.W.2d 882, 891 (1953)). To prevail in a mandamus action, the petitioner must prove that the respondent: (1) "failed to perform an official duty clearly imposed by law . . .;

[1] The statutory exceptions to the district court's original jurisdiction are inapplicable in this case. *See* Minn. Stat. § 586.11 (2012).

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(2) as a result, the petitioner suffered a public wrong specifically injurious to the petitioner . . .; and (3) that there is no other adequate legal remedy." *N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 491 (Minn. 2004) (citations omitted); *accord Madison Equities, Inc. v. Crockarell*, 889 N.W.2d 568, 571 (Minn. 2017); *Breza v. City of Minnetrista*, 725 N.W.2d 106, 110 (Minn. 2006).

II. THE INSTANT ACTION IS NOT JUSTICIABLE FOR TWO REASONS

A. Absent Standing there is no Justiciable Controversy and the Court is Without Jurisdiction.

Any civil action is subject to dismissal if the court lacks subject matter jurisdiction. Minn. R. Civ. P. 12.08(c). The court has no jurisdiction over an action that is not justiciable. *See, e.g.*, *State ex rel. Smith v. Haveland*, 223 Minn. 89, 91-92, 25 N.W.2d 474, 476-77 (1946). Standing is essential to the existence of a justiciable controversy and, therefore, a court's exercise of subject matter jurisdiction. *Annandale Advocate v. City of Annandale*, 435 N.W.2d 24, 27 (Minn. 1989) (citing *Izaak Walton League of America Endowment, Inc. v. State Department of Natural Resources*, 312 Minn. 587, 589, 252 N.W.2d 852, 854 (1977)); *see McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 337 (Minn. 2011). "Standing is a legal requirement that a party have a sufficient stake in a justiciable controversy to seek relief from a court." *Lorix v. Crompton Corp.*, 736 N.W.2d 619, 624 (Minn. 2007) (citation omitted).

1. The Standing Requirement Applies to Mandamus Actions.

Mandamus actions are no different than any other civil action. The petitioner must demonstrate standing as defined by statute. To have standing, the petitioner in a mandamus action must be a "beneficially interested party." Minn. Stat. § 586.02 (2016). The statutory standing requirement is ingrained in the second element that all petitioners must prove in any mandamus suit. A party is "beneficially interested" if it suffered "a public wrong specifically injurious to

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petitioner." *Coyle v. City of Delano*, 526 NW.2d 205, 207 (Minn. Ct. App. 1995); *see Madison Equities, Inc.*, 889 N.W.2d at 574; *Chanhassen Chiropractic Cntr., P.A. v. City of Chanhassen*, 663 N.W.2d 559, 562 (Minn. Ct. App. 2003) (citing *Coyle*) *rev. denied* (Minn. Aug. 5, 2003). The petitioner must also establish that "it would benefit from an order compelling performance of a statutorily imposed duty." *Knudson v. Comm'r of Pub. Safety,* 438 N.W.2d 423, 425 (Minn. Ct. App. 1989).

Respondent argues that petitioner lacks standing to seek mandamus relief. The statutory standing standard of a "public wrong specifically injurious to petitioner" is no different than the common-law formulation of standing that is applicable to all cases. To acquire standing, the petitioner must have either "suffered some 'injury-in-fact' or the [petitioner] is the beneficiary of some legislative enactment granting standing."[2] *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996) (quoting *Snyder's Drug Stores, Inc. v. Minn. State Bd. of Pharmacy*, 301 Minn. 28, 31-32, 221 N.W.2d 162, 165 (1974)); *see Sylstad v. Johnson*, No. C4-98-1932, 1999 WL 314883, slip. op. at *2 (Minn. Ct. App.) (unpublished) (citation omitted) (to have standing, the mandamus petitioner must be "injured in fact").

Injury-in-fact in public interest citizen actions requires "damage or injury to the individual bringing the action which is special or peculiar and different from damage or injury sustained by the general public." *Channel 10, Inc. v. Independent School District No. 709*, 298 Minn. 306, 312, 215 N.W.2d 814, 820 (1974) (citations omitted). The peculiar injury requirement "precludes citizens from bringing lawsuits against governmental agencies based only on their disagreement with policy or the exercise of discretion by those responsible for executing the law." *Conant v. Robins, Kaplan, Miller & Ciresi, L.L.P.*, 603 N.W.2d 143, 146 (Minn. Ct. App. 1999) (citing

[2] Petitioner makes no claim that standing was conferred on it by statute.

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McKee v. Likins, 261 N.W.2d 566, 571 (Minn. 1977)), *rev. denied* (Minn. Mar. 14, 2000). Instead, to avoid a flood of litigation, public rights are generally enforced by public authorities rather than by individuals. *Channel 10, Inc.*, 298 Minn. at 312, 215 N.W.2d at 820 (citation omitted).

Here, petitioner alleges no injury-in-fact. It only alleges the same injury that all citizens would suffer if the Legislature could not operate due to its defunding. Petitioner made no effort to demonstrate that its members are any different than all taxpayers and voters. Its "legislative agenda to lobby and investigate" involves rights common to all taxpayers and voters—rights that are specific to no one. (Pet.'s Mem. Responding to Order to Show Cause, at 9.)

Petitioner offers no legal authority for the proposition that it has standing. Instead, petitioner cited the example of its successful suit to enjoin a Wabasha County petty-misdemeanor diversion program not authorized by statute. *Association for Government Accountability v. Wabasha County*, No. 79-CV-13-751 (Dist. Ct. Jan. 6, 2014). However, in the suit against Wabasha County, the taxpayer standing exception applied to confer standing on petitioner.[3] *Id*., slip. op. at 8-10. In the instant case, petitioner concedes that the taxpayer standing exception is inapplicable because it challenges the non-expenditure of taxpayer funds rather than an alleged

[3] The taxpayer standing exception to the general rule traces its origin to 1888. "[I]t generally has been recognized that a state or local taxpayer has sufficient interest to challenge illegal expenditures." *McKee*, 261 N.W.2d at 570-71 (citing *State v. Weld*, 39 Minn. 426, 428, 40 N.W. 561, 562 (1888) (Mitchell, J.); *see Oehler v. City of St. Paul*, 174 Minn. 410, 417-418, 219 N.W. 760, 763 (1928) ("it is well settled that a taxpayer may, when the situation warrants, maintain an action to restrain unlawful disbursements of public moneys")). Thus, "the right of a taxpayer to maintain an action in the courts to restrain the unlawful use of public funds cannot be denied. Taxpayers are legitimately concerned with the performance by public officers of their public duties." *Id*. at 571. The taxpayer standing exception, which was reaffirmed in *McKee*, has been "limited . . . closely to its facts." *Citizens for Rule of Law v. Senate Committee on Rules & Administration*, 770 N.W.2d 169, 175 (Minn. Ct. App.) (citations omitted), *rev. denied* (Minn. 2009). In other words, the challenged conduct must actually involve an alleged unlawful use of public funds. Thus, in *Conant v. Robins, Kaplan, Miller & Ciresi, L.L.P.*, there was no taxpayer standing because "the challenged moneys [fees paid to attorneys hired by the state to prosecute the tobacco litigation] are not state funds and . . . the law does not require an appropriation for payment of attorney fees for special counsel." 603 N.W.2d 143, 149 (Minn. Ct. App. 1999). Similarly, a return of money from a special mineral fund to the general fund cannot confer taxpayer standing because an unlawful disbursement of funds was not alleged. *Rukavina v. Pawlenty*, 684 N.W.2d 525, 531 (Minn. Ct. App.), *rev. denied* (Minn. 2004).

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improper or unlawful use of taxpayer funds. *See, e.g., St. Paul Area Chamber of Commerce v. Marzitelli*, 258 N.W.2d 585, 588 (Minn. 1977) (taxpayer standing does not extend to the non-expenditure of public funds).

Petitioner's status as an organization confers upon it no greater claim to standing than the individuals within the organization. *No Power Line, Inc. v. Minn. Environmental Quality*, 311 Minn. 300, 334, 250 N.W.2d 158, 160 (1976) (an organization may derive standing from the particularized harm to its members). The organizational interest must also be specific to the alleged harm. In *Friends of Animals & Their Environment (FATE) v. Nichols*, an organization dedicated to the protection of fur-bearing animals petitioned for mandamus to compel the promulgation of rules to define "adequate facilities" as required by statute to obtain a license for fur farming. 350 N.W.2d 489, 490 (Minn. Ct. App.), *rev. denied* (Minn. Dec. 20, 1984). The Court of Appeals affirmed dismissal for lack of standing because the controlling statute "was not intended to regulate the treatment of animals." *Id*. at 492. Thus, even though the petitioner had a limited interest arguably distinct from all citizens, its interest was not sufficiently specific to the alleged public harm to confer standing. *See St. Paul Area Chamber of Commerce*, 258 N.W.2d at 590 (organization's "general concern for the welfare of the St. Paul business community" insufficiently specific to confer standing).

Petitioner alleges no specific injuries to its members that are distinct or unique from those potential injuries that would be suffered by the general public. Absent injury-in-fact, petitioner has no standing. On this ground alone, the Petition must be dismissed.

In addition, petitioner only alleges harm from the total defunding of the Minnesota Legislature. (Pet.'s Mem. Responding to Order to Show Cause, at 2, 10.) Petitioner makes no claim that it, as an organization, or its members are harmed by the failure of legislators to receive

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a pay increase. Since the Petition was filed, this court issued a mandatory injunction requiring the continued funding of the Legislature at fiscal-year 2017 levels.[4] *The Ninetieth Minnesota State Senate v. Dayton*, No. 62-CV-17-3601 (Minn. Dist. Ct. June 26, 2017). With the emergency funding order, the only harm cited by petitioner no longer exists.[5] For this additional reason, petitioner sustained no injury-in-fact, it has no standing, and the Petition must be dismissed.

B. <u>The Instant Action Lacks Ripeness</u>.

"'Ripeness is a justiciability doctrine designed to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies.'" *Leiendecker v. Asian Women United of Minnesota*, 731 N.W.2d 836, 841 (Minn. Ct. App.) (quoting *Nat'l Park Hospitality Ass'n v. Dep't of the Interior*, 538 U.S. 803, 807 (2003)), *rev. denied* (Minn. 2007). "To establish the existence of a justiciable controversy, the litigant must show a 'direct and imminent injury.'" *Id.* (quoting *State v. Colsch*, 284 N.W.2d 839, 841 (Minn. 1979)).

For example, a claim challenging a city's land use determination is ripe only when the challenged action occurs and causes damage. *Carlson-Lang Realty Company v. City of Windom*, 240 N.W.2d 517, 521 (Minn. 1976) ("it appears this latter claim will accrue, if at all, only when the new system is constructed and appellant actually loses customers"). "Issues which have no existence other than in the realm of future possibility are purely hypothetical and are not justiciable." *McCaughtry*, 808 N.W.2d at 339 (quoting *Lee v. Delmont*, 228 Minn. 101, 110, 36 N.W.2d 530, 537 (1949)).

[4] Petitioner does not question the standing of individual legislators to sue for their pay increase.

[5] Petitioner made no argument that the prescribed pay increase is necessary for the legislature to perform its core constitutional functions. In other words, petitioner made no claim that the premise for emergency funding applies to the legislative pay increase.

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Under the Minnesota Constitution, public funds may only be spent when there is an appropriation.[6] MINN. CONST. art. XI, § 1. Due to the Governor's veto, there is no appropriation to fund the legislature for the next two fiscal years. In other words, the work of the Legislature and of the Governor is incomplete. The Governor could call a special session at any time. It remains to be seen whether the prescribed pay increase will be funded by an appropriation.

In addition, even if the appropriation had not been vetoed by Governor Dayton, the appropriation was not itemized. There is no way of knowing whether the pay increase was or was not funded. Despite public pronouncements by legislative leaders, petitioner's suggestion that the pay increases would have been implemented in one house and would not have been implemented in the other is sheer speculation. Moreover, in the case of prior failures to fund state government, the Legislature has appropriated funds retroactively. *Cf. Limmer v. Swanson*, 806 N.W.2d 838, 838 (Minn. 2011) (discussing retroactive funding of the executive branch).

Finally, the Legislature and the Governor are engaged in litigation to determine whether the Governor's veto of the legislative funding appropriation was valid. The outcome of the litigation is only the first step to finding out whether the prescribed legislative pay increases get paid. Any way the issue is examined, petitioner's claim for payment of the legislative salary increase is premature and based on speculation.[7] Therefore, the Petition is not justiciable for lack of ripeness.

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[6] Petitioner's suit contains no alternative claim that the court should order emergency funding of the pay increase on the basis the prescribed pay increase is necessary for the legislature perform its core constitutional functions. Absent such a claim, there is no existing constitutional construct justifying the court to order the payment of funds from state coffers without an appropriation.

[7] Because this case is being dismissed on justiciability grounds, the court need not reach the remaining issues listed in the Order to Show Cause nor should the court issue an advisory opinion considering the viability of elements one and three of a mandamus claim.