

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Court File No.: 62-CV-08-1286

Citizens for Rule of Law, State
Representative Mark Buesgens, State
Representative Tom Emmer, Robert J.
Hantan, Tom Janis, Victor Nike,
Ronald R. Johnson,

Plaintiffs,

vs.

ORDER

Senate Committee on Rules and
Administration; House Committee on
Rules and Legislative Administration;
Senate Fiscal Services; House Budgeting
and Accounting; Compensation Council
and State of Minnesota,

Defendants.

The above-entitled matter came before the Honorable Kathleen R. Gearin on April 28, 2008, pursuant to a motion to dismiss filed by the defendants and motions to deposit funds and amend the complaint filed by the plaintiffs.

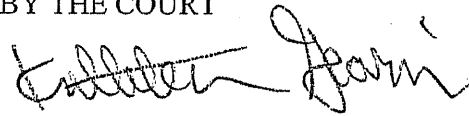
Kenneth E. Raschke, Jr., and Nathan J. Hartshorn, Assistant Attorneys General, appeared on behalf of the defendants. Daniel J. Biersdorf, Esquire, appeared on behalf of State Representatives Tom Emmer and Mark Buesgens. Erick G. Kaardal, Esquire, appeared on behalf of the remaining plaintiffs.

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

1. Defendants' motion to dismiss is granted.
2. Defendants' motion to deposit funds is denied.
3. Plaintiff's motion to amend their complaint adding the Secretary of State Mark Ritchie as party defendant is denied.

DATED: 5-30-08

BY THE COURT



Kathleen Gearin
District Court Judge

MEMORANDUM

The plaintiffs have filed the present lawsuit because they believe that the increases in per diem payments made to members of the Minnesota House of Representatives and the Minnesota Senate violate Article IV, Section 9, of the Minnesota Constitution. That part of the Constitution prohibits Senators and Representatives from increasing their compensation during the period for which the Senators and Representatives were elected. In ruling on the defendants' motion to dismiss pursuant to Rule 12, the Court has assumed that every statement in the plaintiffs' complaint is correct.

Throughout their complaint the plaintiffs refer to the per diem increases approved by the respective Legislative bodies as "living expense compensation." On February 21, 2007, on a

59-7 vote, the Minnesota Senate approved an immediate increase in per diem payments from \$66 to \$96 per day. The decision ratified the earlier decision by the Senate Rules and Administration Committee. On January 10, 2007, the Minnesota House of Representatives made an increase in per diem payments from \$66 to \$77 immediately effective.

The plaintiffs want this Court to issue a declaratory judgment order under Minn. Stat. § 555.01 stating as a matter of law that these per diem payments were, in fact, increases in compensation. None of the counts in their complaint can proceed unless this District Court has the authority to decide whether the payments approved by the State's Legislative bodies as "per diem payments" are, in fact, increases in Legislative compensation.

A trial court cannot ignore previous rulings of the Minnesota Supreme Court. All judges, whether sitting on the trial court or an appellate court, have a duty to tread very lightly on issues that may affect the separation of powers so essential to our way of government. Courts must be careful not to meddle in the legitimate affairs of the Legislative and Executive branches of government.

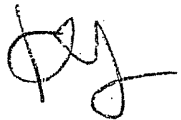
This is not the first time that Minnesota citizens have challenged the Legislators' decision to increase per diem payments during their term. This is the third time this has happened. District Court Judge J. Jerome Plunkett granted a similar motion to dismiss in an order he issued on June 30, 1997. In that order he ruled that "It is clear that resolutions of the Senate and the House fixing the amount of daily living expense money for its members is a classic example of an internal judgment of the Legislature, which is not amenable to judicial review." In that case, as in this one, the plaintiffs did not dispute the power of the Legislature to set a per diem rate for expenses. The plaintiffs were challenging the amount rather than the fact of the increase over

previous sessions. The plaintiffs in the present case are challenging the amount of the increase in per diem payments made to members of the Senate and the House. That is why they continuously refer to this increase as "living expense compensation."

In dismissing the lawsuit, Judge Plunkett held that "the per diem living expense payments to members of the Senate and the House of Representatives in 1997 were not 'compensation' within the meaning of Article IV, Section 9, of the Minnesota Constitution." The Minnesota Supreme Court upheld Judge Plunkett's decision in an order filed on November 22, 1977. The ruling that per diem payments, even when increased significantly, are not increased compensation remains the law in the State of Minnesota. The Supreme Court, in 1977, ruled that the judges in this state must adhere to the broad principles respecting the division of powers among the three branches of government. It also held that this principle could only be achieved if the courts "... refrain from an intrusion into the internal management of the Legislative or Executive branches absent a showing of circumstances compelling our review of discretionary actions taken."

In this Court's opinion, the plaintiffs have not made the requisite showing that trial court intrusion into the internal, discretionary decisions of the Legislative branch regarding the amount of per diem payments is justified. The broad, over-reaching, intrusive remedies sought by the plaintiffs in the present case further supports the Court's ruling.

KG

A handwritten signature in black ink, appearing to be the initials 'KG' with a stylized flourish extending to the right.