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### **Minnesota: Budget balancing or a lack of due process? -A historical perspective on past state impasses**

by [Luther Granquist](#) // August 10th, 2011

During the government shutdown in July, Ramsey County District Court Judge Kathleen Gearin ruled that certain government functions must be provided and paid for even though the Minnesota Legislature and the governor had not agreed on an appropriation act. Years earlier, in a different context, U.S. District Judge Earl Larson issued a similar order in *Welsch v. Likins*, a class action involving Cambridge State Hospital.

After a trial in 1973, Larson ruled in October 1974 that the due process clause of the U.S. Constitution required increased staffing levels at Cambridge. Although Gov. Wendell Anderson at first said he agreed with Larson's orders and would comply, he didn't request funding for the required staff in his proposed budget and the 1975 legislature did not appropriate necessary funds. In April 1976, after a further trial in late 1975, Larson ordered slightly increased staffing levels.

To address the legislature's failure to appropriate sufficient funds to comply with these staffing orders, Larson in July 1976 enjoined the state's fiscal watchdogs, the commissioners of Finance and Administration, from enforcing any state fiscal control provision that would prevent the Commissioner of Public Welfare and the CEO at Cambridge from hiring needed staff. He specifically referred to Article XI, section 1 of the Minnesota Constitution, the provision at the heart of the shutdown controversy: "No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law."

Larson emphasized that this order was required to protect the constitutional rights of the Cambridge residents: "The Court has found that they are inadequately housed, equipped, fed, treated, and cared for, and that their very safety is imperiled by their surroundings and by lack of adequate staff. What the people of the State of Minnesota have done and are continuing to do to the plaintiffs is—despite the loftiest of motives—inhumane and unconstitutional. Plaintiffs' cause cries out for the utmost relief that this Court can offer, consistent with its power."

The commissioners appealed to the federal Court of Appeals, and the legislature hired a law professor from the University of Chicago to submit a friend of the court brief opposing this order. They contended that the power to determine staffing levels lay with legislature and the governor, not the courts.

In January 1977, shortly after a newspaper article appeared about the argument of the case in the Court of Appeals, Gov. Rudy Perpich, who had just replaced Anderson, called the attorneys in the case into his chambers. He wanted to go down to St. Louis and tell the judges there that now

that he was governor he was going to do right for persons with mental retardation and should be given a chance to do so. Ultimately he wrote the judges a letter saying that his goals for the state institutions were not different from the goals ordered by Larson, that he believed in the necessity for adequate staffing, and that he proposed to close Hastings and Anoka State Hospitals so that more funding would be available at Cambridge. He asked the Court of Appeals to give him time “to achieve these goals through democratic processes.”

In March 1977 the Court of Appeals upheld Larson’s orders regarding staffing at Cambridge. That court stated that federal district courts, to provide relief from unconstitutional conditions, have the power to require expenditures that would not otherwise have been made. The court refused to second-guess Larson’s determination of the staffing standards that were needed. But the court gave Perpich and the legislature a second chance to appropriate the money needed to meet those standards by vacating (neither affirming nor reversing) Larson’s injunction against enforcement of the fiscal control laws. The court emphasized that Larson’s orders were “positive, constitutional requirements, and cannot be ignored.”

The court added: “We think that experience has shown that when governors and state legislatures see clearly what their constitutional duty is with respect to state institutions and realize that the duty must be discharged, they are willing to take necessary steps, including the appropriation of necessary funds.”

Despite this warning, the 1977 Minnesota Legislature didn’t respond, although it did order the closing of Hastings State Hospital. In November 1977, on the eve of another hearing before Larson and with the support of Perpich, a staffing agreement was reached to assign greater numbers of staff to Cambridge using positions from Hastings State Hospital and federal funding under the CETA (Comprehensive Employment and Training Act) program, an agreement that avoided direct confrontation with the legislature.

But not for long. Similar issues arose after the Commissioner of Human Services, with the concurrence of key members of the legislature, agreed in 1980 to system-wide staffing standards for all the institutions for persons with mental retardation. During 1981 and 1982 there were six special sessions to address issues posed by the economic crises of that era. In 1982 Larson ruled that several reductions made in institution salary accounts violated the 1980 agreement, but he rejected requests for an order similar to the one he made in 1976, in part because of the bind the state’s economic status created for state officials and in part because it appeared that agreement on a means to comply with his orders appeared possible. The question whether Minnesota’s fiscal control laws must give way in order to comply with court-ordered constitutional standards for state institutions remained undecided.

Documents mentioned in this History Note are included in With an Eye to the Past on the DD Council website:

*Judge Larson’s fiscal control law injunction:* [www.mncdd.org/past/pdf/70s/76/76-WELSCH-8.pdf](http://www.mncdd.org/past/pdf/70s/76/76-WELSCH-8.pdf)

*Governor Perpich’s letter (see below)*

Court of Appeals decision: [www.mncdd.org/past/pdf/70s/77/77-WELSCH-9.pdf](http://www.mncdd.org/past/pdf/70s/77/77-WELSCH-9.pdf)

[Interview with Eleanor Welsch](#), mother of Patty Welsch.

[Interview with Luther Granquist, along with Anne Henry](#), regarding the Welsch Case

February 1, 1977

*The Honorable J. Smith Henley  
United States Circuit Judge  
Court of Appeals For The Eighth Circuit  
United States Court and Custom House  
1114 Market Street  
St. Louis, Missouri 63101*

*BE: Welsch vs. Likins, Appeal Nos.76-1473 and 76-1797*

*The Honorable Myron H. Bright  
United States Circuit Judge  
Court of Appeals For The Eighth Circuit*

*The Honorable Roy L. Harper  
United States District Judge  
Court of Appeals For The Eighth Circuit*

*Your Honors:*

*As the new governor of the State of Minnesota I want to express to you my plans and aspirations regarding care for our retarded citizens. It is my fond hope that, given sufficient time to fulfill these plans and aspirations, we can render unnecessary the further involvement of federal courts in the funding and management of our state hospitals. Should this come to pass, the laudable goal of improved institutional care could be achieved without the trauma of a constitutional confrontation between this State and the federal courts.*

*As you may be aware, I became the governor of Minnesota on December 29, 1976. I previously served as lieutenant governor and before that as a state senator. In both of those offices I was an outspoken advocate for our mentally disabled citizens, and I intend to continue in that tradition.*

*On Tuesday, January 25, 1977, I presented my initial budget proposal to the Minnesota Legislature. Due to my brief tenure as governor, the spending recommendations in that budget are largely reflective of the goals established by the preceding administration. However, the budget message delivered on January 25th did contain one recommendation of great significance to our state retardation facilities. I recommended and will seek to achieve the closure of two of our ten state hospitals, those located in the cities of Hastings and Anoka. The*

*patients and residents at those hospitals can be cared for far more efficiently at the remaining institutions. The savings achieved by these closings, which can be used for improved care elsewhere, will be approximately \$3.2 million annually in operating expenses and \$2.6 million in appropriated capital improvement funds. I also recommended several cost-saving measures in my budget message. If these proposals are accepted by the legislature, the State of Minnesota will have additional resources to add to improving care at the remaining state hospitals.*

*The goals which I have for our state retardation facilities are not different from those espoused by Judge Larson in his several court orders. I believe in the concept of habilitation for all mentally disabled persons. I believe in the necessity of staffing which is adequate in both numbers and training. And I believe that our institutions should be physically safe, comfortable and attractive. These goals shall have high priority in my administration, and I will not be satisfied until they become realities.*

*My request to this Court is that you allow us time to achieve these goals through democratic processes. It is a governor's responsibility to provide leadership on issues of this nature, and I can assure you of my utmost efforts in this regard. If we fail to achieve our goals, then perhaps it would be time for this Court to reconsider the ponderous constitutional issues at stake in these appeals, But it would be tragic if our resolve to achieve reform is thwarted by a constitutional crisis in which the issue of humane care is obscured by a contest of governmental powers. Thus, it is for the sake of progress as well as for the continued vitality of our democratic processes that I enlist your support.*

*I stand willing to provide any further information which may be helpful to your consideration of these appeals.*

*Thank you for your thoughtful consideration.*

*Sincerely,*

*Rudy Perpich*

*RP: lmh*

*cc: Luther A. Granquist, Esq*

*The History Note is a monthly column sponsored by the Minnesota Governor's Council on Developmental Disabilities, [www.mncdd.org](http://www.mncdd.org) and [www.partnersinpolicymaking.com](http://www.partnersinpolicymaking.com)*