



June 29, 2015

ATTORNEY GENERAL MADIGAN PROVIDES CONSTITUTIONAL OFFICERS, LEGISLATIVE LEADERS INFORMATION TO PREPARE FOR BUDGET IMPASSE

Chicago — Attorney General Lisa Madigan today issued an overview of information her office has provided to Illinois' constitutional officers and legislative leaders to help prepare for the possibility that a State budget will not be in place for the new fiscal year. Attorney General Madigan issued this guidance in an effort to make sure that all offices and agencies have a legally supported plan in place to ensure that the State provides services critical to the people of Illinois in spite of the budget impasse.

The State's new fiscal year starts July 1, 2015. If a budget is not in place on July 1, the Illinois Constitution and State statutes severely constrain the State's authority to make payments to fund operations and services. While there are limited payments that the Comptroller is authorized to make in the absence of a budget, Illinois law is clear that the State cannot continue to fund all government operations and services in the absence of a budget passed by the legislature and signed into law by the Governor.

As background on this issue, the Appropriations Clause of the Illinois Constitution provides that "The General Assembly by law shall make appropriations for all expenditures of public funds by the State." Ill. Const. art. VIII, § 2(b). In keeping with that constitutional provision, the State Comptroller Act prohibits the Comptroller from paying vouchers that are not "pursuant to law and authorized." 15 ILCS 405 /9(b) (2012). Additionally, the Finance Article of the Illinois Constitution provides the "The State . . . shall incur obligations for payment or make payments from public funds *only* as authorized by law or ordinance." Ill. Const. art. VIII, § 1(b) (emphasis added).

The Illinois Appellate Court has specifically addressed the issue of whether the State can pay employees in the absence of a budget. During the budget impasse in 1991, a number of State employee unions sued the Comptroller and asked the court to issue an order compelling the Comptroller to issue paychecks due on July 15. In *AFSCME v. Netsch*, 216 Ill. App. 3d 566, 568 (4th Dist. 1991), the court held that the Comptroller could not pay State employees in the absence of an appropriation and "any attempt by the comptroller to issue the funds in the absence of an appropriation bill signed into law by the governor would create obvious problems under the separation-of-powers doctrine." The *Netsch* court determined that an appropriation was necessary "to prevent government operations from being brought to a complete stop." *Id.* at 568-69 (citing *People ex rel. Kirk v. Lindberg*, 59 Ill. 2d 38, 42-43 (1974)).

As the *Netsch* court clearly stated, the Illinois Constitution and statutes prevent the Comptroller from continuing to pay expenditures, including the State's payroll, without a budget, and even a court cannot order all of these payments to be made. In requiring a budget before the State can expend money, with limited exceptions, Illinois law is similar to federal law and the law of other states. That is why the federal government and numerous states have faced shutdowns over the years when budgets have not been implemented.

The State has experienced budget impasses in two recent years – 2007 and 2009. In 2007, after the legislature and the Governor enacted a one-month budget, the State began August without a budget in place. In early August, while the legislature was meeting to consider a budget, AFSCME sued the State, asking a court to order the Comptroller to issue paychecks. The arguments in that case focused on whether the State was prepared to comply with the federal Fair Labor Standards Act (FLSA), which mandates that employees who are covered by that law must be paid the federal minimum wage on the date that their regular paychecks are due or the State will be liable for damages and interest. Because federal law takes precedence over the Illinois Constitution, the State is required to comply with the FLSA, even in the absence of a budget. At the time that AFSCME sued in 2007, State agencies and offices were not prepared to pay a FLSA-compliant payroll in time to meet with August payroll deadlines.

The court's order thus allowed the State to pay the full payroll *only* to the extent it was not feasible to pay a payroll limited to FLSA compliance. In doing so, the court made clear that the order did not establish any precedent for such an order in the future. No

Illinois court has ever entered an order authorizing full payment of the State's payroll in a situation where compliance with the FLSA was feasible and no budget was in place.

The only other recent example occurred in 2009, when the State did not have a budget in place in mid-July. AFSCME sued on July 14, 2009, seeking a court order to compel the Comptroller to issue paychecks. The Attorney General's Office opposed that suit based on the clear requirements of the Illinois Constitution. On July 15, 2009, prior to the resolution of that suit and another suit by the Fraternal Order of Police, the legislature passed a budget.

Based on the Illinois Constitution, and consistent with previous litigation, the Attorney General has provided the constitutional officers with an overview of the application of the FLSA, so that State offices and agencies can be prepared to comply with that law in time for the payroll deadlines in mid-July. A copy of that guidance is attached.

Additionally, to ensure that all State offices and agencies are prepared, if necessary, to continue providing essential or core government services, the Attorney General also provided the constitutional officers with an overview of the process for identifying essential personnel and services. The Attorney General's Office has indicated it will work with the respective constitutional offices to ensure that their essential government functions and personnel are appropriately identified and maintained in the interest of the health, safety and welfare of the people of Illinois. A copy of that overview is also attached.

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