



May 19, 2020

VIA ELECTRONIC DELIVERY

The Honorable Tim Walz
Governor of Minnesota
130 State Capitol
75 Rev Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

The Honorable Keith Ellison
Attorney General of Minnesota
445 Minnesota Street, Suite 1400
St. Paul, MN 55101

Dear Governor Walz and Attorney General Ellison:

As members of the Minnesota Senate, we are concerned about the executive branch's interpretation of laws governing peacetime emergency powers and the enforcement actions taken against businesses and individuals based on recently issued executive orders.

We believe Governor Walz has exceeded the emergency powers authority provided under Minnesota Statutes, Chapter 12, for the imposition of criminal penalties for violation of executive orders. S.F. No. 4588 (Limmer), introduced by the chairman of the Senate Judiciary Committee in the Minnesota Senate on April 27, 2020, makes this concern very clear.

Under Minnesota Statutes, section 609.095, the legislature has the exclusive authority to define crimes and the range of sentences and punishments for their violation. A willful violation of Minnesota Statutes, Chapter 12, and associated rules and orders, is clearly and specifically a misdemeanor under Minnesota Statutes, section 12.45, unless a different penalty or punishment is specifically prescribed. Accordingly, a violation of an emergency powers order is a misdemeanor unless another statute provides a different penalty.

Emergency Executive Order 20-33, which Governor Walz signed and filed on April 8, 2020, provides that it is a misdemeanor under Minnesota Statutes, section 12.45, for a worker to willfully violate the order and a gross misdemeanor for a business owner, manager, or supervisor to require or encourage an employee to violate the order. The gross misdemeanor is

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predicated on the theory that Minnesota Statutes, section 12.45, authorizes the governor to prescribe a different penalty from the misdemeanor.

Your interpretation of the scope of the Governor's authority under Minnesota Statutes, section 12.45, is incorrect and inconsistent with legislative intent and with a more measured reading of the law. Most importantly, it is an infringement on the legislature's fundamental and exclusive authority to define and prescribe the punishment for a crime. Ultimately, this interpretation of executive authority is alarming because there would be no limitation to the severity of the punishment that Governor Walz or any other Governor acting under emergency powers authority could impose without any legislative action. The emergency powers authority provided in Minnesota Statutes, chapter 12, is not a blank check for the imposition of criminal penalties.

Since the issuance of EO 20-01, over 650,000 Minnesotans have become unemployed. In response, the Minnesota Senate acted swiftly to pass economic relief to individuals and small businesses, including tax relief, angel investment tax credits, capital investments, and small business grants. We passed these measures because Minnesota's economy – and the state budget that depends on its success – needs all the support we can offer. However, based on the civil complaint issued by Attorney General Ellison on May 17, it appears the executive branch does not share our concerns about the plight of Minnesota businesses.

We appreciate that the recent enforcement action taken by Attorney General Ellison against Shady's establishments does not seek to impose a gross misdemeanor penalty supposedly provided under an executive order. We also appreciate that the Department of Employment and Economic Development (DEED) is planning to issue guidance to businesses on ways to safely return to our economy. However, the civil penalty sought by the executive branch under M.S. 8.31 sends a heavy-handed message to small businesses and workers who seek to safely reopen just like their big box competitors.

We certainly hope this is not the message you intended to make, and we stand ready to work with you on ways to safely reopen Minnesota. That is why we passed SF 4511 (Mathews), which would have allowed businesses to reopen if they implemented safety measures consistent with Department of Health guidance. In light of this recent lawsuit and the looming June 12 special session, please understand that the previous restraint shown by the Senate to not exercise the authority granted under M.S. 12.31 to terminate the current peacetime emergency powers has become tenuous.

Regards,



Paul Gazelka
Majority Leader
Senate District 9



Bruce Anderson
Senate District 29



Paul Anderson
Senate District 44



Michelle Benson
Deputy Majority Leader
Senate District 31



Roger Chamberlain
Senate District 38



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