

FILED

IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT
SPRINGFIELD SANGAMON COUNTY ILLINOIS

AUG 26 2011 FAM.-6

Anthony P. Lufkin Clerk of the
Circuit Court

John Howard Meixner,
Shannon Christine Fehrholz,
et. al.

Plaintiffs,

v.

Pat Quinn, Governor of the State
of Illinois, Christopher A. Koch, State
Superintendent of Education, *et. al.*

Defendants.

2011-CH-1080

**ORDER CONCERNING PLAINTIFFS' MOTION FOR TEMPORARY
RESTRAINING ORDER**

Plaintiffs are Regional Superintendents and Assistant Regional Superintendents of Education from various Regional Offices of Education (hereinafter "superintendents"). Regional Superintendents are elected to office, Assistant Regional Superintendents are appointed by the Regional Superintendent. Superintendents' positions are statutorily created. 105 ILCS 5/3-2.5 provides Regional Superintendents shall receive for their services an annual salary. Further the statute prescribes the salary for Assistant Superintendents is based upon their educational experience. 105 ILCS 5/3-2.5(a).

For fiscal year 2012 (July 1, 2011- June 30, 2012) the Illinois legislature passed appropriations to pay the salaries of the superintendents. The Governor, exercising his line item veto authority, removed the line item paying the superintendents' salary. The legislature failed to over ride the line item veto. Hence, the superintendents have been working without salary since July 1, 2011. This without a doubt is creating an extreme hardship on the superintendents.

The Plaintiffs claim that their position and salary are mandated by statute and they are entitled to a temporary restraining order granting them prospective relief in the form of an order from this court that they be paid.

The issue is, as it applies to the Plaintiffs' Motion for a Temporary Restraining Order, whether this Court has the authority to order payment of unappropriated salaries. The answer is no. The granting of a temporary restraining order is within the sound discretion of the Court. That discretion is not without limits. In this case, the Court is without authority to issue a mandatory injunction to the Governor. *Hadley v. Department of Corrections*, 362 Ill. App.3d. 680 (4th Dist. 2005) *Brando v. State Department of Transportation*, 139 Ill. App.3d. 798 (1st Dist. 1985)


The Governor is vested with broad power. The Illinois Constitution provides that "[t]he Governor may reduce or veto any item of appropriations in a bill presented to him. . . . An item vetoed shall be returned to the house in which it originated and may become law in the same manner as a vetoed bill." Illinois Constitution Art. 4 Section 9(d). Taken to the absurd, the Governor has the power to veto appropriations to pay the salaries of all state officials and suspend the operation of all of the State's departments. The bare possibility that one might abuse their power does not authorize this Court to take from the executive the powers the Constitution plainly vests in them. *People ex rel. Millner v. Russel*, 311 Ill. 96, 99-100 (1924)

The rationale of *Russel* supports the conclusion that a position and salary created by statute must still be supported by an appropriation. The Illinois Constitution states very plainly that the Governor may veto an item of appropriation. To hold otherwise

would thrust the Court into the appropriation process. Such would be contrary to the Illinois Constitution.

In sum, this Court is without authority to issue a temporary restraining order mandating the executive branch pay the Plaintiffs prospectively. The Plaintiffs' Motion for Temporary Restraining Order is DENIED.

Entered this 26 day of August 2011

A handwritten signature in black ink, appearing to read "John Schmidt", written over a horizontal line.

John Schmidt
Circuit Judge for the 7th Judicial Circuit
Springfield, Illinois