

## Are Rell's executive spending orders legal?

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*Connecticut Post*

Updated: 08/22/2009 09:09:19 PM EDT

HARTFORD -- Gov. M. Jodi Rell's authority to issue executive orders to keep the state running hinges on a 19th-century state Supreme Court case that's never been tested in a modern court.

The case established the governor's ability, with a stroke of her pen, to bypass the constitutionally mandated process in which the Legislature sets appropriations and funds government. But it's also fueling complaints that Rell is using the fiscal emergency to slash funding for myriad social service needs.

And some are speculating that her spending priorities could provoke lawsuits from groups or non-profit organizations who received less money than they felt they deserved.

"Our legal people have looked at it and we could have court cases," said House Speaker Christopher Donovan, D-Meriden.

"We could win in five years, but it would cost everyone a lot of money. All of this poses an interesting question.

Can the governor run the appropriations on her own? It's a question and a concern of ours," Donovan said.

Administration officials rejected the notion of legal risk, insisting that Rell's authority to temporarily run government is solid, and that her funding priorities reflect strict limits on how much money is available in the absence of a budget, not her personal choices.

"The governor, as the chief executive officer, has the ability to order payment of essential services," said Robert Genuario, secretary of the state Office of Policy and Management.

"Just think of what suits would follow if the governor was not providing for state police or care in hospitals."

Since July, the Democratic-controlled Legislature and Rell, a Republican, have been unable to agree on a roughly \$38 billion budget for the next two years, or how to plug an \$8.5 billion dollar deficit. Much of the disagreement centers on how much in new taxes should be levied, with Democrats wanting more taxes, particularly on wealthier residents, and Rell blocking them.

Faced with no budget since July 1, the beginning of the new fiscal year, the governor has issued two executive orders to pay for "essential services," including salaries for herself, state workers and legislators, and is poised to issue a third to cover September.

Complaints are already flowing over Rell's spending priorities, which have dramatically reduced money for many social service programs. Doctors last week said the state is not

sufficiently funding the Life Star rescue program, while nonprofit organizations serving mentally ill patients said the governor's latest executive order cut their funding by 20 percent, which they said means 500,000 people could go without services.

Additional programs, ranging from on-the-job training to child care to efforts to reduce prison recidivism rates, are also receiving reduced funding, and some non-profit agency workers are being let go as a result.

Politically, however, some believe the stalemate is working in Rell's favor, and could help her if she chooses to run for re-election next year.

"I would say this enhances her image as we get closer to the gubernatorial race," said Gary Rose, a political science professor at Sacred Heart University in Fairfield.

"It will be advantageous for her to say there was a stalemate and she was the one who ran state government, who kept it going," Rose said. "The tax part of it, that message, is not getting across. I think this will strengthen Rell, or even another Republican candidate."

Rell's authority to run state government lies in a little known 1892 state Supreme Court court case, the *State vs Staub*, in which the state sued its comptroller for refusing to allocate education funding.

Much as today, in 1892 the Legislature and the governor had failed to agree on a budget and the state comptroller maintained he was legally unable to spend money beyond the start of the new fiscal year.

The state Supreme Court ruled that the Legislature's failure to enact a budget suspended other rules and procedures. The court noted that while there was no appropriation authority, the state had collected taxes and was still legally obligated to provide education funds.

"Even in the absence of appropriations passed by the Legislature certain types of expenses associated with the necessary operation of government must be incurred and paid," the court concluded.

In 1991 and 2003, the state was again left without a spending plan when the new fiscal year began. After the state's comptroller raised concerns about whether payroll could be met, Attorney General Richard Blumenthal, relying on the standard set by *State vs Staub*, said the state could fund essential operations, either through an executive order or a continuing resolution passed by the Legislature.

But Blumenthal warned precedent established by the *State vs Staub* "has not been applied in modern times in the absence of an entire state budget." He advised against executive orders and recommended the Legislature pass a continuing resolution to fund essential services.

In 2003, the Legislature passed a continuing resolution, but then-Gov. John Rowland vetoed it and issued his own executive order.

In an interview last week, Blumenthal said the 1892 case established the principle that essential services -- police, jails, public health functions, education -- had to be funded even in the absence of a budget.

"The principle is that citizens should not be made to suffer for the sins of government officials," Blumenthal said.

Asked how long Rell could continue issuing executive orders, Blumenthal said there are no legal cases which provide a "sunset" for the governor's authority.

The attorney general also doubted the state was open to lawsuits from parties who felt funding had been improperly or illegally withheld. "That raises an interesting question of who has standing, even if they have a valid point."

House Speaker Donovan said he prefers a continuing resolution, but said Rell would likely veto that resolution. The Democrats lack enough votes in the Senate to overturn Rell's veto of the Democrat's proposed budget so there is little chance they could override a veto of a continuing resolution, he said.

Blumenthal said a continuing resolution is the most democratic option. "A resolution reflects a consensus involving both the Legislature and the governor and would comport better with the idea of a democratic decision-making process."

Donovan also raised concerns about Rell's spending priorities, saying the governor's second executive order contained significant cuts to social service programs and other agencies. "The cuts she made reflected more of her budget than ours."

Adam Liegeot, a spokesman for Rell, said the governor's executive orders provide funding based on revenue expected that month. As revenue dipped in August, spending was reduced, Liegeot said.

One of the biggest looming challenges, if a budget is not adopted soon, is \$7.8 billion in education payments due to go out in October to the state's 169 towns and cities. Genuario said a decision has not been made over whether the state could make those payments under an executive order.

"We could meet it, but that would be difficult," Genuario said.

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