

NOTICE

Decision filed 07/24/15, corrected 08/26/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 150277-U

NO. 5-15-0277

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

AMERICAN FEDERATION OF STATE, COUNTY)
 AND MUNICIPAL EMPLOYEES, COUNCIL 31,)
 ILLINOIS TROOPERS LODGE NO. 41,)
 FRATERNAL ORDER OF POLICE; ILLINOIS)
 NURSES ASSOCIATION; ILLINOIS FEDERATION)
 OF PUBLIC EMPLOYEES, LOCAL 4408 IFT-AFT;)
 ILLINOIS FEDERATION OF TEACHERS, LOCAL)
 919; INTERNATIONAL BROTHERHOOD OF)
 ELECTRICAL WORKERS; ILLINOIS)
 FRATERNAL ORDER OF POLICE LABOR)
 COUNCIL; LABORERS INTERNATIONAL)
 UNION OF NORTH AMERICA-ISEA LOCAL)
 2002; SERVICE EMPLOYEES INTERNATIONAL)
 UNION, LOCAL 73; SEIU HEALTH CARE)
 ILLINOIS & INDIANA; SEIU LOCAL 1;)
 TEAMSTERS LOCAL UNION NO. 705,)
 AFFILIATED WITH THE INTERNATIONAL)
 BROTHERHOOD OF TEAMSTERS; and)
 CONSERVATION POLICE LODGE OF THE)
 POLICE BENEVOLENT ARID PROTECTIVE)
 ASSOCIATION,)

Plaintiffs-Appellees,)

v.)

THE STATE OF ILLINOIS and LESLIE GEISSLER)
 MUNGER, in Her Official Capacity as Comptroller)
 for the State of Illinois,)

Defendants-Appellants.)

Interlocutory Appeal from
 the Circuit Court of the
 Twentieth Judicial Circuit,
 St. Clair County, Illinois.

No. 15-CH-475

Honorable
 Robert P. LeChien,
 Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Presiding Justice Cates and Justice Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court had jurisdiction in suit to compel State officials to issue paychecks to State employees. Attorney General had standing to bring appeal on behalf of the State of Illinois even though the trial court dismissed the State as a party and Comptroller did not file her own appeal. Court did not abuse its discretion in entering a temporary restraining order.

¶ 2 The dispute underlying this appeal involves the failure of the legislature and Governor to agree to a budget. Due to the impasse, no appropriations bill exists allowing most State employees to be paid. Several unions representing State workers brought this action seeking declaratory and injunctive relief. They requested that the State Comptroller be directed to issue warrants allowing union members to be paid. The Comptroller took the position that all State employees should be paid, not just members of the unions involved in this litigation, but she stated that she would not issue the payroll warrants absent a court order to do so. The trial court entered a temporary restraining order (TRO) directing the Comptroller to pay all State employees at their regular rates of pay. The State, via the Attorney General (AG), appeals pursuant to Illinois Supreme Court Rule 307(d) (eff. Feb. 26, 2010). The AG argues that (1) the trial court lacked jurisdiction under the State Lawsuit Immunity Act (745 ILCS 5/1 (West 2014)); (2) the court abused its discretion in ruling in this matter after a Cook County court entered a conflicting order; (3) the requirements for issuing a TRO were not met; and (4) the court committed reversible error by allowing the Comptroller to be represented by attorneys other than the AG. The Comptroller filed an emergency motion to dismiss this appeal,

arguing that the AG lacked the authority to bring this appeal on behalf of the Comptroller due to the differences between their positions in this matter. We deny the Comptroller's motion to dismiss. We affirm the TRO; however, we remand with directions to set a hearing date that will limit the duration of the TRO.

¶ 3 The 2016 fiscal year began in Illinois on July 1, 2015. The Governor vetoed a budget passed by the legislature, and as of today, there is still no State budget in effect for the 2016 fiscal year. As a result, there is no appropriation in place to authorize the payment of salaries to most State employees. However, State employees have been directed to report to work, and they have complied with this directive.

¶ 4 On July 2, several unions representing State employees filed the complaint at issue in the circuit court of St. Clair County against the State of Illinois and the Comptroller in her official capacity. They alleged that under their collective bargaining agreements and extensions of those agreements, the State is required to pay union members in a timely manner. The unions further alleged that, "Notwithstanding the lack of budgetary appropriations, the State has sufficient funds to continue to pay State employees for their work." They argued that the failure to appropriate funds for the payment of employee salaries constituted an impairment of the State's contractual obligation to pay the union members. In addition, they argued that the Personnel Code requires the State to provide "fair and reasonable compensation" to its employees for the services they provide. See 20 ILCS 415/8a (West 2014). The unions requested a declaration that failure to pay union members their full salaries constitutes an unconstitutional impairment of contract.

They further requested preliminary and permanent injunctions directing the Comptroller to issue paychecks to union members.

¶ 5 The matter before us is complicated by the fact that the AG filed a separate declaratory judgment action in Cook County, raising different issues regarding the State's obligation to pay all State employees until a new budget is in place. That action was filed on July 1, approximately 16 hours before the unions filed the St. Clair County suit at issue here. We will discuss the Cook County proceedings to the extent that they are relevant to the questions before us.

¶ 6 In the Cook County action, the AG sought declaratory and injunctive relief against the Comptroller. The complaint alleged that "An actual controversy has arisen in light of substantial uncertainty regarding which, if any, payments may be authorized by the Comptroller in the absence of annual appropriation statutes." The AG argued that the Comptroller does not have authority to approve any payments that are not authorized by an appropriations bill or other law. The AG acknowledged that even without an appropriations bill, the Comptroller is authorized and required to pay the salaries of legislative and judicial employees and to make payments to employees mandated under the federal Fair Labor Standards Act (FLSA) (29 U.S.C. § 201 *et seq.*). In pertinent part, the FLSA mandates payment of the federal minimum wage and, where applicable, overtime. The AG requested a declaration and preliminary and permanent injunctions directing the Comptroller to pay State employees no more than is required under the FLSA or, in the alternative, enjoining her from issuing paychecks at all.

¶ 7 The Department of Central Management Services (CMS) and many of the unions involved in the St. Clair County case intervened in the Cook County case. CMS and the Comptroller submitted affidavits of officials who would be charged with implementing the AG's proposed order. These officials averred that it would take many months for CMS to determine which employees were covered by the FLSA and adjust the payroll system to reduce the employees' pay to the federal minimum wage. They also stated that doing so would require them to adjust the amount of payroll deductions and would "wreak havoc" on the State's retirement systems.

¶ 8 On July 7, the Cook County court entered a TRO enjoining the Comptroller from issuing paychecks beyond the minimum requirements of the FLSA. The Comptroller, CMS, and the unions immediately filed petitions for review, and the First District Appellate Court entered an order staying the TRO pending its decision in that appeal.

¶ 9 Meanwhile, in the St. Clair County proceedings, the AG filed a motion to dismiss the unions' complaint on July 6, arguing that (1) the unions' suit was barred by sovereign immunity; (2) the court should decline to hear the case because of the pending Cook County litigation; and (3) the unions failed to state a claim for impairment of contract. The AG argued that impairment of contract claims require legislative action and could not be premised on the legislature's failure to act to pass a budget.

¶ 10 On July 8, the unions filed the motion for a TRO that is at issue in this appeal. Pointing to the evidence submitted by the Comptroller and CMS in the Cook County case, they alleged that, in light of the difficulties CMS would face in issuing checks that comply with only the minimal requirements of the FLSA, there was no guarantee that

employees would be paid at all. They further alleged that State employees justifiably relied on their paychecks to meet their living expenses.

¶ 11 On July 9, the Comptroller filed a motion to disqualify the AG from representing her and for the appointment of private counsel. Her motion was based on the fact that the AG took a different position in this litigation than the Comptroller.

¶ 12 The St. Clair County court held a hearing on July 9 and entered a written order on July 10. The court denied the AG's motion to dismiss as to the Comptroller, but granted the motion to dismiss as to the State of Illinois. The court reserved ruling on the Comptroller's motion to disqualify the AG to allow the AG time to file a response. The court granted the unions' motion for a TRO. In support of its ruling on the TRO, the court found that the unions and their members have a protectable right to be paid. The court found that the unions demonstrated a likelihood of success on the merits, noting that failure to provide an appropriation to pay employees who were required to work impaired the State's ability to fulfill its contractual obligations. The court further found that the unions and their members had no adequate remedy at law, noting that the hardships caused by missed paychecks include noneconomic losses. In balancing the equities, the court found that State employees and their families should not suffer while the Governor and legislature "vie for a result favorable to their political agendas" and that denying the motion could expose the State to substantial liability under the FLSA, which includes remedies such as interest and attorney fees. At the request of the Comptroller and over the objection of the AG, the court made the TRO applicable to all State employees, not just union members.

¶ 13 On July 13, the AG filed a motion to strike the appearance of the Comptroller's general counsel and a motion for an extension of time to file her response to the Comptroller's motion to disqualify the AG. On the same day, the AG filed a petition for review of the TRO pursuant to Illinois Supreme Court Rule 307(d) (eff. Feb. 26, 2010). The rule provides that a reviewing court must decide a petition for review of a TRO within five days after the expiration of the time for filing any responding memorandum unless the court deems it appropriate to modify that schedule. Ill. S. Ct. R. 307(d)(4), (5) (eff. Feb. 26, 2010). We find that circumstances dictate that we deviate from the five-day schedule, and accordingly we deem it appropriate to modify that schedule.

¶ 14 On July 14, the Comptroller filed an emergency motion to dismiss this appeal, arguing that (1) the AG lacked the authority to file an appeal on her behalf due to the differences of position between the AG and Comptroller in this litigation, and (2) the appeal was premature because her motion to disqualify the AG was still pending. On July 17, the trial court denied both the Comptroller's motion to disqualify the AG and the AG's motion to strike the appearance of separate counsel for the Comptroller. On July 21, the Comptroller filed with this court a supplement to her emergency motion to dismiss the appeal. In light of the trial court's ruling, she withdrew her argument that the appeal was premature, but reasserted her argument concerning the differences between her position and that of the AG. In response, the AG argues that, as the State's chief legal officer, she has the authority to pursue this appeal on behalf of the State because the State has a substantial interest in the outcome of this litigation. We agree with the AG.

¶ 15 As the AG points out, the State of Illinois was dismissed as a party on the basis of sovereign immunity, not because it lacks an interest in the outcome of this litigation. Although the AG argues in her petition for review that the court erred in failing to dismiss the entire suit on the basis of sovereign immunity, no party has appealed the court's decision to grant the motion to dismiss as to the State. The AG argues that it would be incongruous to allow the court to dismiss the State as a party on this basis and then enter "a temporary restraining order adverse to the State that the State has no ability to appeal." We find this argument logical and persuasive. We also note that, as the AG points out, Illinois courts have found that nonparty State agencies have standing to file appeals in cases where they have a direct and substantial interest in the outcome even though they are not named as parties. See *In re O.H.*, 329 Ill. App. 3d 254, 257-58 (2002) (citing *People v. Pine*, 129 Ill. 2d 88 (1989), and *People v. White*, 165 Ill. App. 3d 249 (1988)); see also *People ex rel. Hartigan v. E&E Hauling, Inc.*, 153 Ill. 2d 473, 482-86 (1992) (the AG has authority to file a lawsuit on behalf of the State relating to contracts between private entities and a public corporation even though the public corporation did not file suit itself).

¶ 16 We turn now to the merits of the AG's appeal. She first argues that the court lacked jurisdiction to enter the TRO because the Court of Claims has exclusive jurisdiction over this litigation. This is so, she contends, because this is an action against the State of Illinois based on contracts between the State and the unions. We disagree.

¶ 17 As the AG points out, the Court of Claims has exclusive jurisdiction over cases involving "claims against the State founded upon any contract entered into with the State

of Illinois." 705 ILCS 505/8(b) (West 2014). Under the State Lawsuit Immunity Act, the State of Illinois may not be sued except as provided under the Court of Claims Act or certain other statutory provisions not relevant here. See 745 ILCS 5/1 (West 2014). However, under the "State officer" exception, circuit courts have jurisdiction over lawsuits against officers of the State of Illinois to compel or enjoin future actions where the plaintiffs have alleged that the officer's conduct (or failure to act) violates a law or constitutional provision. See *Wilson v. Quinn*, 2013 IL App (5th) 120337, ¶¶ 14-15; *Hadley v. Department of Corrections*, 362 Ill. App. 3d 680, 683 (2005). That is precisely what the unions have alleged here. Thus, the trial court had jurisdiction to enter the order.

¶ 18 The AG next contends that the court abused its discretion by ruling in this matter due to the Cook County litigation addressing the same matter. She argues that the relief ordered here conflicts with the order entered in the Cook County case. We are not persuaded for two reasons. First, the AG's suit against the Comptroller in Cook County did not raise the same arguments the unions raised in the St. Clair County action. Second, the First District has since vacated the Cook County court's TRO and remanded the matter. The First District found that the Cook County court (1) failed to limit the duration of the TRO, and (2) failed to make findings regarding balancing the equities. It is unclear whether the Cook County court will reach the same result on remand upon making those findings. It is also unclear whether the First District will uphold the TRO on appeal should the Cook County court decide it is appropriate to enter the order after weighing the equities. In order for paychecks that are due on July 31 to be issued, CMS

must begin processing payroll this week. Thus, this is an extremely time-sensitive matter. We find that it was appropriate for the St. Clair County court to rule in this matter rather than waiting for the Cook County litigation involving an order that is currently stayed to be resolved.

¶ 19 The AG further argues that the court abused its discretion because the unions did not establish that the requirements for issuing a TRO are present in this case. We disagree.

¶ 20 The purpose of a TRO is to preserve the status quo until the court can hold a hearing to determine whether a preliminary injunction is warranted. *Abdulhafedh v. Secretary of State*, 161 Ill. App. 3d 413, 416 (1987). It is a "drastic remedy" which should only be granted "in exceptional circumstances and for a brief duration." *American Federation of State, County, & Municipal Employees v. Ryan*, 332 Ill. App. 3d 965, 966 (2002). A TRO is proper only if the court finds that (1) the party requesting the order has a protectable right; (2) the party will suffer irreparable harm if the TRO is not granted; (3) there is no adequate remedy at law; (4) there is a likelihood that the party requesting the TRO will succeed on the merits; and (5) a balance of the equities favors issuing the TRO. *Kanter & Eisenberg v. Madison Associates*, 116 Ill. 2d 506, 510-11 (1987); *Scheffel & Co. v. Fessler*, 356 Ill. App. 3d 308, 313 (2005). On appeal, we will reverse a TRO only if we find that the trial court abused its discretion in making these findings. *Bradford v. Wynstone Property Owners' Ass'n*, 355 Ill. App. 3d 736, 739 (2005).

¶ 21 Here, there is no real dispute that the unions, their members, and other State employees have a protectable right to be paid for work they perform. We also agree with

the court that State employees will suffer irreparable harm if the TRO is not granted. As the unions stated in their motion requesting the TRO, no one knows when the budget impasse will end. Courts have found that irreparable harm results from continuing transgressions. *Hadley*, 362 Ill. App. 3d at 688. We also agree that the unions' members have no adequate remedy at law. State employees cannot be expected to bring multiple lawsuits to attempt to protect their rights. See *Hadley*, 362 Ill. App. 3d at 688-89. In addition, as the trial court pointed out, there are consequences that flow from not receiving a paycheck, some of which are nonmonetary in nature and cannot be adequately remedied by an award of damages. The loss of pay will, at the very least, cause State employees and their families a good deal of stress. Some may be unable to make payments on their homes, cars, or other debts. We find no abuse of discretion in the court's determination that the unions met their burden of establishing that they have a protectable right, will suffer irreparable harm without the injunction, and have no adequate remedy at law.

¶ 22 The AG argues that the unions not only have not shown a likelihood of success on the merits, but have failed to state a claim for impairment of contract. We emphasize, however, that a party seeking a TRO does not need to demonstrate that it would be entitled to a final judgment at trial. It is sufficient to raise a "fair question" about the right to relief. *Stocker Hinge Manufacturing Co. v. Darnel Industries, Inc.*, 94 Ill. 2d 535, 542 (1983). As discussed previously, the AG took the position in the Cook County case that a present controversy existed between her and the Comptroller due to "substantial uncertainty regarding which, if any, payments may be authorized by the

Comptroller in the absence of annual appropriation statutes." This is, in essence, an acknowledgement that there is at least a fair question as to the rights asserted in this lawsuit.

¶ 23 In support of her argument to the contrary, the AG cites *American Federation of State, County & Municipal Employees v. Netsch*, 216 Ill. App. 3d 566 (1991), a 24-year-old decision of the Fourth District. While *Netsch* does provide support for the AG's position, we do not find it to be controlling.

¶ 24 In *Netsch*, as here, the legislature failed to pass any appropriation bill prior to the start of the new fiscal year. *Netsch*, 216 Ill. App. 3d at 568. Unions representing State employees filed an action seeking a writ of *mandamus* compelling the Comptroller to issue paychecks to all State employees that were due to be paid on July 15, 1991. *Netsch*, 216 Ill. App. 3d at 567. As authority for the proposition that the Comptroller had a clear duty to issue the paychecks, the plaintiffs relied on section 13 of the State Comptroller Act (Ill. Rev. Stat. 1989, ch. 15, ¶ 213 (now at 15 ILCS 405/13 (West 2014))).

¶ 25 The Fourth District noted that although this statute "describes the means by which the comptroller is required to disburse salaries, it is not authority for the expenditure of any fund or funds which have not been appropriated for that purpose." *Netsch*, 216 Ill. App. 3d at 568. Thus, the court found no clear authority for the Comptroller to issue paychecks absent an appropriations bill. *Netsch*, 216 Ill. App. 3d at 568-69. The court went further, noting that issuing paychecks without an appropriations bill "would create obvious problems under the separation-of-powers doctrine" (*Netsch*, 216 Ill. App. 3d at

568), and stating that the Comptroller was prohibited from issuing paychecks at that time (*Netsch*, 216 Ill. App. 3d at 569).

¶ 26 *Netsch* provides obvious support for the AG's position. However, we do not believe it is controlling for three reasons. First, the *Netsch* court's decision was framed by the arguments of the parties and the form of relief the plaintiffs sought—a writ of *mandamus*. In order to obtain a writ of *mandamus*, a party "must establish a clear right to the requested relief, a clear duty of the public officer to act, and clear authority of the public officer to comply with the order." *McFatrige v. Madigan*, 2013 IL 113676, ¶ 17. The unions' argument here is not that the Comptroller has a *clear* duty and authority to act; rather, they argue that a failure to act runs afoul of the constitutional prohibition against impairment of contract. The plaintiffs in *Netsch* did not raise the constitutional arguments raised by the unions in this case, and such arguments would not have been appropriate in a *mandamus* action. Thus, while the *Netsch* court reached the result advanced by the AG, it did not resolve the questions involved in this case because it was not called upon to do so.

¶ 27 Second, the *Netsch* court itself indicated that in the event of a protracted budget standoff, courts may legitimately be called upon to intervene. The court stated, "While we now hold that the issue of general breakdown of government is not before us, we are not saying that the courts are barred from intervening in the event that the legislative or executive branches fail to perform their constitutional functions." *Netsch*, 216 Ill. App. 3d at 569.

¶ 28 The third reason we do not find *Netsch* to be controlling is that at least one recent decision strongly supports the arguments advanced by the unions in this case. *State v. American Federation of State, County, & Municipal Employees, Council 31* involved a contract dispute that arose after the legislature enacted a budget that did not appropriate sufficient funds to pay employees in 14 State agencies the salary increases to which they were entitled under their collective bargaining agreements. *State v. American Federation of State, County, & Municipal Employees, Council 31*, 2014 IL App (1st) 130262, ¶ 8 (hereinafter *State (CMS)*). Because of the inadequate appropriation, CMS froze the salaries of those employees at their previous levels. *State (CMS)*, 2014 IL App (1st) 130262, ¶ 8.

¶ 29 The unions sought arbitration, and the arbitrator ruled in their favor. *State (CMS)*, 2014 IL App (1st) 130262, ¶ 9. The State filed a petition to vacate the arbitration award, which the trial court granted in relevant part. The State appealed that ruling, arguing that the collective bargaining agreement imposed no binding obligation on the State because the agreement obligated the State to pay salaries with funds the legislature had not yet appropriated. *State (CMS)*, 2014 IL App (1st) 130262, ¶ 1. In rejecting this argument, the First District found that because the legislature appropriates funds on a yearly basis, the State's position would completely eliminate the ability of State agencies to enter into multiyear contracts, a result at odds with statutory provisions. *State (CMS)*, 2014 IL App (1st) 130262, ¶ 37 (citing 5 ILCS 315/21 (West 2008)).

¶ 30 We acknowledge that the AG's argument here is not quite so expansive. She is not arguing that the State lacked the authority to enter into the collective bargaining

agreements at issue or that they are invalid; she argues only that the Comptroller lacks the authority to comply with the terms of the collective bargaining agreements until a budget is in place. However, the end result is the same. Accepting the State's theory would allow the legislature "in every appropriations bill to *impair* the State's obligations under its contracts." (Emphasis added.) *State (CMS)*, 2014 IL App (1st) 130262, ¶ 39. The First District found this result to be untenable. Significantly for our purposes, the court concluded that enforcing the contractual obligation to pay the salary increases despite the inadequate appropriation "furthers the express constitutional policy forbidding the General Assembly from passing any acts, including insufficient appropriation bills, that impair the obligation of contracts." *State (CMS)*, 2014 IL App (1st) 130262, ¶ 40.

¶ 31 The AG seeks to distinguish this case from cases such as *State (CMS)* by arguing that the constitutional prohibition against impairment of contract applies only to legislative *action*—such as the enactment of an inadequate appropriations bill at issue in *State (CMS)*—and not to legislative *inaction*—such as the failure to enact a budget at issue here. We find this to be a distinction without a difference. As the unions argue in response, both scenarios lead to the same result. The AG contends that the distinction is significant because the remedy for an impairment of contract is invalidation of the offending legislation. We note, however, that in *State (CMS)*, the remedy was enforcement of the collective bargaining agreement. *State (CMS)*, 2014 IL App (1st) 130262, ¶¶ 1-2.

¶ 32 We also note that both the United States Supreme Court and our State supreme court have "held that particular scrutiny of legislative action is warranted when, as here, a

state seeks to impair a contract to which it is itself a party and its interest [in doing so] is financial." *In re Pension Reform Litigation*, 2015 IL 118585, ¶ 63. It would hardly comport with this "particular scrutiny" to hold that the prohibition against impairment of contract is entirely inapplicable to governmental failure to act.

¶ 33 We do not decide the question on the merits. However, we find that persuasive authority exists to support the position of the unions and the Comptroller. They have met their burden of demonstrating a likelihood of success on the merits.

¶ 34 We turn to the last requirement for a TRO—a balancing of the equities. The court found that this balancing inquiry favors granting the injunction, and we agree. As the court noted, State employees and their families depend on their paychecks to pay their bills. The Comptroller and CMS have asserted that it will be virtually impossible for them to adjust the State's payroll system to issue paychecks that comply with the minimal requirements of the FLSA instead of checks that compensate employees at their regular salaries. Thus, if the standoff between the Governor and legislature goes on indefinitely, State employees and their families could be left without resources to pay their bills and support themselves. This harm is severe and irreparable.

¶ 35 By contrast, the AG argues that the State will be irreparably harmed if forced to make payments without an appropriations bill. Significantly, she does not contend that the State lacks adequate funds to pay employees, and the unions have alleged that the State does have adequate funds available. In other words, the only harm the AG alleges the State might suffer is that it might be ordered to pay salaries it is obligated to pay before an appropriations bill is passed authorizing the payments. This harm pales in

significance compared to the harm that might be suffered by State employees and their families if the TRO is not granted.

¶ 36 Moreover, a decision not to enter the TRO would likely impose significant burdens on the State as well. As previously discussed, having to alter the State's payroll system to comply with the minimal requirements of the FLSA would require CMS to expend considerable time and resources. In addition, liability for failure to do so in a timely manner could be substantial. Further, if the budget impasse continues indefinitely and the Comptroller is not allowed to issue paychecks, the State may become unable to provide crucial governmental services. The court did not abuse its discretion in finding that a balance of the equities favors granting the TRO.

¶ 37 Finally, the AG argues that the court committed reversible error by allowing the Comptroller to be represented by attorneys other than the AG. She contends that this error so "infected the TRO" that it must be reversed. We disagree. There is "no clear-cut definitive answer" to the issue of the proper procedure to follow when a public official disagrees with the attorney whose statutory duty it is to represent the official. *Suburban Cook County Regional Office of Education v. Cook County Board*, 282 Ill. App. 3d 560, 570-71 (1996). Courts have approved the appointment of independent counsel as a solution to this problem. *People ex rel. Sklodowski v. State*, 162 Ill. 2d 117, 127 (1994); *Suburban Cook County Regional Office of Education*, 282 Ill. App. 3d at 573. Here, the court allowed the Comptroller's general counsel and private attorneys to represent her *prior to* making such an appointment. However, even if we assume this was error, the AG appeared on behalf of the State and fully and vigorously advanced the arguments she

raises in this appeal. We find no merit to her contention that the TRO must be reversed on this basis.

¶ 38 We find no abuse of the court's discretion in entering the TRO. However, there is no indication in the record that the court set a date for a hearing on a preliminary injunction, at which time the TRO would expire. A TRO is an emergency measure which, as noted earlier, may only be issued for a brief duration. *Abdulhafedh*, 161 Ill. App. 3d at 416. If a TRO is entered *ex parte*, it may not be in effect for longer than 10 days. *Abdulhafedh*, 161 Ill. App. 3d at 416. Although this specific limit is not applicable where, as here, a TRO is issued with notice to the opposing party, the TRO must still be of limited duration. *Abdulhafedh*, 161 Ill. App. 3d at 416-17. Here, the TRO does not explicitly contain an expiration date, and it appears on the record before us that no hearing date has been set for a preliminary injunction. "To allow a TRO of unlimited duration is to have a preliminary injunction without allowing the defendant a fair opportunity to show why the injunction should not be issued." *Abdulhafedh*, 161 Ill. App. 3d at 417. Thus, we remand this matter to the trial court with directions to set a date for a hearing if it has not already done so.

¶ 39 Motion to dismiss denied; order affirmed; cause remanded with directions.