

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0931**

Cathy Spann, et al.,
Respondents,

vs.

Minneapolis City Council, et al.,
Appellants.

**Filed March 14, 2022
Reversed
Cochran, Judge
Concurring specially, Connolly, Judge**

Hennepin County District Court
File No. 27-CV-20-10558

James V. F. Dickey, Douglas P. Seaton, Upper Midwest Law Center, Golden Valley, Minnesota (for respondents)

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Considered and decided by Cochran, Presiding Judge; Connolly, Judge; and Smith,

John, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

SYLLABUS

1. The Minneapolis City Charter clearly imposes a duty on the city council to continuously fund a police force with a minimum number of sworn police officers.

2. The mayor's duty under the Minneapolis City Charter to establish and maintain the police department is a discretionary duty. The charter does not clearly impose a duty on the mayor to continuously employ a minimum number of sworn police officers.

OPINION

COCHRAN, Judge

This appeal requires us to determine whether the district court properly granted the extraordinary legal remedy of mandamus. Appellants, the Minneapolis City Council and Mayor Jacob Frey, challenge a writ of mandamus issued by the district court that requires appellants to hire additional sworn police officers. Appellants assert that the district court erred by interpreting the city's charter to impose a clear duty on appellants to continuously employ a minimum number of sworn police officers and by using mandamus to control the mayor's exercise of discretion in hiring officers. We conclude that, although the city charter imposes a clear duty on the city council to continuously fund a police force with a minimum number of officers, it is the mayor who has the duty to employ officers and there is no clear duty under the charter for the mayor to continuously employ that same minimum number of officers. Rather, the charter vests the mayor with the duty to establish and maintain the police department—a duty which, by its very nature, is discretionary. The district court therefore erred when it concluded that appellants have a clear duty to

continuously employ a minimum number of officers and by granting mandamus on that basis. Accordingly, we reverse.

FACTS

The following facts are derived from the stipulation of facts and stipulated exhibits on which the parties agreed to have the district court decide this matter.

The number of sworn police officers employed by the City of Minneapolis has fallen substantially since early 2020. At all relevant times, the targeted number of sworn officers—the number the mayor and police department hope to have employed—has been 888. The city’s 2020 budget funded 888 sworn officer positions. On January 4, 2020, the city employed 879 sworn officers, 25 of whom were on continuous leave, meaning that they were on leave for 78 or more hours during an applicable pay period. By April 2021, the number employed had fallen to 743, and the number on continuous leave had risen to 92—netting just 651 actively working sworn officers. And the police department projected further declines in the number of sworn officers employed, with that number falling below 700 during 2022, but increasing to 757 sworn officers by the end of January 2023.

The recent decline in the number of active sworn officers employed by the city was preceded by two unusual events. First, in mid-2020, the city faced significant revenue shortfalls because of the COVID-19 pandemic. In response, the city implemented budget cuts. The budget cuts did not result in any layoffs of sworn officers. But the police department canceled a 2020 police academy. It also laid off all its community service officers (CSOs), many of whom were working toward completing

Minnesota Peace Officer Standards and Training licensure requirements. Police academies and the CSO program are important sources of new hires to offset attrition of sworn police officers. Second, later in 2020, an unprecedented number of officers went on continuous leave and/or left the department following the May 25, 2020, death of George Floyd and ensuing civil unrest in the city. The police department usually anticipates about 44 sworn officer departures annually, but 169 sworn officers separated from their employment with the department between May 25, 2020, and April 15, 2021.

In 2021, the mayor and police department took steps to increase the number of active sworn officers, including holding three police academies and recalling CSOs. But the city was still suffering revenue shortfalls attributable to the pandemic. The city's 2021 budget funded only 770 of the targeted 888 sworn-officer positions.

At the same time the number of sworn officers on the force was falling, the rate of violent crime in Minneapolis was climbing. According to police department records, from 2019 to 2020 the city suffered a 70.8% increase in homicides and a 105% increase in the number of shooting victims. These increasing violent-crime levels disproportionately affected diverse communities, including those in the city's fourth precinct in north Minneapolis.

Respondents are residents of north Minneapolis neighborhoods who filed a petition for a writ of mandamus in August 2020, seeking to compel appellants to hire additional police officers. The petition was based on sections 7.3(a) and 7.3(c) of article VII of the

city's charter. Minneapolis, Minn., City Charter art. VII, § 7.3(a), (c) (2022).¹ Section 7.3(a) addresses the mayor's functions with regard to the police department. It provides, in relevant part, that "[t]he [m]ayor has complete power over the establishment, maintenance, and command of the police department." *Id.*, § 7.3(a). Section 7.3(c) addresses the city council's duty to fund the police department, providing:

Funding. The City Council must fund a police force of at least 0.0017 employees per resident, and provide for those employees' compensation, for which purpose it may tax the taxable property in the City up to 0.3 percent of its value annually. This tax is in addition to any other tax, and not subject to the maximum set under section 9.3(a)(4).

Id., § 7.3(c). Respondents contended that sections 7.3(a) and 7.3(c) together require appellants not just to *fund* but also to *employ* a minimum number of police officers at all times and that appellants have failed to do so. The petition asserted that "[t]he [m]ayor has no discretion to employ fewer than 0.0017 employees of the police force per resident." According to the petition, based on the number of residents in Minneapolis in 2020, the city council was required to fund, and the mayor was required to employ, 743 officers.² Appellants opposed the petition, asserting that the charter requires the city

¹ We cite the current version of the Minneapolis City Charter because, although the charter has been amended since respondents commenced this action, sections 7.3(a) and 7.3(c) remain the same in all relevant respects. *See* Minneapolis, Minn., Ordinance No. 2021-056 (Nov. 19, 2021) (amending article VII in ways not relevant to this appeal).

² On appeal, the parties agree that the requisite number should be determined with reference to the since-released 2020 census data, which identifies the population of Minneapolis as 429,954. Multiplying that number by the 0.0017 requirement in the charter results in a product of 730.92. As noted below, the district court granted mandamus requiring appellants to fund and employ 730.33 sworn police officers, a number derived from the 2019 estimated population of Minneapolis, or the number based on the 2020 census,

council to *fund* a minimum number of police force employees, but does not impose a duty on the city council or mayor to *employ* a minimum number of officers. Appellants also asserted that the city council had remained compliant with the charter by continuing to fund the minimum number of positions required by section 7.3(c) of the charter despite a decline in the number of sworn officers employed.

The district court granted the petition. It determined that appellants had conceded that they were required to both fund and employ a minimum number of police force employees. Because the police department projected that the number of sworn officers in its employ would drop below the required minimum calculated by the district court, the district court concluded that appellants had “failed to comply with [s]ection 7.3(c) of the Minneapolis City Charter to fund and employ at least 0.0017 sworn police officers per resident of Minneapolis.” And the district court ordered that:

[The mayor and city council] shall immediately take any and all necessary action to ensure that they fund a police force of at least 0.0017 employees per resident, which will total either 730.33 sworn police officers or a number of sworn police officers equaling 0.0017 of the 2020 census population when published later this year, whichever is higher.³

whichever is greater. The record reflects that the city council has maintained funding that meets that minimum-funding requirement at all times relevant to this appeal.

³ In addition to their dispute over the nature of appellants’ duty under the charter, the parties disagreed about which police department employees could be counted in determining charter compliance and which population statistics must be used in determining compliance. The district court determined that (1) “employees” of the “police force” are sworn officers currently employed by the department, including those on continuous leave; and (2) the minimum number of required employees should be determined with reference to 2019 population estimates and, when it became available, 2020 census data. Appellants do not challenge on appeal the determination that employees of the police force means sworn officers, and we agree that it does. Appellants do assert that the

The district court further ordered appellants to comply with the requirements of the writ by June 30, 2022, or to show cause for their failure to do so.

This appeal follows.

ISSUE

Did the district court err by granting mandamus?

ANALYSIS

“Mandamus is an extraordinary legal remedy.” *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 171 (Minn. 2006) (quotation omitted). The writ may issue “(1) to compel the performance of an official duty clearly imposed by law [or] (2) to compel the exercise of discretion when that exercise is required by law.” *Id.*; *see also* Minn. Stat. § 586.01 (2020). To warrant judicial interference to compel performance of a clearly imposed duty, the “duty must be positive, not discretionary, and the right must be so clear as not to admit of any reasonable controversy.” *State ex rel. Schwartzkopf v. City Council of Brainerd*, 141 N.W. 97, 99 (Minn. 1913) (quotation omitted). When a duty involves the exercise of discretion, mandamus may issue only to set that discretion in motion or to require a new exercise of discretion because of arbitrary and capricious conduct. *State ex rel. S. St. Paul v. Hetherington*, 61 N.W.2d 737, 740 (Minn. 1953).

district court erred by using 2019 population estimates before the 2020 census data became available. Respondents argue that this issue is moot because the 2020 census data is now available. We need not determine whether this issue remains justiciable or resolve it on the merits because we reverse on other grounds.

Respondents sought mandamus based on their view that the city charter imposes a clear, nondiscretionary duty on the city council to fund *and* the mayor to employ a minimum number of sworn police officers at all times. To be entitled to mandamus on that basis, respondents were required to demonstrate that (1) both the mayor and the city council failed to perform an official duty clearly imposed by law; (2) respondents suffered a public wrong and were specifically injured by the failure; and (3) respondents have no other adequate legal remedy. *Breza v. City of Minnetrista*, 725 N.W.2d 106, 109-10 (Minn. 2006). Appellants challenge only the first of these elements in this appeal. And, because the district court’s determination of that element turns on legal issues, we undertake de novo review. *See In re Welfare of Child of S.L.J.*, 782 N.W.2d 549, 553 (Minn. 2010) (“[W]here a decision on a writ of mandamus is based solely on a legal determination, our review is de novo.”).

The central legal issue before us is whether section 7.3 of the city charter clearly imposes a duty on the city council and the mayor to *not just fund but also to continuously employ* a minimum number of police officers. Appellants assert that, while section 7.3(c) imposes a clear duty on the city council to fund the police department, the charter does not clearly impose a duty on the mayor to employ a minimum number of officers at any given time. Respondents counter that, read together, sections 7.3(a) and 7.3(c) of the charter clearly impose a duty to fund and employ.⁴

⁴ In an amicus brief, Police Officers Federation of Minneapolis makes an argument for interpreting section 7.3(c) that is different from the argument advanced by respondents. “Amicus must accept the case before the court as it is and ordinarily cannot inject new

The district court did not address this issue because it determined: “The parties do not dispute that ‘to fund’ also requires the City ‘to employ.’ For example, if the Court finds that the City was required to fund 10 sworn officers on the police force, 10 sworn officers must be employed.” Appellants assert that the district court erred in this regard, and we agree. Throughout their filings in the district court, appellants consistently maintained their position that section 7.3(c) is a funding provision that the city council has complied with by providing funding for a minimum number of sworn-officer positions. The district court’s order does not identify any basis for its determination that appellants conceded the issue, but respondents cite to the transcript of a May 21, 2021, hearing. In the cited portions of the transcript, appellants acknowledged that funding provided by the city council is to be used by the mayor for hiring sworn officers. But the acknowledgment that hiring follows funding as a practical matter—or even as a matter of proper governance—does not amount to a concession that the charter clearly imposes a duty to employ a minimum number of officers at all times. Accordingly, we reject the district court’s determination that appellants have conceded this issue and turn to the parties’ arguments on the merits.

issues into a case that have not been presented by the parties.” *In re NorthMet Project Permit to Mine Application*, 959 N.W.2d 731, 755 (Minn. 2021) (quotation omitted). We therefore focus on respondents’ interpretation arguments. Even if we were to consider the federation’s argument, however, we would reject it. The federation argues that section 7.3(c) imposes a clear, nondiscretionary duty on appellants to employ a minimum number of officers by requiring that “[t]he [c]ity [c]ouncil must fund a police force of at least 0.0017 employees per resident, and provide for those employees’ compensation.” (Emphasis added.) But section 7.3(c) by its terms governs only the city council’s duty to fund a police force; it does not govern the mayor’s duty to maintain the police department, which is separately governed by section 7.3(a).

The arguments raised by the parties require us to interpret the language of the city charter. The charter itself directs us to apply “the canons of construction and other principles of interpretation in the Minnesota Statutes” when construing the language of the charter. Minneapolis, Minn., City Charter art. I, § 1.3(d)(2) (2022); *see also Hayden v. City of Minneapolis*, 937 N.W.2d 790, 795 (Minn. App. 2020) (applying general principles of statutory interpretation to interpret Minneapolis City Charter), *rev. denied* (Minn. Apr. 14, 2020). Under those canons, we consider the language of sections 7.3(a) and 7.3(c) contextually and, absent ambiguity, apply their plain meaning. Minn. Stat. § 645.16 (2020); *see also Vasseur v. City of Minneapolis*, 887 N.W.2d 467, 471 (Minn. 2016) (applying plain language of Minneapolis City Charter).

Respondents assert that, in determining whether the charter clearly imposes a duty to employ a minimum number of officers, we should consider a 1961 referendum that triggered the charter amendment that first imposed a minimum-employee requirement for the police force. *See* Minneapolis, Minn., City Charter ch. 6, § 1 Amendment Note (Dec. 15, 2014) (describing 1961 charter amendment). The police-force provision was amended to its current form through a 2013 referendum. *See* Minneapolis, Minn., City Charter note 1 (2022). We conclude that the language of the current charter is unambiguous, and we thus do not consider extrinsic evidence. *See* Minn. Stat. § 645.16 (“When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.”).

As we have described above, section 7.3(a) of the charter confers on the mayor “complete power over the establishment, maintenance, and command of the police

department.” And section 7.3(c) requires the city council to “fund a police force of at least 0.0017 employees per resident, and provide for those employees’ compensation.”

We have no trouble concluding, and all parties agree, that the charter clearly imposes a duty on the city council to continuously fund a minimum number of sworn police officers. “Fund” is commonly understood to mean “to provide funds for” while “funds” are “available pecuniary resources.” *Merriam-Webster’s Collegiate Dictionary* 507 (11th ed. 2014); *see also* Minn. Stat. § 645.08(1) (2020) (providing that words and phrases should be “construed . . . according to their common and approved usage”). Consistent with those meanings, the mandate of section 7.3(c) is directed at the city council, whose role in relation to the police department is limited to providing funding.

By contrast, under section 7.3(a), the mayor “has complete power over the establishment, maintenance, and command of the police department.” The charter does not direct the mayor to employ any certain number of officers. Of course, it is logical to conclude that if the city council provides funds for police officers, then the mayor must use those funds for their designated purpose. In that manner, it may be inferred that the mayor’s duty to maintain the police department includes a duty to employ a certain number of officers. But that logical inference does not answer the question of whether there is a nondiscretionary “*duty clearly imposed by law*” that may be controlled through a writ of mandamus. *Mendota Golf*, 708 N.W.2d at 171, 174 (emphasis added). Our answer to that question is necessarily informed by the history and nature of mandamus.

Before the 20th century, “it was the law in this state that no act or omission of an executive officer of the state, in his official capacity, could be brought under control of the

courts by mandamus or injunction.” *State ex rel. Birkeland v. Christianson*, 229 N.W. 313, 314 (Minn. 1930). In the early 1900s, the Minnesota Supreme Court modified that rule, holding that mandamus could issue to compel the performance of “purely ministerial” duties. *Cooke v. Iverson*, 122 N.W. 251, 253 (Minn. 1909). But the court retained the principle that mandamus may not be used to “control or direct the head of the executive department of the state in the discharge of any executive duty involving the exercise of his discretion.” *Id.*; *see also Christianson*, 229 N.W. at 314 (explaining modification of rule). The same principles applied in cases involving municipal officials. *See, e.g., Olson v. Honett*, 157 N.W. 1092, 1092 (Minn. 1916) (town board); *State ex rel. Trebby v. Vasaly*, 107 N.W. 818, 820 (Minn. 1906) (mayor). Thus, for instance, mandamus would be available to compel issuance of a liquor license approved by a municipal body, but mandamus was not available to control the discretionary decision whether to approve a liquor-license application. *State ex rel. Howie v. Common Council of Northfield*, 101 N.W. 1063, 1064 (Minn. 1904).

In *Christianson*, the court explained that a party may be entitled to a writ upon demonstrating that an executive-branch duty is both ministerial and mandatory. 229 N.W. at 316; *see also Elecs. Unlimited Inc. v. Village of Burnsville*, 182 N.W.2d 679, 682 (Minn. 1971) (“Traditionally, mandamus may issue against a public officer only to compel a ‘ministerial’ act and will not issue when there obtains on the part of such official any degree of discretion with respect to the act in question.”). A ministerial duty is “one in respect to which nothing is left to discretion. It is a simple, definite duty, arising under conditions admitted or proved to exist, and imposed by law.” *Christianson*, 229 N.W. at 315 (quoting

Mississippi v. Johnson, 71 U.S. 475, 498 (1866)); *see also Cook v. Trovatten*, 274 N.W. 165, 167 (Minn. 1937). “When the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment, the act is ministerial.” *Romsdahl v. Town of Long Lake*, 220 N.W. 166, 167 (Minn. 1928).

The supreme court’s more recent mandamus cases have not used the term “ministerial” in describing the nature of duties for which mandamus may lie, instead stating that the writ may issue “to compel the performance of an official duty clearly imposed by law.” *Mendota Golf*, 708 N.W.2d at 171; *see also S.L.J.*, 782 N.W.2d at 553 (“Mandamus lies to compel a governmental body or board to perform a duty that the law clearly and positively requires” (Quotation omitted)). But we discern no substantive change in the law. The case law maintains the distinction between duties that are “clearly imposed” (ministerial) and those requiring the exercise of discretion. *See Mendota Golf*, 708 N.W.2d at 179. The statute governing the writ of mandamus similarly provides that it may issue “to compel the performance of an act which the law specially enjoins as a duty” but may not control the exercise of discretion. Minn. Stat. § 586.01.

At first blush, the mayor’s duty to maintain the police department by employing officers may appear to be ministerial: he must employ the number of police officers for which funding has been provided by the city council. In application, however, the duty quickly devolves into derivative questions that clearly call for the application of his discretion, particularly in the present circumstances. What should be done when a worldwide pandemic causes budget cuts that impact efforts to recruit and onboard new

officers? What steps should be taken when an unprecedented number of officers separate from the department following a summer of civil unrest? How quickly and through what process should these new officers be hired? Should the usual training and onboarding requirements be bypassed for some or all candidates? And what avenues should be pursued if a sufficient number of qualified candidates cannot be found? These questions illustrate how the mayor's duty to use funding provided by the city council to employ officers, and thereby maintain the police department at a certain staffing level, necessarily requires the exercise of discretion. Therefore, we conclude that the mayor's duty to maintain the police department is a discretionary duty, and there is no clear duty to continuously employ a minimum number of officers.

For duties requiring the exercise of discretion, “mandamus is inappropriate ‘to control or interfere with the manner in which’ the [entity] exercises its discretion,” but “mandamus can be appropriate ‘to set the exercise of that discretion into motion.’” *Mendota Golf*, 708 N.W.2d at 182 (quoting *Hetherington*, 61 N.W.2d at 740). Mandamus may also lie to “obtain a new and bona fide exercise of discretion when it appears that the [entity] has acted without discretion or in a clearly arbitrary and capricious manner.” *Hetherington*, 61 N.W.2d at 740. It will be a “rare case[.]” in which an official acts “in so clearly an arbitrary and capricious a manner that their action may be reviewed on mandamus.” *Zion Evangelical Lutheran Church of Detroit Lakes v. City of Detroit Lakes*, 21 N.W.2d 203, 205 (Minn. 1945) (quotation omitted).

Respondents argue that the district court's grant of mandamus merely set the mayor's discretion in motion. We note the tension between this argument, which presumes

the existence of a discretionary duty, and respondents' primary argument that the charter clearly imposes a (nondiscretionary) duty to continuously employ a minimum number of officers. We further observe that this was not the basis for the district court's decision to issue the writ of mandamus. In any event, we reject this argument because the record reflects that the mayor is actively exercising his discretion to address the shortage of sworn officers by, for instance, increasing the number of police academies in 2021 and recalling CSOs. On this record, there is no need for mandamus to set that discretion in motion.

Respondents also argue that we should affirm the district court on the alternative ground that appellants have acted arbitrarily and capriciously. Respondents did not make this argument to the district court, and the district court made no findings that the mayor has acted arbitrarily or capriciously in carrying out his discretionary duty to maintain the police department. For this reason, the argument has been forfeited, and we decline to address it. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) ("A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." (Quotation omitted)).

DECISION

The Minneapolis City Charter clearly imposes a duty on the city council to continuously fund a police force with a minimum number of sworn police officers, but the charter does not clearly impose a duty on the mayor to continuously employ that same minimum number of sworn police officers. The mayor's duty under the charter to maintain the police department is a discretionary duty. The district court erred by granting

mandamus on the basis that the charter imposes a clear duty on appellants to continuously employ a certain minimum number of sworn police officers. We therefore reverse.

Reversed.

CONNOLLY, Judge (concurring specially)

I agree with the majority's thoughtful opinion that the Minneapolis City Charter imposes a clear duty upon the city to fund a police force with a minimum number of sworn officer positions. As the majority points out, the city charter is clear; it provides:

Funding. The City Council must fund a police force of at least 0.0017 employees per resident, and provide for those employees' compensation, for which purpose it may tax the taxable property in the City up to 0.3 percent of its value annually. This tax is in addition to any other tax, and not subject to the maximum set under section 9.3(a)(4).

Minneapolis, Minn., City Charter ch. 6, § 7.3(c) (2015). Noticeably absent from the charter's language is a clear mandate that the mayor employ a minimum number of sworn officers. Thus, I agree with the majority that, although the city charter clearly requires a duty to fund a police force with a minimum number of sworn officers, the city charter includes no mandate that this minimum number of officers be employed by the mayor at any given point in time.

I write separately, however, because I think it is illogical that there is a clear to duty to fund a certain number of sworn officers, but no clear duty to employ them. The adverse effect of the lack of any clear mandate to employ a specified number of officers is evident. It is undisputed that, since the pandemic began and the death of George Floyd occurred, the number of sworn police officers employed by the city has decreased drastically. It is also undisputed that, during this time period, crime has drastically increased. In light of the increase in crime, respondents have made it clear that they have been injured by the lack of police officers.

Nevertheless, it is well settled that a writ of mandamus is an extraordinary remedy. *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 171 (Minn. 2006) (“Mandamus is an extraordinary legal remedy.”). To obtain a writ of mandamus, a petitioner must show that the defendant, among other things, “failed to perform an official duty clearly imposed by law.” *N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 491 (Minn. 2004). “Mandamus will issue only when the petitioner has shown the existence of a legal right to the act demanded which is *so clear and complete* as not to admit any reasonable controversy.” *Day v. Wright County*, 391 N.W.2d 32, 34 (Minn. App. 1986) (emphasis added), *rev. denied* (Minn. Sept. 24, 1986).

Here, the city charter provides *no clear duty* to employ a certain number of sworn officers at any given point in time, even though there is a clear duty to fund that number of officers at all times. Consequently, I agree with the majority that it was error to grant the writ of mandamus.

My decision is also influenced by the city’s representations at oral argument that the mayor is making a good-faith effort to hire the specified number of officers that has already been funded. Specifically, counsel for the city stated at oral argument that the city has funds to hire “190 new officers over the course of 2022,” which would consist of “160 newly trained cadets and . . . recruits and . . . 30 laterals.” The parties’ stipulation that the city has secured the funding for the requisite number of officers, together with the city’s representation that the mayor is acting in good faith in an effort to hire 190 new officers, satisfy the requirements of the city charter. *See Minneapolis, Minn., City Charter ch. 6, § 7.3(c)*. Although it seems illogical that the city charter would mandate the funds to hire

a certain number of officers, but not mandate that those officers be hired, the plain language of the city charter does not contain a clear duty to employ the specified number of officers. Perhaps the city charter should be amended to rectify this. However, that decision is for a different branch of government to make. Therefore, I concur with the majority that the district court's grant of the writ of mandamus must be reversed.