

Byrne, Randall (Treasury)

From: Vandegrift, Drew (TREASURY)
Sent: Monday, June 15, 2015 3:26 PM
To: Headen, Frederick (Treasury)
Cc: Koryzno, Edward (Treasury); Byrne, Randall (Treasury)
Subject: RE: COA Kincaid v. Flint

Thanks for your review, Fred.

-Drew

From: Headen, Frederick (Treasury)
Sent: Monday, June 15, 2015 3:09 PM
To: Vandegrift, Drew (TREASURY)
Cc: Koryzno, Edward (Treasury); Byrne, Randall (Treasury)
Subject: RE: COA Kincaid v. Flint

You have to read the language you quote in its proper context. The entire sentence reads that “[c]onsequently, the Legislature did not grant the EM the power of ratification, nor did the actions of the EM taken under 2011 PA 4 survive the electors’ referendum of that Act.”

First, note the reference to *the* “EM.” It is in the singular; in other words, the Court was referring specifically to Mike Brown, not to Emergency Managers in general. Second, the Court was addressing the issue of whether anything in Act 4 authorized Mike Brown to ratify the actions of the then Finance Director in recommending that water and sewer rates be increased. The Court concluded that the answer was no.

Finally, I think that read literally, and in isolation, the phrase “nor did the actions of the EM taken under 2011 PA 4 survive the electors’ referendum of that Act” would be mere dicta because the phrase was not necessary to resolve the question before the Court: namely whether the Act authorized Mike Brown to ratify the actions in question. In addition, it would lead to the absurd result of requiring each Emergency Manager serving when Act 436 took effect to reenact any actions taken by him or her, or a predecessor, under Act 4 in order for those actions to remain valid under Act 436. This would fly in the face of § 31 of Act 436.

I think the statement by the Court was overbroad and unnecessary. But, I see no reason for concern.

From: Vandegrift, Drew (TREASURY)
Sent: Monday, June 15, 2015 11:45 AM
To: Headen, Frederick (Treasury)
Cc: Koryzno, Edward (Treasury); Byrne, Randall (Treasury)
Subject: COA Kincaid v. Flint

Hello Fred,

I am reviewing the latest COA opinion for Kincaid v. Flint. I am troubled by the court’s holding that no EM actions taken under PA 4 “survive[d] the electors’ referendum of that Act” (p8). What about the 19(1)(k) actions taken under PA 4?

Both Flint and Pontiac have enormous OPEB liabilities to honor if the 19(1)(k) actions are no longer effective.

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM SCOTT KINCAID, ERAINA POOLE,
GEORGE POOLE, and MARY BELL,

Plaintiffs-Appellants,

v

CITY OF FLINT,
a municipal corporation.

Defendant-Appellee.

FOR PUBLICATION
June 11, 2015
9:10 a.m.

No. 318906
Genesee Circuit Court
LC No. 12-098490-CZ

Before: DONOFRIO, P.J., and BORRELLO and STEPHENS, JJ.

STEPHENS, J.

Plaintiffs, all residents of the defendant, appeal as of right the order of the circuit court granting defendant's motion for summary disposition and denying plaintiffs' motion to amend their complaint. We reverse and remand.

I. BACKGROUND

On August 15, 2011, the defendant's finance director, Michael Townsend sent a notice of a proposed 3.5% water and sewerage rate increase to be effective September 16, 2011, to the city council and mayor. The increase was proposed to meet a projected fiscal year deficit in the water fund of \$14,789,666 as well as a sewer fund deficit of \$8,078,917. Council adopted the proposal and the mayor signed it.

Shortly thereafter defendant was declared to be in a state of financial emergency.¹ On November 28, 2011, Governor Rick Snyder appointed Michael Brown as the Emergency Manager (EM) of defendant under the Emergency Manager Law, Public Act 4 of 2011.² On

¹ MCL 141.1545, former MCL 141.1214 lists the four instances in which a financial emergency exists.

² Former MCL 141.1501 *et seq.*; At the time, former MCL 141.1515(4) provided the Governor with the authority to appoint an emergency manager: