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Sent: Wednesday, June 17, 2015 10:58 AM
To: Byrne, Randall (Treasury); Vandegrift, Drew (TREASURY)
Subject: FW: FYI: Michigan Court Ruling Clips Emergency Managers' Power

From: Sylvia Arakelian
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Michigan Court Ruling Clips Emergency Managers' Power

Caitlin Devitt

CHICAGO - A Michigan appeals court ruling has clipped the authority of the state's emergency managers in the first case examining the extent of their power under the state's law for distressed local governments.

The Michigan Court of Appeals on June 12 that emergency managers cannot simply ratify actions imposed by local officials and must closely follow local ordinances when imposing their own orders.

The case is Kincaid et al v. the City of Flint, stemming from a challenge to a former Flint emergency manager's order imposing steep water and sewer rate increases.

The appeals court decision reverses a lower court's ruling dismissing the case.

"The EM is a creature of the Legislature with only the power and authority to do what is granted by statute," the opinion says. "That authority was not as broad as defendant argues."

The ruling means emergency managers need to formally initiate actions on their own and pay close attention to adhering to local procedure.

For local governments currently under emergency management, managers may want to review their orders to protect against a legal challenge in light of the Flint decision, said attorneys at Michigan-based law firm Miller Canfield, which has been following the case and published a comment on the ruling.

"The court of appeals took a very strict, constructivist view of the statutes," said attorney Christopher Trebilcock, referring to Act 436, the state's current emergency management law, and its predecessor, Act 4.

"For any entity that is under Act 436 or Act 4, the filing of proper procedure is very important and strict adherence to local ordinances is required," he said.

"If you're a local unit that's still in receivership it's worth reviewing the orders and actions in light of the court of appeal's decision."

Miller Canfield says it's the first case to analyze the extent of an EM's authority. The ruling places a "previously undefined limit on an EM's powers and by implication narrowed the EM's authority to 'act for and in the place and stead' of local officials," the law firm said in its commentary.

For Flint, the ruling means the loss of revenue generated by the water and sewer rate increases a former emergency manager imposed. The city has not yet announced whether it will appeal the ruling. If it does, it would appeal to the Michigan Supreme Court.

In 2011, before Flint was under state-ordered emergency management, the finance director recommended raising water and sewer rates, a move that was later approved by the city council and the mayor. The state then appointed Michael Brown to take over the city as emergency manager. He ratified the finance director's rate increase. Brown imposed water and sewer rate increases of 12.5% and 45%, respectively.

City council member Scott Kincaid and other residents sued, saying the city did not follow local ordinances in imposing the increases, including adhering to a 30-day waiting period, among other things, and that an EM cannot ratify an action imposed prior to his appointment.

In a press conference June 15, Kincaid and other plaintiffs said they hope to reach a settlement with the city to end the lawsuit.

"We are willing to sit down, we're willing to negotiate," Kincaid said, according to local reports. "Let's work out a process to get water and sewer rates to a level that people can afford them and businesses can continue to grow."