

## Emergency Managers Not Authorized To Rubber Stamp Prior Acts of Local Officials

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In a first-of-its-kind case, a panel of the Michigan Court of Appeals has ruled that an Emergency Manager (EM) is not authorized by either Act 4 or Act 436 to ratify prior acts of a local government official, even where he may have authority to initiate such actions. The case, *Kincaid et al v. City of Flint*, is the first to analyze the extent of an EM's authority under either version of Michigan's Emergency Manager Act.

In 2012, Flint's newly appointed EM ratified previously adopted water and sewer rate increases that were implemented before Flint became subject to Act 4. The EM concurrently also raised those water and sewer rates, by as much as 45 percent. Plaintiffs claimed that both the original and the EM's additional rate increases violated city ordinances and that the City illegally pooled the funds to pay general obligations. Plaintiffs also challenged the EM's authority to ratify the increases implemented prior to his appointment under Act 4. While the case was pending before the trial court, Act 4 was repealed and quickly replaced by Act 436. Thus, the Court of Appeals considered the EM's authority under both Act 4 and Act 436.

The Court of Appeals strictly construed the Acts to place 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. Specifically, the Court found that an EM is not authorized to ratify prior actions of local officials and doing so exceeds an EM's statutory powers. To arrive at this conclusion, the Court first analyzed the extent to which Act 436 "ratified" actions taken under Act 4, citing Section 30 of Act 436, MCL 141.1570(1)(a)-(e), which enumerates certain actions that occurred under Act 4 and continue to be effective under Act 436. These provisions address the actions of state actors such as the state treasurer, the review team, and the governor. The Court found that "Notably, actions taken by the EM are not included". The Court also rejected Flint's argument that the EM's power to ratify could otherwise be read into Act 4 and Act 436.

As a practical matter, this decision, standing alone, may not present a significant incursion into the EM's "broad powers in receivership" granted under state law. Under the City of Flint rationale, an EM cannot simply approve by ratification prior actions taken by such officials, but must instead "re-do" such actions as a new initiative. Municipalities and school districts that have been operating under EM Orders may want to review those Orders to determine whether ratification was undertaken by an EM, as such Orders may now be subject to challenge and invalidation under City of Flint.

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