

# **Bond Case Briefs**

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## **EMERGENCY MANAGERS - MICHIGAN**

### **Kincaid v. City of Flint**

**Court of Appeals of Michigan - June 11, 2015 - N.W.2d - 2015 WL 3631825**

On August 15, 2011, the City of Flint'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 Flint was declared to be in a state of financial emergency. On November 28, 2011, Michael Brown was appointed as the Emergency Manager (EM) of defendant under the Emergency Manager Law. On May 5, 2012, after being informed by newly appointed finance director Gerald Ambrose of the financial disarray of the City's water and sewer funds, EM Brown created Emergency Order No. 31. Order No. 31 ratified and confirmed the water and sewer rates implemented under Townsend on September 16, 2011, and additionally raised water and sewer rates, 12.5% and 45%, respectively.

Plaintiffs sued, alleging two claims of error: that water and sewer rate increases that occurred under Townsend in September 2011 were not authorized by Flint Ordinances and that EM Brown did not have the authority to ratify Townsend's unauthorized increases and then further increase water and sewer rates in violation of the same ordinances.

The Court of Appeals held that:

- Both the rate increases of September 2011 and those imposed by the EM failed to meet the notice and effective date requirements of the relevant ordinances; and
- As a matter of first impression, the Legislature did not delegate to an EM the power to ratify the unauthorized acts of another public official.