
Emergency Managers: Savior or The Big, Bad Wolf?

Probably neither, although the answer will vary depending upon whom one asks. If a business owns property in, or does business with, a municipality under emergency management, that business needs to know how to navigate that relationship as smoothly as possible. As a starting point, consider the following often-cited ideas about emergency managers and whether they are fact or myth:

- **Emergency managers are not required to honor the U.S. Constitution.**
Myth: Emergency managers are public officials who are subject to Constitutional principles and obligations. There is much controversy about whether the entire emergency management statutory regime violates fundamental principles of democracy, and that debate continues today. However, at least one court has ruled that emergency managers, as public officials, must adhere to, and cannot violate, a citizen's Constitutional rights by their actions. Maddin Hauser's GCL Practice Group obtained a preliminary injunction preventing the emergency manager for the City of Pontiac, Michigan from disregarding the clients' Constitutional rights to certain real property. As state officials, emergency managers cannot violate the U.S. and Michigan Constitutions by their actions.
- **Emergency managers can do whatever they want, whenever they want.**
Myth: Emergency managers are created by a Michigan statute that defines their powers. Currently, Michigan Public Act 436 establishes the position of emergency manager and expressly states the powers of an emergency manager. While many believe that emergency managers have unlimited powers, this is a common misconception.
- **An emergency financial manager has more powers than an emergency manager.**
Myth: The titles of emergency manager and emergency financial manager identify the same government position and official created by Michigan statutes. Their titles differ due to a change in the Public Acts that govern their appointment and powers. Pursuant to Michigan Public Act 72 which has now been repealed, the title was emergency financial manager. Now, pursuant to Michigan Public Act 436, the title is officially emergency manager. However, a comparison of Michigan Public Act 436 with the former, now repealed Michigan Public Act 72 demonstrates that

emergency managers possess more powers than those formerly granted to emergency financial managers.

- **Even after an emergency manager leaves office, the municipality remains under financial supervision, and control is not immediately returned to the local elected government officials.**

True: After the municipality is deemed to have emerged from its financial emergency status, the municipality is then governed by a transition board. The transition board oversees the municipality's operations and compliance with a budget and plan established by the departed emergency manager. Moreover, the emergency manager may become a member of the transition board as shown by the composition of the transition board acting in the City of Pontiac, Michigan.

If your business is faced with issues involving an emergency manager, the Maddin Hauser GCL Practice Group is uniquely experienced with interacting with, and if necessary litigating against, emergency managers.