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City under longest-running state takeover sees strong challenges to emergency manager actions



owners of the adjacent Ottawa Towers office buildings are fighting to block the demolition in a case that's shown some rare momentum in favor of a party challenging the actions of a manager appointed under Michigan's strong financial emergency law.

PONTIAC, MI -- Emergency managers do what they want to do in Michigan.

They've taken bold measures to balance the books in struggling municipalities around the state.

And whether it was **raising water** rates, **selling** buildings, **charterizing** schools, **eliminating police** and fire departments or **filing bankruptcy**, efforts to challenge state appointees even on the most unpopular measures have generally been unsuccessful under Michigan's strong financial emergency law. But there is a heated court battle taking place in Pontiac, which, of the six cities and three school districts that are run by emergency managers, has been under state control the longest.

Emergency Manager Lou Schimmel wants to demolish a parking garage. And the city wound up in contempt of court while trying to take a hard line against those challenging the move.

To some residents, the Phoenix Center in Downtown Pontiac is more than just a

garage. And to the owners of a pair of adjacent office buildings, it's essential for parking and luring tenants.

"It's absolutely astonishing that persons who claim to have the best interest of the city of Pontiac at heart are essentially telling one of the few large, tax-paying citizens 'We're not interested in your building,'" said Steve Sallen, a lawyer representing the owners of Ottawa Towers, who sued the city in an effort to halt the demolition.

"This isn't Manhattan, where people will pay and park multiple blocks away because there's that kind of a demand. Why would anyone want to occupy an office building where you don't have any place to park."

Repairs to the deteriorating Phoenix Center will cost some \$8 million over the next 10 years, a cost the city simply cannot afford, city officials argue.

The Ottawa Center has offered to pick up those costs if the city cancels demolition plans, but Mayor Leon Jukowski said it's not that simple.

"It's a city owned facility, so we're still liable for the repairs," said Jukowski, who as mayor has supported emergency management of the city. "It is a liability issue..."

"We want it gone. It's a blighted structure and there's no way that I can contractually guarantee that it won't remain or again become a blighted structure in the future."

Schimmel last month enacted an ordinance condemning the Ottawa Towers' easement on the Phoenix Center, but a court injunction gives tenants the right to keep parking there for now.

Lawyers expect the case to go to trial later this year.

The city earlier this summer kicked all the vehicles out of the garage in the middle of a workday and shut down the facility after finding Ottawa Towers maintenance workers inside making repairs without permits.

That led to Oakland County Circuit Judge Michael Warren finding Pontiac in contempt and ordering the garage reopened in a rare sway of momentum in favor of a party challenging a Michigan emergency manager.

Sallen said the challenge has had early success because it involves real property rather than contractual interests, a plaintiff with the funds and determination to fight and "a judge in this case that is not intimidated by the fact that we have municipal actors as a defendant."

He believes the case could have implications for future cases against measures

taken under emergency management in Michigan.

"I think everything we do helps create a future road map for future litigants to follow," Sallen said.

"In America, we don't have kings. In America, we have elected officials. He has decided that he wants to demolish the Phoenix Center... It's breathtaking that one person has that kind of authority and in this case, we believe that he exceeds those rights when he tries to cancel property rights. It seems that this emergency manager law is contrary to what we as Americans expect. And that is a system of checks and balances."

But emergency management in Pontiac, through some dramatic actions like eliminating its police department and turning patrol responsibilities over to the county, has led to a healthier budget and stronger bond ratings.

And Jukowski believes getting rid of the Phoenix Center is essential to continuing the progress and boosting economic activity.

"The city's master plan calls for reopening Saginaw Street," he said.

The Phoenix Center cuts off Saginaw Street, which runs north and south within the Woodward Avenue loop in the city's downtown area.

"It's oversized, it's outdated, it doesn't serve anybody except the owner of those buildings," the mayor said. "... You have significant problems. The electricity has been vandalized... The drain pipes are rusted. The elevator doesn't work. We've got homeless people living in the stairwells. It's just a nightmare..."

"This is a cynical attempt to increase the value of the (Ottawa Towers) buildings by providing free parking."

The most fervent opposition to actions and proposals of emergency managers around the state has often been rooted in **emotional and cultural ties to city assets** and institutions.

And to some Pontiac residents, the Phoenix Center is more than just a garage. An amphitheater and park sit on top of the Phoenix Center.

Christina Daily, 24, said as she waited for a bus near the facility that her high school graduation ceremony was held there.

"They should fix it up and use it," she said "It's not hurting anything. It definitely could be used."

Resident Katherine Leal said concerts held atop the garage once brought vibrance to Downtown Pontiac.

"It's worth saving," she said. "If they get rid of it, what are they going to get rid of next? It's only an eyesore because the city let it become an eyesore."

Dan McGowan, co-owner of the Crofoot, a concert venue and banquet center on Saginaw Street, said the last time a major event was held at the rooftop amphitheater was in 2011, when rapper Wiz Khalifa performed there.

He said the concert brought thousands to the area and generated some excitement in Downtown Pontiac, but since then, "it's just sitting there, not being used."

Whether it's torn down or repaired, McGowan said he's just glad something is being done.

"This is a big sort of black hole in Downtown," he said. "It certainly divides Downtown. Opening that up would be great... But I think a well-managed Phoenix Center could have more impact..."

"There are certainly people who would say 'Tear down that eyesore,' ...but it's an unusual asset that in my opinion should be revamped."

Another potential momentum shifter In a separate challenge to another budget-minded action taken by Pontiac's emergency manager, a federal appeals court last week **ordered a judge to take a second look** at a lawsuit filed by city retirees whose benefits were reduced by Schimmel.

The benefits were cut under the state's previous emergency manager law, known as Public Act 4, which voters statewide repealed last year.

The 6th U.S. Circuit Court of Appeals ordered U.S. District Judge Lawrence Zatkoff to consider whether the actions of emergency managers taken under PA4 remain valid after the law was repealed.

Appeals court Judge James Gwin also ruled that the "Michigan Legislature seems to have ignored the two-thirds vote requirement when it gave Public Act 4 immediate effect."