



Municipal Law News

June 2012

Court Rejects Detroit Edison's "Smart Meter" Program

- Ronald D. Richards Jr.

A recent decision addressed the validity of the Michigan Public Service Commission's (MPSC) decision to allow Detroit Edison to increase its rates to pay for smart meters.¹ There, the MPSC approved funding for Detroit Edison to pursue a plan to upgrade its meters.² Specifically, the plan would involve Detroit Edison installing smart meters in about 500,000 homes, in about 30 municipalities. These smart meters would let Detroit Edison remotely monitor and shut off electricity.

The Michigan Court of Appeals reversed the MPSC's ruling, and ruled that the MPSC erred in letting Detroit Edison increase its rates to pay for the smart meters. The Court reasoned that the MPSC erred in approving funding for the smart meter program because evidence was lacking that the meters were needed, or would benefit customers. Therefore, the Court ruled that the rate increase was unreasonable because it was not supported by competent, material or substantial evidence.

Relatedly, in January 2012, the MPSC opened an investigation into the deployment of smart meters by electric utilities.³ Noting that consumers and municipalities have expressed concern about smart meters, the MPSC ordered all regulated electric utilities to submit information to the MPSC by March 16, 2012, on a number of issues, including:

1. The utility's existing plans for deployment of smart meters in its service territory;
2. Any scientific information known to the utility that bears on the safety of smart meters; and
3. An explanation of the steps that the utility intends to take to safeguard the privacy of the information gathered.

Comments were due April 16, 2012. Over 200 comments were filed, including many by municipalities.

The next step is for the MPSC Staff to file its report. That report is due June 29th. The Staff report will summarize the filings in this docket, independently review the literature regarding smart meters, and identify any developments in other jurisdictions pertinent to this investigation. At the end of its report, the Staff will make its recommendations, including suggestions regarding how the MPSC should best implement the Staff's recommendations.

If you have any questions regarding this case, please contact [Ronald Richards](#). ■■

¹*In re Application of Detroit Edison Co to increase rates*, ____ Mich App ____; ____ NW2d ____ (2012).

²MPSC Case No. U-15751.

³MPSC Case No. U-17000.



Ronald D. Richards Jr.
Attorney

P: 517.371.8154

E: rrichards@fosterswift.com

Party May Pursue Damages Against a Government Entity Despite Immunity Defense

- Ronald D. Richards Jr.

The Michigan Court of Appeals recently ruled in *Coloma Emergency Medical Service, Inc v Dep't of Community Health*,¹ that damages against a governmental entity may be pursued despite governmental immunity laws. In *Coloma*, the plaintiff ambulance company sought to expand its area to serve the entire boundary of Berrien County. The Berrien County Medical Control Authority denied the request. Coloma then requested a hearing before the Department of Community Health. The Department did not conduct the required denial justification review for several months. Coloma then sued in circuit court requesting a writ of mandamus (a court order instructing an inferior court, a corporation, person, etc. to perform some duty) to compel the Department to conduct the hearing. Coloma also sought money damages for delay. While the case was pending, the Department sent a letter to Coloma saying it just completed the hearing and review,

and affirmed the Authority's decision. The Department then moved for summary disposition under governmental immunity and mootness, among other reasons. The trial court dismissed Coloma's request for mandamus as moot because the Department conducted the review. However, the trial court refused to dismiss Coloma's money damages claim.

The Court of Appeals affirmed. The Court first rejected the Department's argument that the relevant provisions of the Revised Judicature Act (RJA), when read together, only allow for damages when a writ of mandamus is *granted*. The Court determined that subsections 4411, 4421, and 4431, do not support that argument and, in fact, compel the opposite conclusion.

continue on back | [Damages](#)



Municipal Law News

June 2012

Damages | continued from front

The Court further explained that the Department was wrong in contending that the plaintiff's claim for money damages sounds in tort and is barred by governmental immunity. *Mercer v City of Lansing*,² squarely refutes the Department's suggestion. *Mercer* held that the defendants were "not immune from an award of damages under MCL 600.4431," because "the statutory grant of damages in mandamus actions is not subject to the" Governmental Tort Liability Act. The Court noted that a mandamus claim addresses government inaction, while tort immunity addresses the discharge of a governmental function, i.e., governmental action.

If you have any questions regarding this case, please contact Ronald Richards. ■■

¹Unpublished per curiam opinion of the Court of Appeals (Docket Nos. 300416 & 300599, dec'd 03-06-12).

²274 Mich App 329; 733 NW2d 89 (2007).

WEBINAR RECORDING

"An Update on the 2011 Labor Law Changes and the Impact on Michigan Municipalities"

In 2011, the Legislature passed the Publicly Funded Health Insurance Contribution Act and the Municipal Partnership Act, and amended the Public Employment Relations Act (PERA).

This webinar discussed the new legal requirements and restrictions required under these new laws, and the impact they likely will have on Michigan municipalities.

LISTEN TO THE WEBINAR RECORDING:

www.fosterswift.com/news-events-2001-Labor-Law-Changes-Impact-Michigan-Municipalities.html

UPCOMING WEBINAR SERIES FOR NEW MUNICIPAL OFFICIALS

From December 2012 through May 2013, the Foster Swift Municipal Law Group will conduct a series of free webinars to help newly-elected municipal officials come up to speed on the laws that govern Michigan municipalities. The webinars will outline basic municipal law principles, along with suggested "best practices" to avoid pitfalls. This is a "can't miss" for new township officials! This series is a nice refresher for veteran municipal officials as well.

The webinar series will consist of six seminars. The planned topics are as follows:

- December 2012** Planning Commission & ZBA nuts and bolts
- January 2013** Open Meetings Act
- February 2013** Freedom of Information Act
- March 2013** Labor Law Basics and Update
- April 2013** Municipal Ethics
- May 2013** Municipal Bonds

Look for specific dates and more details in upcoming newsletters.

MUNICIPAL ATTORNEYS:

PRACTICE GROUP LEADER

Ronald D. Richards Jr.
517.371.8154
richards@fosterswift.com

Michael R. Blum | 248.785.4722
Nichole J. Derks | 517.371.8245
James B. Doezema | 616.726.2205
Laura J. Garlinghouse | 616.726.2238
Brian G. Goodenough | 517.371.8147
Richard L. Hillman | 517.371.8129

Michael D. Homier | 616.726.2230
John M. Kamins | 248.785.4727
Janene McIntyre | 517.371.8123
Thomas R. Meagher | 517.371.8161
Brian J. Renaud | 248.539.9913
Anne M. Seuryneck | 616.726.2240

LANSING

FARMINGTON HILLS

GRAND RAPIDS

DETROIT

MARQUETTE

HOLLAND

Foster Swift Collins & Smith, PC **Municipal Law News** is intended for our clients and friends. This newsletter highlights specific areas of law. This communication is not legal advice. The reader should consult an attorney to determine how the information applies to any specific situation.

IRS Circular 230 Notice: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication is not intended to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed in this communication.

