

## CITY EMPLOYEES FIRED FOR TAMPERING WITH WATER METERS



When City employees in Lincoln Park, MI, were fired for allegedly tampering with their water meters, they sued the mayor, their boss, the City manager and the City itself for violating their Fourth Amendment rights – unreasonable search and seizure. After an auditor suggested water theft as a reason for the City's loss of water revenue, the City manager decided to investigate. City employees were chosen as a test group because the number of household members was already known. A study of two years of billing information showed an average of 162 units for active employees and 146 for retirees. It also showed that the lowest nine were all employees of the Department of Public Services (DPS). The DPS director and a detective with the sheriff's department visited each residence to ask that they be allowed to inspect the water meter. The first employee consented to the inspection. The meter head appeared altered, and the man admitted to turning it on and off. He resigned from his position and was not party to the ensuing lawsuit. The other employees were not as willing. Some resisted allowing access to the meter and only agreed after being threatened with a warrant or, allegedly, termination, while others outright refused. Warrants were issued, and of the eight remaining households, only one meter was conclusively determined to not have been tampered with. The others showed possible damage – i.e. missing security pins – but, while none had signs indisputably proving modification, the possibility of tampering was not ruled out. Disciplinary hearings were subsequently held, and all seven employees were fired. The eight-person lawsuit (including the wife of an employee) alleged violation of constitutional rights and included a violation of Fourth Amendment rights from four employees, retaliation for asserting said rights from three employees, and one man claiming that he was fired simply because of his brother – the man who resigned after admitting to



wrongdoing. The district court found that the DPS director and the City manager were protected by qualified immunity, which protects state officials. It also found that the plaintiffs had not provided specific evidence of the mayor's involvement in the events and had not established "a municipal policy or custom" that resulted in the City depriving them of federal rights. The plaintiffs appealed the dismissal of all claims excluding those associated with the mayor. The four plaintiffs claiming a Fourth Amendment violation alleged coercion from their boss and the detective – a "direct order" – but failed to show that their jobs were explicitly threatened. Appellate judges noted that the two men had left the residences of those who had continued to refuse access. With regard to those three employees, the appeals court believed that they had failed to show a causal link between their termination and exercising their Fourth Amendment rights – they seemed to be questioning the propriety of the termination itself in lieu of specifically connecting it to their assertion of rights. In the same vein, those who did not exercise their rights were likewise fired. Finally, the employee who claimed retaliation in association with his brother had not provided sufficient evidence. As the claims against the City were "abandoned" – for not being mentioned in the plaintiffs' opening appellate brief – the appeals court affirmed the district court's ruling.