

COA Opinion: Because the West Michigan Community Mental Health System is not substantially controlled by the counties that created it, it could not withhold rent from the counties by claiming its lease agreements were “less than arm’s length” leases.

3. August 2011 By Aaron Lindstrom

In *Mason County v. Department of Community Health, No. 295365*, the Court of Appeals examined how much rent the West Michigan Community Mental Health System (a community mental health authority) had to pay Mason and Oceana Counties for the properties it leased from the counties. Under an OMB circular, if the leases were arm’s length leases, then it would have to pay the full rent, but if the counties were “able to control or substantially influence” WCMHS, then WCMHS would have to pay a lesser amount defined in the OMB circular. Judge Saad, writing for the panel, held that the counties could not control or substantially influence WCMHS, and therefore affirmed the trial court’s conclusion that WCMHS owed the counties rent.

The Court of Appeals concluded that the counties could not control or substantially influence the community mental health (CMH) authority for several reasons. First, the statutory mental health code, amended in 1995 by Public Act 290, indicates that CMH authorities are to run independently of the counties and that it is the state, not counties, that exert control over CMH authorities. For example, MCL 330.1226 indicates that a county’s involvement is limited to receiving a copy of reports and approving the *county* portion of the budget. Second, no more than 4 of the 12 board members for a CMH can be county commissioners. Not only is this a minority number, those board members have a duty and ethical obligation to act in the best interest of the CMH authority. Third, the board members cannot be removed at will; under MCL 330.1224, they can only be removed for cause—“for neglect of official duty or misconduct in office.” Fourth, while the counties could dissolve the CMH authority, the possibility of dissolution was not realistic. As Judge Saad put it, quoting another court, this power to dissolve is not like the sword of Damocles, but “more akin to the butter-knife of Damocles,” and unlikely to be a significant influence. The Court also rejected other arguments by WCMHS regarding jurisdiction and necessary parties.