

1975 S.C. Op. Atty. Gen. 190 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4114, 1975 WL 22410

Office of the Attorney General

State of South Carolina

Opinion No. 4114

September 11, 1975

***1** State-wide curtailments of natural gas supplies could create a situation warranting the Governor to exercise his emergency powers to prevent a public calamity by reallocating the State's remaining natural gas supplies.

TO: David S. Harter

Director

South Carolina Energy Management Office

QUESTION PRESENTED:

When faced with large-scale interruptions in natural gas supplies, can reallocation of the State's supplies be ordered by the Governor under his emergency powers, to prevent extreme economic and physical hardships to the citizens of South Carolina?

STATUTES, CASES, ETC:

Code of Laws of South Carolina, 1962, as amended, Sections 44–311 et seq.

DISCUSSION OF ISSUES:

Code of Laws of South Carolina, 1962, as amended, Section 44–312 reads in pertinent part:

The Governor, when an emergency has been declared as provided for in this section, as the elected Chief Executive of the State, shall be responsible for the safety, security and welfare of the State and shall be empowered with the following authority to adequately discharge this responsibility:

(1) Issue emergency proclamations and regulations and amend or rescind them. Such proclamations and regulations shall have the force and effect of law as long as the emergency exists.

(2) Declare a state of emergency for all or parts of the State if he finds a disaster has occurred, or that the threat thereof is imminent, and extraordinary measures are deemed necessary to cope with the existing or anticipated situation. A declared state of emergency shall not continue for a period of more than fifteen days without the consent of the General Assembly.

Section 44–311(b) defines disaster as follows:

‘Disaster’ shall mean actual or threatened enemy attack, sabotage, conflagration, flood, storm, epidemic, earthquake, riot or other public calamity.

In October of 1973 the Attorney General expressed his opinion that the restrictions upon the use of oil, brought about by the Middle East conflict, and magnified by the approach of the Winter season, created the threat of an imminent disaster as contemplated by the provisions of Sections 44–311, et seq. This situation authorized the Governor to declare a state

of emergency and distribute South Carolina's share of national oil supplies, and to charge a fee necessary to implement such distribution procedures.

The potential injury to the economic and physical well-being of the citizens of South Carolina, which could result from large scale interruptions in natural gas supplies, presents a situation of potential disaster similar in magnitude to the 1973 Arab oil embargo. Therefore, in order to fulfill his responsibility for the safety, security and welfare of the state, the Governor should be able to declare a state of emergency and reallocate the available natural gas supplies to minimize the disruption of supply reductions. This declared state of emergency can continue for only fifteen days without the consent of the General Assembly.

CONCLUSION:

*2 If the Governor should determine that large scale curtailments in natural gas supplies, especially during the Winter season and where alternative fuel resources are not available, creates an imminent public calamity, he would be authorized to exercise his Statutory emergency powers and allocate natural gas supplies.

George C. Beighley
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