

1973 WL 27005 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 14, 1973

***1 re: Powers of the Governor regarding Disaster Preparedness**

Honorable Fred C. Craft
Director
State Disaster Preparedness Agency
1429 Senate Street
Columbia, S. C. 29201

Dear Mr. Craft:

In regard to South Carolina's recently enacted Civil Defense and Disaster Control Act, Act No. 128, 1973 Statutes at Large, you have inquired whether an executive order of the Governor issued pursuant to that Act carries the force of law. Additionally, you inquire whether the Governor, by an executive order, can compel a county presently not participating in the State's civil defense and disaster control program to participate in that program.

With respect to the question of the force and effect carried by an executive order of the Governor, of importance is Section 2 of the South Carolina Civil Defense and Disaster Control Act. Section 2 provides:

Powers of Governor.—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 additional 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.

...

These quoted provisions clearly evidence an intent of the Legislature that executive orders of the Governor carry the force and effect of law only for the period of a formally declared emergency. During such emergencies executive orders are immediately enforceable through the police powers of the State. At other times an executive order would require approval by the Legislature in order to be so enforceable. This approval is required so that the powers and functions of the legislative and executive branches of the government remain separate, as is required by the Article 1, Section 8 of the Constitution of the State of South Carolina.

Viewing then the second question regarding the power of the Governor to compel by executive order participation by counties in this State's civil defense and disaster control program, it is apparent in light of the answer to the first question that the Governor, except during a formally declared emergency, has no authority which would permit enforcement of such an order. Nevertheless, from a legal standpoint this appears immaterial inasmuch as the Legislature under Section 7, paragraph (2) of the South Carolina Civil Defense and Disaster Control Act has expressly stated:

***2** County and municipal governments shall be responsible for:

(a) Organizing, planning and otherwise preparing for prompt, effective employment of available resources of the county or municipality to support disaster operations of the municipalities of the county, or to conduct disaster operations in areas where no municipal capability exists.

(b) Coordinating support to municipal disaster operations from other sources including State and Federal assistance as well as support made available from other municipalities of the county. (emphasis added)

These quoted provisions, in the opinion of this office, constitute a clear directive by the State Legislature to all counties that they develop and maintain a capability to deal with disasters, and that they coordinate with the State government in the process. Past experience makes it clear that preparations must be made before a disaster occurs if the public is to be adequately protected, and the recognition of and concern for this fact by the Legislature is evident throughout this State's Civil Defense and Disaster Control Act. Accordingly, in the opinion of this office, a county which at present is not participating in civil defense and disaster control planning, can be compelled to participate in such planning, despite there being no formally declared emergency, not by executive order, but by virtue of Section 7 of the Civil Defense and Disaster Control Act. Enforcement of involuntary participation in either case would be obtained by and through a court order.

Very truly yours,

John B. Grimball
Assistant Attorney General

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