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Legal Background Briefing on ...

Proclamation of a State of Disaster Emergency

Overview

This Briefing provides legal background relating to a proclamation of a state of disaster emergency by the Governor of Iowa. This Briefing also addresses powers that the Department of Public Health may exercise independently or in conjunction with the Governor's authority during a state of disaster emergency. References to the Iowa Code are to the 2020 Iowa Code.

Background

For the purposes of Code chapter 29C, which governs emergency management and security, a "disaster" means man-made and natural occurrences "which threaten the public peace, health, and safety of the people or which damage and destroy public or private property."¹ In addition, a "public health disaster" means a state of disaster emergency proclaimed by the Governor that "involves an imminent threat of an illness or health condition" caused by certain enumerated sources.²

Proclamation of a State of Disaster Emergency

Upon finding that a disaster "exists or is threatened," the Governor may issue, in writing, a proclamation of a state of disaster emergency which must be filed with the Secretary of State.³ The proclamation must include the facts on which the finding is based and the affected area, and specifically state if the proclaimed state of disaster emergency is a public health disaster.⁴ A proclamation continues for 30 days unless sooner terminated or extended in writing by the Governor.⁵ The Governor's proclamation may be rescinded

by concurrent resolution of the General Assembly, or, if the General Assembly is not in session, by a majority vote of the Legislative Council.⁶

Powers and Duties of the Governor during a State of Disaster Emergency

The Iowa Code grants the Governor specific powers during a state of disaster emergency. The Governor may delegate, and provide for the subdelegation of, these powers.⁷

Control of State Resources. The Governor may utilize all available resources of the state and political subdivisions of the state as “reasonably necessary to cope with the disaster emergency.”⁸ The Governor may also transfer the direction, personnel, or functions of state departments and agencies for the purpose of performing or facilitating emergency management.⁹ The Governor may also utilize state agencies and political subdivisions of the state to clear debris that threatens public or private health or safety from public or private lands.¹⁰

Control of Movement of Persons. The Governor may order the evacuation of all or part of a population of an impacted or threatened area if the Governor deems evacuation necessary for the preservation of life or other disaster mitigation, response, or recovery.¹¹ This includes the power to control the routes, modes of transportation, and destinations of those subject to evacuation.¹² The Governor may also control ingress and egress to and from disaster areas, the movement of persons within the areas, and the occupancy of premises in the areas.¹³

Other Powers and Duties. The Governor may suspend the provisions of any regulatory statute or rule prescribing

procedures for the conduct of state business if strict compliance with the statute or rule would prevent, hinder, or delay necessary action, provided that the Governor specifically states the reasons for the suspension.¹⁴

The Governor may enter into mutual aid agreements with other states and cooperate with the President of the United States and appropriate federal officers and agencies.¹⁵

The Governor may commandeer or utilize private property, subject to requirements for compensation.¹⁶ The Governor may also suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles.¹⁷

A rule adopted or order issued during and in response to a declared disaster emergency is exempt from the requirements of Code chapter 17A.¹⁸

Powers and Duties of the Department of Public Health during a Public Health Disaster

When a public health disaster has been declared by the Governor, the Department of Public Health has additional powers and duties under subchapter XVII of Code chapter 135, some of which are exercised in conjunction with the Governor’s authority.

Powers. During a declared or imminent public health disaster, the department may purchase and distribute medicines and supplies; impose rationing, quotas, and limitations on the distribution of relevant medicines and supplies; and appropriate medicines and supplies from private persons provided such persons are paid just compensation.¹⁹ When making a distribution decision, the department “shall give preference to health care providers, disaster response personnel, and mortuary staff.”²⁰

Powers Exercised in Conjunction with the Governor’s Authority. The Department of Public Health is also granted certain powers to be exercised in conjunction with the Governor’s authority. These include decontamination of “any facility or material” to the extent reasonable and necessary, adoption of measures for the identification and safe disposal of human remains, taking “reasonable measures” for the prevention of the spread of infectious disease, and identification and containment of cases of infectious disease and contamination.²¹ The department may also order physical examinations, tests, vaccinations, and treatments, unless reasonably likely to cause serious harm to the affected individual, quarantine those who refuse an examination, test, vaccination, or treatment,²² and exercise quarantine powers as enumerated in Code chapter 139A.²³ The department may also accept grants and loans, provide financial assistance, temporarily reassign department employees with the consent of the employees, and order the closure of schools in conjunction with the Department of Education.²⁴

¹² Iowa Code §29C.6(14).

¹³ Iowa Code §29C.6(15).

¹⁴ Iowa Code §29C.6(6).

¹⁵ Iowa Code §29C.6(7), (9).

¹⁶ Iowa Code §29C.6(12).

¹⁷ Iowa Code §29C.6(16).

¹⁸ Iowa Code §29C.19.

¹⁹ Iowa Code §135.142.

²⁰ Iowa Code §135.142(3).

²¹ Iowa Code §135.144(1)-(4).

²² Iowa Code §135.144(5)-(7).

²³ Iowa Code §135.144(8).

²⁴ Iowa Code §135.144(10)-(13).

¹ Iowa Code §29C.2(4).

² Iowa Code §135.140(6).

³ Iowa Code §29C.6(1).

⁴ Iowa Code §29C.6(1).

⁵ Iowa Code §29C.6(1).

⁶ Iowa Code §29C.6(1).

⁷ Iowa Code §29C.6(8).

⁸ Iowa Code §29C.6(10).

⁹ Iowa Code §29C.6(11).

¹⁰ Iowa Code §29C.6(4).

¹¹ Iowa Code §29C.6(13).