

LAW LIBRARY

ARIZONA ATTORNEY GENERAL

DARRELL F. SMITH, THE ATTORNEY GENERAL
STATE CAPITOL
PHOENIX, ARIZONA

March 21, 1966

DEPARTMENT OF LAW LETTER OPINION NO. 66-17-L (R-65)

REQUESTED BY: COL. CARL N. SMITH, U.S.A. Ret.
Director of Civil Defense and
Emergency Planning

QUESTION: What specific type of condition
would qualify as a "contingency"
under the provisions of § 35-192
A.R.S.?

ANSWER: See body of opinion.

Section 35-192 A.R.S., as amended by the Twenty Seventh
Legislature, Second Regular Session, reads as follows:

"35-192. Authorization for declaration of
disaster; state disaster board;
authorization for liabilities and
expenses; prescribing priorities
and limitations

A. The governor may declare an emergency
arising from such major disasters as provided in
this section and incur liabilities therefor, re-
gardless of whether or not the legislature is in
session.

B. When the governor determines that a con-
tingency or disaster so justifies, and declares an
emergency, specific liabilities and expenses pro-
vided for in this section are authorized to be
incurred against and to be paid as claims against
the state from the general fund to meet contingencies

Opinion No. 66-17-L
(R-65)
March 21, 1966
Page Two

and emergencies arising from:

1. Invasions, hostile attacks, riots or insurrections.
2. Epidemics of disease or plagues of insects.
3. Floods or floodwaters.
4. Acts of God or any major disaster.

* * * " (Emphasis Supplied.)

The following definitions appear in Webster's New International Dictionary, 2nd Ed. (1960):

- "Contingency.
1. Quality or state of being contingent; also, close connection or relationship;
 2. That which is contingent; a chance event;

- "Contingent.
1. Liable, but not certain, to occur; possible.
 2. Happening from unforeseen causes, or subject to unforeseen conditions; accidental or incidental; chance."

This office, in a previous Letter Opinion (61-89-L) has defined "contingency" as a fortuitous event, which comes without design, foresight or expectation. (Citing Black's Law Dictionary.)

The statute cited provides that only those "major" con-

Opinion No. 66-17-L

(R-65)

March 21, 1966

Page Three

tingencies that happen as a result of invasions, hostile attacks, riots or insurrections, epidemics of disease or plague of insects, floods or floodwaters, acts of God or any major disasters are contingencies for the purposes of this statute.

It is the opinion of this office that the word "contingency" as contained in A.R.S. § 35-192, as amended, means a major fortuitous event, which comes without design, foresight, or expectation and happens as the result of one of the specific instances cited above.

Your question asks what specific type of condition would qualify as a contingency. This is a question that is properly determined by the Governor, for as this office said in Opinion No. 64-19:

"Whether an emergency or contingency exist authorizing the Governor to incur liabilities and expenses under § 35-192 is a question of fact, the ascertainment of which devolves upon the Governor."

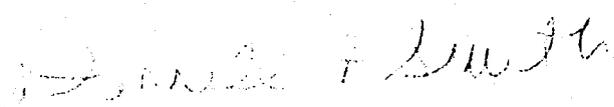
Thus it is for the Governor in the exercise of his sound discretion to determine what condition or conditions would constitute a major contingency or disaster under the statute cited.

It is noted in passing that not only must the Governor determine that the major contingency resulted from one of the specific instances cited above, but that he must also determine that the contingency constitutes an emergency. This office has in the past given its opinion (No. 64-19) and its Letter Opinion (No. 61-89-L) as to what an emergency is, and what constitutes the use of sound discretion by the Governor in determining an emergency. It is enough to point out that his act is subject to a review by the State Auditor, pursuant to A.R.S. § 41-141, prior to payment of claims by the State, and by the State Disaster

Opinion No. 66-17-L
(R-65)
March 21, 1966
Page Four

Board, pursuant to A.R.S. § 35-192(D).

Respectfully submitted,


DARRELL F. SMITH
The Attorney General

DFS:mr