



Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert R. Corbin

June 4, 1979

Mr. Charles A. Ott, Jr., Director
Division of Emergency Services
5636 East McDowell Road
Phoenix, AZ 85008

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ARIZONA ATTORNEY GENERAL

Re: I79-146 (R79-086)

Dear Mr. Ott:

This is in reply to your request of March 27, 1979, asking us to review a proposed Executive Order to be used as a basis for administering emergency funds pursuant to natural or man-caused disasters which endanger life, property and resources of the State.

The Executive order alludes to disaster declarations by the Governor of Arizona under A.R.S. § 35-192 and by the President of the United States pursuant to Section 301 Pub. L. 93-288, providing for the allocations of public monies to alleviate damage, loss, hardship or suffering resulting from disasters. It recites that the Director of the Arizona Division of Emergency Services has been designated as the Governor's authorized representative for Federal Disaster Assistance and has been designated as the State official to administer the Governor's emergency fund. It orders the Director to be responsible for the administration of any funds made available by both the State of Arizona or the federal government for coping with conditions which constitute a State of Emergency or a Presidential Declaration of a major disaster and finally, it authorizes the Director:

1. to disperse funds, sign encumbrances, claims and other documents and maintain records for audit purposes.
2. to develop, negotiate and consummate contracts or leases with individuals, institutions or commercial agencies in order to prevent or minimize the loss of life or property, to ease the suffering of disaster victims or to effect repairs, restorations and other assistance to those that are eligible.

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3. to employ personnel by exempt appointment or contract with the availability of disaster-related funds to effect full recovery measures or to provide training and public information.

4. to contract for feasibility studies to analyze the adequacy of personnel procedures, equipment and resources to cope with disasters.

Pursuant to our oral conversation with Mr. James Lind of your office, we understand your specific questions to be as follows:

1. Whether or not the functions and duties imposed upon the Director of the Division of Emergency Sources as spelled out in the proposed Executive Order are within the powers of the Governor, and

2. If so, whether or not the Governor can authorize the Director of Emergency Services to exercise those functions and duties.

You have asked that the answers to these questions be determined in light of the disaster occurring in this state during December of 1978 and any disasters that may occur in the future of a similar nature.

From the background information you furnished us, the Governor of Arizona, on December 18, 1978, issued a Declaration of Emergency, as a result of heavy rainfall which commenced on December 17, 1978, which resulted in extensive damage to private and public property because of the ensuing flood waters. At that time, the Governor, inter alia, directed that the sum of Fifty Thousand Dollars (\$50,000.00) from the general fund be made available to the Director of Emergency Services.

On December 20, 1978, the Governor requested the President, through the Regional Federal Disaster Assistance Administration, to make a declaration that a major disaster existed in Graham, Greenlee, Maricopa, Navajo, Gila and Pima Counties within the State of Arizona, pursuant to Pub. L. 93-288, as a result of the severe damage created by rain and flood waters during the period December 17, through December 20, 1978. The Governor requested assistance be authorized under individual and family grant programs, pursuant to Section 408 Pub. L. 93-288. The Governor also certified that the State would pay its 25% share of grants to individuals and families.

On December 26, 1978, the Governor made an additional request that the Counties of Yavapai, Pinal and Coconino be added to the December 21, 1978, disaster declaration request.

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On December 26, 1978, the Federal Disaster Assistance Administration in correspondence with the Governor indicated that on December 21, 1978, the President had determined that damage resulting from the storms and flooding beginning about December 17, 1978, had caused a major disaster in the State of Arizona. It further indicated that federal assistance would be made available in accordance with Pub. L. 93-288, Executive Order 11795, and federal regulations attached thereto.

The Governor certified that you, along with Leonard E. Fitzgerald, your deputy, were his authorized representatives empowered to exercise, on behalf of the State, all necessary documents for disaster assistance.

The Governor also certified that you and William D. Lockwood, your deputy, were the State Coordinating Officers under the declared major disaster.

In answering your first question, the powers conferred upon the Governor during a state of emergency must be analyzed. The Legislature, in A.R.S. § 26-301.7, has specifically recognized flooding as a condition of disaster within its definition of a State of Emergency. It has also specifically conferred upon the Governor, in A.R.S. § 26-303.D., authority to proclaim a State of Emergency which shall be effective immediately. During a State of Emergency the Governor is given complete authority over all agencies of state government, the right to exercise the police power vested in the State by the Constitution and laws of Arizona, and the power to utilize state agencies and state personnel, equipment and facilities to prevent or alleviate threatened damage. A.R.S. § 26-303.E. The powers conferred upon the Governor with respect to a State of Emergency shall terminate either by proclamation of the Governor or by a concurrent resolution of the Legislature. A.R.S. § 26-303.F.

In view of these broad powers it is our opinion that the Governor, during a State of Emergency, could perform all the functions specified in the proposed Executive order.

We next turn to whether the Governor has the authority to delegate to the Division of Emergency Services the functions and duties outlined in the Executive order. A.R.S. § 26-302 provides that the Governor may delegate any of the powers vested in him under Chapter 2 of Title 26 to the Director of Emergency Services, except the powers enumerated in A.R.S. § 26-303.

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We believe that during a declared State of Emergency the Governor can confer responsibilities such as those set forth in the proposed Executive Order, authorizing the disbursement of funds, the signing of encumbrances and other pertinent documents, the negotiation and consummation of contracts and leases, the employment of additional personnel by exempt appointment or contract, and the performance of feasibility studies. In fact A.R.S. § 26-303.E.2 specifically authorizes the Governor to direct all agencies, which would include the Division of Emergency Services, to employ additional personnel. It is our opinion that the provisions of the Executive Order do not constitute an improper delegation of any of those powers as enumerated in A.R.S. § 26-303 in violation of A.R.S. § 26-302. On the contrary, we think that the responsibilities imposed by the Executive Order are entirely consistent with the Governor's powers as outlined in A.R.S. § 26-303 and with the obligation imposed upon the Division during a declared State of Emergency pursuant to A.R.S. § 26-305 and A.R.S. § 26-306. When the Legislature prohibited the delegation of those powers enumerated in A.R.S. § 26-303, it seems clear that the legislature only intended that the Governor not delegate such powers as the power to proclaim the State of Emergency, the power of having complete control over all agencies of state government, the police power, and the power to direct the agencies of the State to utilize personnel, equipment and facilities.

In summary, the Governor can confer upon the State Director of Emergency Services the authority to perform the functions outlined in the Executive Order only during a declared State of Emergency. Outside of a period during which a State of Emergency is declared, the Division has no independent authority to perform these functions. We would therefore recommend that a paragraph be added to the proposed Executive Order to reflect these limitations.

Sincerely,



BOB CORBIN
Attorney General