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June 3, 1981

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ATTORNEY GENERAL OPINION NO. 81-130

Mr. Marvin E. Henry
Emergency Operations Coordinator
Division of Emergency Preparedness
Office of the Adjutant General
P. O. Box C-300
Topeka, Kansas 66601

Re: Militia, Defense and Public Safety -- Emergency Preparedness for Disasters -- Powers of Governor and Local Officials

Synopsis: The governor's power to act under a declaration of disaster emergency pursuant to K.S.A. 48-925 includes forced evacuation, but the authority so granted to the governor does not extend to the chairman of a board of county commissioners, the board of county commissioners, or mayor of a city. However, the powers authorized by K.S.A. 48-925 may be exercised by the governor only upon the declaration of a disaster emergency, as specified in the Emergency Preparedness for Disasters Act, and the powers granted local officials in local disaster emergencies may be exercised only after formal declaration of such disaster emergency, as provided in K.S.A. 48-932. Cited herein: K.S.A. 48-924, 48-925, 48-929, 48-932, 48-935 and 77-201.

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Dear Mr. Henry:

You inquire as to the powers and duties of certain state and local officials pursuant to the provisions of K.S.A. 48-904 et seq. Specifically, you pose three separate questions concerning the authority granted to the governor by K.S.A. 48-524(c)(5), which allows for the evacuation of all or part

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of the population of any area of the state stricken or threatened by disaster. Consideration of the questions will be in the order presented.

The first question asked is whether the authority granted the governor in emergency situations includes forced evacuation. The governor's power to act during a state of disaster emergency is conferred by K.S.A. 48-925, which states in pertinent part thus:

"(c) During a state of disaster emergency declared under K.S.A. 48-924, and in addition to any other powers conferred upon the governor by law, the governor may . . .

. . . .

"(5) direct and compel the evacuation of all or part of the population from any area of the state stricken or threatened by a disaster, if he or she deems this action necessary for the preservation of life or other disaster mitigation, response or recovery"

Thus, the governor may "compel" the evacuation of certain areas under disaster situations. Since the term "compel" must be given its normally approved meaning (see K.S.A. 77-201, Second), we must conclude that the power to order forced evacuations is included, since "compel" is normally defined as meaning "to force or cause irresistibly." See Webster's Third New International Dictionary, 463 (15th Ed. 1968).

Your second question is whether the authority granted to the governor by K.S.A. 48-925(c)(5) to direct and compel evacuations extends to the chairman of a board of county commissioners and mayor of a city during local disaster emergencies.

The powers authorized by K.S.A. 48-925 are granted expressly to the governor. K.S.A. 48-925(d) provides that "[t]he governor shall exercise the powers conferred by subsection (c) by issuance of orders under subsection (b)" of K.S.A. 48-925, which states as follows:

"(b) Under the provisions of this act and for the implementation thereof, the governor may issue orders and proclamations which shall have the force and effect of law during the period of a state of disaster emergency declared under subsection (b) of K.S.A. 48-924

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and which orders and proclamations shall be null and void thereafter unless ratified by concurrent resolution of the legislature. Such orders and proclamations may be revoked at any time by concurrent resolution of the legislature."

Thus, any actions taken under K.S.A. 48-925(c) must be done pursuant to K.S.A. 48-925(b), and the governor is the only person given the power to act pursuant to K.S.A. 48-925(b). The one statutory extension of this power to act under K.S.A. 48-925 is granted to the lieutenant governor by K.S.A. 48-924(c), but this power is only available during an absence of the governor.

Local officials, however, are given the power to act in local disaster emergencies by K.S.A. 48-932, which states in pertinent part thus:

"(a) A state of local disaster emergency may be declared by the chairman of the board of county commissioners of any county, or by the mayor or other principal executive officer of each city of this state having a disaster emergency plan, upon a finding by such officer that a disaster has occurred or the threat thereof is imminent within such county or city. No state of local disaster emergency shall be continued for a period in excess of seven (7) days or renewed, except with the consent of the board of county commissioners of such county or the governing body of such city, as the case may be. Any order or proclamation declaring, continuing or terminating a local disaster emergency shall be given prompt and general publicity and shall be filed promptly with the county clerk or city clerk, as the case may be . . .

. . . .

"(c) The declaration of a local disaster emergency shall activate the response and recovery aspects of any and all local and interjurisdictional disaster emergency plans which are applicable to such county or city, and shall initiate the rendering of aid and assistance thereunder."

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The declaration of a local disaster emergency brings local and interjurisdictional plans into effect. Thus, the Emergency Preparedness for Disasters Act provides separate and distinct grants of power to the governor and to local officials. The power granted to the governor is defined by statute, while the powers of local officials are those contained in the applicable disaster emergency plans. Limitation of local and interjurisdictional plans is as provided in K.S.A. 49-929(d), which requires such plans to be "[i]n accordance with the standards and requirements for disaster emergency plans as promulgated by the division of emergency preparedness."

A primary rule of statutory construction is that the intent of the legislature as expressed by the language used must be followed. See e.g., Hand v. Board of Education of U.S.D. 247, Crawford County, 198 Kan. 460, (1967). The language used to enable the governor to act under K.S.A. 48-925 does not refer to parties other than the governor for the exercise of the granted powers. Hence, because local officials are granted a separate mechanism for action during disaster emergencies, we must conclude that the powers delegated in K.S.A. 48-925(b) and (c) do not extend by implication to officials other than the governor. We note in passing, however, that if such forced evacuations are permitted under the approved local or interjurisdictional plan, powers similar to those of the governor could be available to local officials.

The third question posed is whether the formality of disaster declaration can postdate any necessary action in a situation where it is absolutely necessary to cause evacuation before the formality of disaster declaration can be accomplished. Because the Emergency Preparedness for Disasters Act has two separate mechanisms, this question must be examined on both state and local levels. The mechanism for state action, K.S.A. 48-925, states as follows in regard to when the governor may exercise disaster emergency power:

"During a state of disaster emergency declared under K.S.A. 48-924, and in addition to any other powers conferred upon the governor by law, the governor may" (Emphasis added.)

Hence, the use of the governor's emergency powers is restricted to a specific period of time, i.e., "during a state of disaster emergency," and the exercise of such powers on the state level may not predate the formality of the declaration of the disaster emergency.

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The mechanism for local disaster emergency declaration is contained in K.S.A. 48-932. The effect of a local emergency declaration is the activation of the response and recovery aspects of applicable local or interjurisdictional plans. These plans work to enable local authorities to act in response to disaster emergencies by superseding conflicting municipal ordinances and authorizing certain necessary actions. Because these actions would not be authorized until activation of the disaster emergency plan, necessary action may not predate the formality of declaration, since the authority for any such action would not exist without activation of the plan.

To summarize, the governor's power to act under a declaration of disaster emergency pursuant to K.S.A. 48-925 includes forced evacuation, but the authority granted to the governor by K.S.A. 48-925 does not extend to the chairman of a board of county commissioners, the board of county commissioners, or mayor of a city. However, the powers authorized by K.S.A. 48-925 may be exercised by the governor only upon the declaration of a disaster emergency, as specified in the Emergency Preparedness for Disasters Act, and the powers granted local officials in local disaster emergencies may be exercised only after formal declaration of such disaster emergency, as provided in K.S.A. 48-932.

Very truly yours,



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Bradley J. Smoot
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