



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

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EMERGENCY PREPAREDNESS:

Emergency Authority to Respond to
an Outbreak of Foot and Mouth Disease

Michael Chamness
Director
Illinois Emergency Management Agency
110 East Adams Street
Springfield, Illinois 62701-1109

Dear Mr. Chamness:

I have your letter wherein you inquire: (1) whether the discovery of a single confirmed case of foot and mouth disease in Illinois would justify the declaration of a "disaster" under section 7 of the Illinois Emergency Management Act (20 ILCS 3305/7 (West 2000)); (2) whether the Governor's emergency powers after the declaration of a disaster include the authority to restrict persons from entering or leaving areas of the State other than those in which diseased animals are located; and (3) whether the Governor may exercise emergency powers for a period in excess of 30 days after the declaration of a disaster. In accordance with your request, I will comment informally upon the questions you have raised.

You have noted in your letter that foot and mouth disease is extremely contagious and spreads easily among cloven-hoofed animals, such as cattle, sheep, pigs, goats and deer. Although the disease is not always fatal to infected animals, it reduces their economic value by interfering with weight gain, reproduction and milk production both during the course of the illness and after recovery. Although foot and mouth disease is not considered a human health risk, humans can carry the virus on their clothing, shoes, body and personal items, thereby transmit-

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ting the disease to animals. Introduction of the disease into Illinois could have severe adverse consequences for the livestock industry and wildlife community.

Section 4 of the Illinois Emergency Management Act (20 ILCS 3305/4 (West 2000)) defines "disaster" as follows:

" * * *

'Disaster' means an occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from any natural or technological cause, including but not limited to fire, flood, earthquake, wind, storm, hazardous materials spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, extended periods of severe and inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot, or hostile military or paramilitary action.

* * *

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(Emphasis added.)

The definition of "disaster" is intentionally broad, so as to include all types of occurrences, both natural and man-made, and to permit prevention as well as remediation of damage and loss. (See Remarks of Rep. Mahar, May 19, 1975, House Debate on House Bill No. 1109, at 190.) The definition includes the threat of injury or loss of property as well as of life, and to blight and infestation as well as epidemic. The term "blight" generally refers to plant diseases, and "infestation" to parasites affecting either plants or animals. (Webster's Third New International Dictionary (1993), 233, 1158-59.) The use of these terms, together with the expressed legislative intent to include all types of occurrences within the purview of the Act, clearly contemplates that threats to economically important plants and animals, as well as to the health and safety of people, may be considered "disasters".

The cattle and swine industries, in particular, are of great importance to the economy of this State. The 1997 Census of Agriculture lists Illinois as fourth among the 50 States in

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hog production, with the value of animals sold annually exceeding \$1 billion. Illinois also ranks among the top 20 States in dairy products and cattle sales, with a combined annual value exceeding \$800 million. (National Agricultural Statistics Service, U.S. Department of Agriculture, 1997 Census of Agriculture, Tables 27-29.) Related industries, from the manufacture of farm equipment to food processing and marketing, depend upon the health of the livestock industry, and, in turn upon the health of the animals themselves. Losses which could result from an epidemic of foot and mouth disease would be no less a disaster to this State and its inhabitants than the consequences of floods, tornadoes or earthquakes.

Available information concerning foot and mouth disease (see, e.g., the U.S. Department of Agriculture web site at www.aphis.usda.gov) indicates that morbidity in cattle and swine is 100%; consequently, virtually all cattle and swine exposed to the virus become ill. The disease is apparently less serious and less virulent in sheep and goat populations, but these animals can nonetheless transmit it to other, more susceptible, species. Thus, except in the unlikely event that the disease would appear in a quarantined animal, a single confirmed case would almost certainly be the precursor to the appearance of the disease in all animals with which the infected animal has been in contact. Moreover, because the virus survives on people, their clothing and inanimate objects, animals which have had contact with those caring for the diseased animal may also become ill. Based upon the nature of this disease and the potential loss of livestock its appearance could bring, it must be concluded that the occurrence of even a single confirmed case could justify the declaration of a "disaster" due to the "threat of widespread or severe damage" that the disease would cause if unchecked.

You have also inquired whether the emergency powers of the Governor would include the authority to quarantine areas other than those in which diseased animals are located. Subsection 7(a)(8) of the Emergency Services and Disaster Act (20 ILCS 3304/7(a)(8) (West 2000)) provides:

"Emergency Powers of the Governor. (a)
In the event of a disaster, as defined in Section 4, the Governor may, by proclamation declare that a disaster exists. Upon such proclamation, the Governor shall have and may

exercise for a period not to exceed 30 days
the following emergency powers; * * *

* * *

(8) To control ingress and egress
to and from a disaster area, the move-
ment of persons within the area, and the
occupancy of premises therein.

* * *

"

Subsection 7(a)(8) clearly authorizes the Governor to control travel to, from and within a declared disaster area, but does not purport to confer authority to control travel outside of the declared disaster area. Where the intention of the General Assembly is clearly expressed, the plain meaning of the statute must be given effect. (Finley v. Finley (1980), 81 Ill. 2d 317, 326.) Consequently, it does not appear that the emergency powers of the Governor extend to controlling ingress and egress to and from areas that are not included within the declared disaster area. In this regard, it must also be recognized that the authority to control travel to, from or through the State is limited by the power of Congress to control interstate commerce (U.S. Const., art. I, sec. 8) and the right of citizens to travel among the several States (U.S. Const., art. IV, sec. 2).

Therefore, it appears that the authority of the Governor to control travel under subsection 7(a)(8) of the Act will necessarily depend upon the extent of the area which is encompassed within the declared "disaster area", as well as any possible Federal response under Federal civil defense legislation (42 U.S.C.A. §§ 5121 et seq.; 50 App. U.S.C.A. §§ 2251 et seq.). If the facts surrounding the discovery of the infection in one or more animals warrant doing so, it is conceivable that the entire State could be declared a disaster area, in which case limitations upon ingress and egress to and from as yet disease-free areas might well be justified. If, however, the facts indicate that the threat of exposure to the disease is limited, the area reasonably subject to travel controls will necessarily be less extensive.

Lastly, you have inquired whether, under the provisions of the Illinois Emergency Management Act, an extension of the 30 day time frame within which the Governor may exercise emergency

powers would be permitted. Subsection 7(a)(1) of the Act (20 ILCS 3305/7(a)(1) (West 2000)) provides:

"Emergency Powers of the Governor. (a) In the event of a disaster, as defined in Section 4, the Governor may, by proclamation declare that a disaster exists. Upon such proclamation, the Governor shall have and may exercise for a period not to exceed 30 days the following emergency powers; provided, however, that the lapse of the emergency powers shall not, as regards any act or acts occurring or committed within the 30 days period, deprive any person, firm, corporation, political subdivision, or body politic of any right or rights to compensation or reimbursement which he, she, it, or they may have under the provisions of this Act:

(1) To suspend the provisions of any regulatory statute prescribing procedures for conduct of State business, or the orders, rules and regulations of any State agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder or delay necessary action, including emergency purchases, by the Illinois Emergency Management Agency, in coping with the disaster.

* * *

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In construing a statute, all of its terms and provisions are to be read and considered as a whole to determine not only its intent and meaning, but also the method of accomplishing the object to be attained. (Pascal v. Lyons (1958), 15 Ill. 2d 41, 45.) An attempt should be made to give meaning to the expressed intent of the legislature, and to avoid a construction that would render any portion of the statute meaningless or void. People v. Tarlton (1982), 91 Ill. 2d 1, 5.

Subsection 7(a)(1) clearly authorizes the Governor to exercise emergency powers for up to 30 days. A construction of its provisions to allow the Governor to extend the 30 day period

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would render the limitation clause meaningless. A more reasonable construction, taking into consideration the other provisions of the Act, is that the Governor would be required to seek legislative approval for the exercise of extraordinary measures extending beyond 30 days.

This construction is supported by references to section 9 of the Act (20 ILCS 3305/9 (West 2000)), which pertains to the financing of disaster response measures. Section 9 provides for the Governor's use of particular appropriated funds for emergency purposes, and, if necessary and the General Assembly is not in session, the transfer of funds from other accounts or the borrowing of additional funds, but only "until such time as a quorum of the General Assembly can convene in regular or extraordinary session". The purpose of this provision, like section 7 of the Act, is to empower the Governor to deal immediately with emergency situations. Even though many disaster situations could require remediation for a period long in excess of 30 days, normal governmental processes, including legislative action, can be set in motion to meet such needs within 30 days of the occurrence.

In conclusion, it appears that a single confirmed case of foot and mouth disease in Illinois could provide the basis for the Governor's declaration of a disaster. The Governor's emergency powers do not extend to the control of travel to or from areas which are not within a declared disaster area. Further, the emergency powers granted to the Governor cannot be extended beyond the 30 day period permitted in subsection 7(a) of the Illinois Emergency Management Act without legislative approval.

Sincerely,



MICHAEL J. LUKE
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Chief, Opinions Bureau

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