



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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FILE NO. 20-002

EMERGENCY PREPAREDNESS:
Governor's Authority to Exercise
Emergency Powers During an
Ongoing Public Health Emergency

The Honorable Don Harmon
President of the Illinois Senate
State Senator, 39th District
327 Capitol Building
Springfield, Illinois 62706

COPY

Dear President Harmon:

I have your letter inquiring whether informal opinion No. I-01-028, issued July 2, 2001, considered all legislative history of the Illinois Emergency Management Agency Act (the Emergency Management Act) (20 ILCS 3305/1 *et seq.* (West 2018)) in answering the third question addressed in that informal opinion.¹

¹Informal opinion No. I-01-028 addressed three questions: (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 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.

For the reasons stated below, it is my opinion that informal opinion No. I-01-028 did not consider all of the legislative history of the Emergency Management Act existing at the time the opinion was issued. In fact, in addressing this third question, the informal opinion did not cite to any legislative history of the Emergency Management Act at all. This omitted legislative history reveals that the provisions requiring the Governor to concurrently issue a call to convene the General Assembly into session when an emergency proclamation is issued were removed from the relevant provisions of the Emergency Management Act. The informal opinion also did not compare a provision of the Emergency Management Act that contains language that has a specific limitation on the duration of a local disaster declaration with that of section 7 of the Emergency Management Act. In addition, since the issuance of informal opinion No. I-01-028, there have been several legislative changes to the Emergency Management Act. Most notably to your question and the impending legislative session in light of the current public health situation, the definition of "disaster" in the Act has been amended to specifically include "public health emergencies."

BACKGROUND

Emergency Management Act

The Emergency Management Act was enacted to ensure that Illinois was prepared to and will adequately deal with any disasters, in order to preserve the lives and property of the people of this State, and to protect the public peace, health, and safety in the disaster. 20 ILCS 3305/2 (West 2018). The Act provides that if a disaster exists, then the Governor may issue a proclamation formally declaring the disaster. 20 ILCS 3305/7 (West

2018). When such proclamation is issued, the Act grants broad emergency powers to the Governor. 20 ILCS 3305/7 (West 2018). The Emergency Management Act also grants specific emergency management powers to the Governor. 20 ILCS 3305/6 (West 2018). Further, in the event of a local disaster, the Act grants specific emergency powers to the principal executive officer of a political subdivision. 20 ILCS 3305/11 (West 2018).

Section 7 of the Emergency Management Act (20 ILCS 3305/7 (West 2018)) addresses the Governor's emergency powers and currently provides, in pertinent part:

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-day 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:

* * *

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

* * *

(12) * * * perform and exercise any other functions, powers, and duties as may be necessary to promote and secure the safety and protection of the civilian population. (Emphasis added.)

Section 4 of the Emergency Management Act (20 ILCS 3305/4 (West 2018)) defines a "disaster" to include "an occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from any natural * * * cause, including but not limited to

* * * epidemic * * * [or] public health emergencies[.]” The Act further defines the phrase “public health emergency” as “an occurrence or imminent threat of an illness or health condition that[,] [among other things,] is believed to be caused by * * * the appearance of a novel * * * infectious agent * * *[,] and [it] poses a high probability of * * * a large number of deaths in the affected population[,] * * * or widespread exposure to an infectious * * * agent that poses a significant risk of substantial future harm to a large number of people in the affected population.”

Section 11 of the Emergency Management Act (20 ILCS 3305/11 (West 2018)) permits a local disaster to be declared “by the principal executive officer of a political subdivision, or his or her interim emergency successor.” In the event that a local disaster is declared by the principal executive officer of a political subdivision, then the plain language of section 11 makes it clear that the local disaster declaration “shall not be continued or renewed for a period in excess of 7 days except by or with the consent of the governing board of the political subdivision.” 20 ILCS 3305/11(a) (West 2018).

Informal Opinion No. I-01-028

In informal opinion No. I-01-028, issued July 2, 2001, this office addressed, among other things, whether the Governor may exercise emergency powers for a period in excess of 30 days after the declaration of a disaster in response to the discovery of a single confirmed case of foot and mouth disease in Illinois. As described in informal opinion No. I-01-028, foot and mouth disease is an animal virus which was not considered a human health risk but could be carried by humans on their clothing, shoes, body, and personal items, thereby

transmitting the disease to animals. Ill. Att'y Gen. Inf. Op. No. I-01-028 at 1-2. In that context, this office concluded that the emergency powers granted to the Governor could not be extended beyond the 30-day period permitted in section 7 of the Emergency Management Act without legislative approval. Ill. Att'y Gen. Inf. Op. No. I-01-028 at 4-6. In reaching that conclusion, informal opinion No. I-01-028 reviewed the relevant language of subsection 7(a)(1) of the Emergency Management Act (20 ILCS 3305/7(a)(1) (West 2000)), which provides that "the Governor shall have and may exercise for a period not to exceed 30 days" the emergency powers set out therein after issuing a proclamation that a disaster exists. The informal opinion then stated:

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 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. Ill. Att'y Gen. Inf. Op. No. I-01-028 at 5-6.

In reaching this conclusion, informal opinion No. I-01-028 relied, in part, on section 9 of the Emergency Management Act (20 ILCS 3305/9 (West 2000)), which concerns the financing of a disaster response and provided, in pertinent part:

It is the legislative intent that the first recourse shall be to funds regularly appropriated to State and political subdivision departments and agencies. If the Governor finds that the demands placed upon these funds in coping with a particular disaster are unreasonably great, he may make funds available from the Disaster Relief Fund. *If monies available from the Fund are insufficient, and if the Governor finds that other sources of money to cope with the disaster are not available or are insufficient, the Governor*

shall request the General Assembly to enact legislation as it may deem necessary to transfer and expend monies appropriated for other purposes or borrow, for a term not to exceed 2 years from the United States government or other public or private source. If the General Assembly is not sitting in regular session to enact such legislation for the transfer, expenditure or loan of such monies, and the President of the Senate and the Speaker of the House certify that the Senate and House are not in session, the Governor is authorized to carry out those decisions until such time as a quorum of the General Assembly can convene in a regular or extraordinary session. (Emphasis added.)

Informal opinion No. I-01-028 then stated, with regard to section 9 of the Act:

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. (Emphasis added.) Ill. Att'y Gen. Inf. Op. No. I-01-028 at 6.

In answering the question of whether the Governor may exercise emergency powers for a period in excess of 30 days after the declaration of a disaster in response to the discovery of one single confirmed case of foot and mouth disease in Illinois, informal opinion No. I-01-028 does not cite to any of the legislative history of the Act.

ANALYSIS

You have specifically inquired concerning the legislative history of the Emergency Management Act. In addressing your question, it is necessary to review the Act's legislative history both prior to, and subsequent to, the issuance of informal opinion No. I-01-028.

**Legislative History Prior to the Issuance
of Informal Opinion No. I-01-028**

The Emergency Management Act traces its origins to the Illinois Civil Defense Act of 1951 (the Civil Defense Act) (1951 Ill. Laws 1219). *See generally* Public Act 79-1084, effective September 22, 1975. The General Assembly originally enacted the Civil Defense Act to prepare for and carry out such functions, other than functions for which military forces are primarily responsible, as may be necessary or proper to prevent, minimize, repair, and alleviate injury and damage resulting from disasters caused by enemy attack, enemy sabotage, or other hostile action. *See People v. City of Chicago*, 413 Ill. 83, 88; 108 N.E.2d 16, 19 (1952). In 1957, the General Assembly amended the Civil Defense Act (1957 Ill. Laws 159, 160-61) to cover not only disasters due to hostile action but also resulting from "fire, flood, earthquake or other natural causes" and "natural disaster[s] of major proportions[.]"²

In 1975, the General Assembly replaced the Civil Defense Act with the Illinois Emergency Services and Disaster Agency Act of 1975 (Public Act 79-1084, effective September 22, 1975, codified at Ill. Rev. Stat. 1975, ch. 127, par. 1101 *et seq.*). During the legislative debates on House Bill 1109, which upon enactment became Public Act 79-1084, the House sponsor stated:

²The General Assembly also amended the Civil Defense Act on a number of other occasions not pertinent to this review. *See, e.g.*, 1957 Ill. Laws 158 (amending section 15 of the Civil Defense Act to address the effective date of a rule, regulation, order, or amendment filed by the Governor under the Act); 1963 Ill. Laws 1155 (among other things, removing language which limited acquiring property to those circumstances when the owner was known and voluntarily surrendered the property and adding new sections 9.1 and 21 to the Act to address the testing of civil defense warning devices and providing civil liability protections to persons owning real estate who voluntarily permit persons to shelter on the property); 1965 Ill. Laws 3750 (amending section 7 of the Civil Defense Act to conform the section's terminology with changes in the language made in the Judicial Article of the Illinois Constitution of 1870 (Ill. Const. 1870, art. VI (amended 1964), §1 *et seq.*)).

Mahar: * * * House Bill 1109, which is known as the Illinois Emergency Services and Disaster Agency Act of 1975, it replaces the old Civil [sic] Defense Act of 1951. Although most of the provisions of the 24 year old Civil Defense Act will be retained, the Act will bring Illinois in accord with the Federal laws and regulations * * *. Presently, 46 states have come in accord and revised their Civil Defense Act. Now, to many people throughout the State of Illinois, Civil Defense still means the old World War II image. The image of a person in a white hat with a bucket of sand looking at the sky for airplanes. This Bill is oriented toward all types of disasters, including the natural and man-made disasters. Remarks of Rep. Mahar, May 19, 1975, House Debate on House Bill No. 1109, at 190.

Public Act 79-1084 significantly amended the language regarding the Governor's exercise of emergency powers. Before it was repealed by Public Act 79-1084, effective September 22, 1975, section 7 of the Civil Defense Act (Ill. Rev. Stat. 1973; ch. 127, par. 275) addressed the Governor's emergency powers and provided, in pertinent part:

In the event of an actual enemy attack upon the United States (as defined in Section 3 of this Act) or the occurrence, within the State of Illinois, of a major disaster resulting from enemy sabotage or other hostile action, or when a natural disaster of major proportions has actually occurred in this State, *the Governor may, by proclamation, declare that a Civil Defense Emergency exists; and, if the General Assembly is then in regular session, or, in the event that it is not, if the Governor concurrently with his proclamation declaring such an emergency issues a call for an immediate convention of the General Assembly in extraordinary session for the purpose of amending or repealing this Act or any other act related to or concerned with Civil Defense and of enacting such other legislation concerning Civil Defense as it may deem necessary, he shall have and may exercise for a period not to exceed 30 days the following emergency powers[.]*
(Emphasis added.)

Pursuant to the now-repealed language in section 7 of the Civil Defense Act, when the Governor issued a proclamation that a civil defense emergency existed, the Governor was required to concurrently issue a call to convene the General Assembly into session to consider legislation concerning civil defense.

When it enacted Public Act 79-1084, the General Assembly did not include the language regarding the Governor calling the General Assembly into session within section 8 of the Illinois Emergency Services and Disaster Agency Act of 1975 (Ill. Rev. Stat. 1975, ch. 127, par. 1108), which sets out the general emergency powers of the Governor and, like the current language of section 7 of the Emergency Management Act, provided that "[i]n the event of a disaster, as defined in Section 4, the Governor may, by proclamation declare that a disaster emergency exists" and "[u]pon such proclamation, the Governor shall have and may exercise for a period not to exceed 30 days the following emergency powers[.]" Instead, Public Act 79-1084 placed language requiring the Governor to call the General Assembly into session in section 10 of the Illinois Emergency Services and Disaster Agency Act (Ill. Rev. Stat. 1975, ch. 127, par.

1110) addressing financing disaster emergencies.³ As discussed above, informal opinion No. I-01-028 relied on this language, then codified as section 9 of the Emergency Management Act, without regard to the fact that it no longer appeared in section 7 of the Act.

Informal opinion No. I-01-028 also failed to include a reference to the provision of the Emergency Management Act that contains an explicit limitation on the duration of a local disaster declaration. Section 11 of the Emergency Management Act (20 ILCS 3305/11 (West 2018)),⁴ which addresses local disaster declarations, provides that a local disaster declaration "shall not be continued or renewed for a period in excess of 7 days except by or with the consent

³The language in section 10 was added by House Amendment No. 2 to House Bill 1109. During the legislative debates, the House sponsor explained that "Amendment #2 puts the language back in the Act that was in the previous Act. You have to restrict the Governor from spending money out of General Revenue without the consent of the legislature." Remarks of Rep. Mahar, May 6, 1975, House Debate on House Bill No. 1109, at 92. The House sponsor additionally explained that

Mahar: * * * Amendment #2 refers to the Section of the old Act which says that 'the amount of money that's appropriated in any of the transfers or if the total amount of money is spent, the Governor must come back to the General Assembly for additional revenues if there are additional bills to be paid.' Now Amendment #2 takes that responsibility away and places it back in the hands of the legislature which it says that when the annual appropriations are made for disasters or if a disaster occurs and the money is spent, the Governor has to come back to the General Assembly for the additional money he might need to pay the bills. Remarks of Rep. Mahar, May 6, 1975, House Debate on House Bill No. 1109, at 93.

Later during the debates, Representative Shraeder asserted, among other things, that the bill was "mandating that the Governor call a special session of the General Assembly in emergencies * * * [and] if we're going to go to that route, we should say to the Governor, 'you can transfer funds without calling a special Session of the Legislature[.]'" Remarks of Rep. Shraeder, May 19, 1975, House Debate on House Bill No. 1109, at 193. In his closing remarks, Representative Mahar countered that "as far as the Governor's concerned in * * * calling for a special emergency session, he has that power anyway. There's no actual change. * * * [O]ne of the Amendments addressed [*sic*] itself to his ability to borrow money * * * from the General Revenue Fund to pay any * * * extraordinary expenses in the case of a disaster if it went over the appropriated amount. That was amended out, and that authority was taken away from him. So, * * * the power of the Governor in respect to a special session of spending money is exactly the same as it was in [the] 1951 Civil Defense Act." Remarks of Rep. Mahar, May 19, 1975, House Debate on House Bill No. 1109, at 194-95.

⁴The language now found in section 11 of the Emergency Management Act (20 ILCS 3305/11 (West 2018)) was a part of the Illinois Emergency Services and Disaster Agency Act of 1975 when that Act was originally enacted. See Public Act 79-1084, effective September 22, 1975.

of the governing board of the political subdivision." By overlooking this language, the informal opinion omitted a key provision of the Act wherein the General Assembly imposed on all of the executives of political subdivisions a limitation on their ability to extend a disaster declaration, either by continuation or renewal. If the General Assembly had intended to limit the Governor's authority in this regard, it could have included language in section 7 similar to that found in section 11. It did not.

Additionally, while the language of section 7 of the Civil Defense Act expressly required the Governor to call the General Assembly into session concurrently with issuing a disaster proclamation, the scope of potential disasters to which those powers could be aimed was limited. As noted above, before Public Act 79-1084 was enacted, the Civil Defense Act contemplated responding to civil defense emergencies resulting from enemy attack, enemy sabotage, or other hostile action, or from fire, flood, earthquake, or other natural causes. Public Act 79-1084 added section 4 to the Illinois Emergency Services and Disaster Agency Act (Ill. Rev. Stat. 1975, ch. 127, par. 1104) and more broadly defined "disaster" to mean:

an occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from any natural or man-made cause, including but not limited to fire, flood, earthquake, wind, storm, oil spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, drought, infestation, explosion, riot, or hostile military or paramilitary action.

Before informal opinion No. I-01-028 was issued, the General Assembly amended the definition of "disaster" to further expand the scope of the statute. For example, Public Act 80-180, effective August 3, 1977, added "extended periods of severe and inclement weather" and

"critical shortages of essential fuels and energy" to the definition of "disaster." Public Act 85-1027, effective June 30, 1988, which enacted the Illinois Emergency Services and Disaster Agency Act of 1988, among other things, amended the definition of "disaster" by substituting "natural or technological cause" in place of "natural or man-made cause," and "hazardous materials spill" for "oil spill[.]" Public Act 86-755, effective September 1, 1989, did not amend the definition of "disaster" in section 4 of the Act, but added "telecommunications failure" to the potential disasters referenced in the policy statements set out in section 2 of the Emergency Management Act (*see* 20 ILCS 3305/2 (West 2018)).⁵

Informal opinion No. I-01-028 applied the definition of "disaster" in section 4 of the Emergency Management Act (20 ILCS 3305/4 (West 2000)),⁶ which then included the terms "epidemic" as well as "blight," which generally referred to plant diseases, and "infestation," which referred to parasites affecting either plants or animals. Ill. Att'y Gen. Inf. Op. No. I-01-028 at 2. Informal opinion No. I-01-028 concluded that "[t]he 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'." Ill. Att'y Gen. Inf. Op. No. I-01-028 at 2. Significantly, however, informal opinion I-01-028 did not consider a threat to the health

⁵During the legislative debates on Senate Bill 1017, which was enacted as Public Act 86-755, the bill was nonetheless described as expanding the definition of disaster. *See* Remarks of Sen. Mahar, June 29, 1989, Senate Debate on Senate Bill No. 1017, at 13.

⁶Public Act 87-168, effective January 1, 1992, changed the name of the Illinois Emergency Services and Disaster Agency Act of 1988 to the Illinois Emergency Management Agency Act.

and safety of people so great that the convening of the General Assembly could increase, rather than mitigate, the disaster.

**Legislative History Subsequent to the Issuance
of Informal Opinion No. I-01-028**

Not only did informal opinion No. I-01-028 not contain a review of the then existing legislative history of the Emergency Management Act, but when the informal opinion was issued, this office was also not in a position to anticipate amendments to or analyze the legislative history of future Public Acts that would be signed into law subsequent to the issuance of the informal opinion. Since the issuance of informal opinion No. I-01-028, the General Assembly has continued to expand the definition of "disaster." Senate Bill 860, which was enacted as Public Act 92-073, effective January 1, 2002, added "acts of domestic terrorism" to the definition of "disaster" and added statutory authority for taking possession of or acquiring "animals and livestock; feed and seed" to the Governor's emergency powers in section 7 of the Emergency Management Act. Senate Bill 860 was described during legislative debates as an agency clean-up bill which included "an amendment which is a reflection of the recent concern about animal disease." Remarks of Sen. Myers, April 3, 2001, Senate Debate on Senate Bill No. 860, at 77; *see also* Remarks of Rep. Poe, April 26, 2001, House Debate on Senate Bill No. 860, at 7. Senate Bill 860 passed the General Assembly on April 26, 2001, but it had not been approved by the Governor until 10 days after informal opinion No. I-01-028 was issued.

Notably, in light of present circumstances, Public Act 93-249, effective July 22, 2003, specifically added "public health emergencies" to the definition of "disaster" and added the

definition of "public health emergency" to section 4 of the Act.⁷ Public Act 93-249 also added language to the Emergency Management Act (*see* 20 ILCS 3305/5(f)(2.6) (West 2018)) and the Department of Public Health Powers and Duties Law (*see* 20 ILCS 2310/2310-50.5 (West 2018)) to require that the Illinois Emergency Management Agency and the Illinois Department of Public Health coordinate with one another in responding to public health emergencies. During legislative debate on House Bill 6, which upon enactment became Public Act 93-249, then-State Senator Barack Obama stated that the bill amends the Act and other relevant statutory provisions "to respond to public health emergencies that - - so that they may include bioterrorism" and "to ensure disaster relief financing can cover such public health emergencies." Remarks of Sen. Obama, May 16, 2003, Senate Debate on House Bill No. 6, at 20. The expansion of a disaster to

⁷Section 4 of the Emergency Management Act provides, in pertinent part:

"Public health emergency" means an occurrence or imminent threat of an illness or health condition that:

(a) is believed to be caused by any of the following:

* * *

(ii) the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin; * * * [and]

* * *

(b) poses a high probability of any of the following harms:

(i) a large number of deaths in the affected population;

(ii) a large number of serious or long-term disabilities in the affected population; or

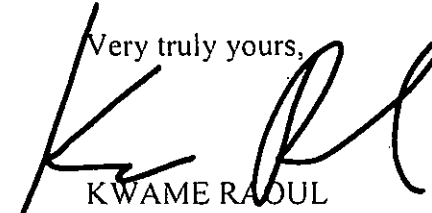
(iii) widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population.

expressly include public health emergencies, that could clearly extend past 30 days and foreseeably involve situations in which the General Assembly would be unable to safely convene, further evinces an intent that the Governor have the authority to issue successive disaster proclamations without legislative approval in the case of an ongoing disaster. In this regard, the 30-day limitation found in section 7 of the Act must necessarily address the period of time within which the Governor may exercise his emergency powers related to a particular disaster proclamation.

CONCLUSION

For the reasons stated above, it is my opinion that informal opinion No. I-01-028 did not consider all of the legislative history of the Illinois Emergency Management Agency Act pertinent to addressing a situation where the Governor is required to exercise emergency powers for successive 30-day periods.

Very truly yours,



KWAME RAOUL
ATTORNEY GENERAL