

GOVERNOR:
DIVISION OF WELFARE:
PUBLIC CALAMITY:
CONSTITUTIONAL LAW:

The Governor of the state of Missouri has authority under the provisions of Chapter 44, RSMo, to declare that an emergency exists because of a natural disaster of major proportions and to expend appropriations available for providing relief pursuant to a state plan for the benefit of persons affected by the disaster.

OPINION NO. 185

May 15, 1973

Honorable William C. Phelps
Lieutenant Governor of Missouri
327 State Capitol Building
Jefferson City, Missouri 65101



Dear Lieutenant Governor Phelps:

This opinion is in response to your question asking whether the state of Missouri has authority to lease and install improvements such as utilities upon land sites for the purpose of locating mobile homes that will be occupied by persons who have been dislodged from their homes by the flooding which has recently occurred in counties declared by the President to be eligible for disaster aid.

You state that:

"Overall in the State of Missouri, approximately 800 families have been dislocated from their permanent homes and will need mobile homes for purposes of temporary housing because adequate housing is not available in the vicinity. Federal law permits the Department of Housing and Urban Development to rent the mobile homes or provide the homes if state and local governments provide the land site with properly installed utilities."

Section 38(a) of Article III of the Missouri Constitution excepts from the prohibitions imposed on the General Assembly respecting grants and gifts to individuals "aid in public calamity." Thus the General Assembly unquestionably has the authority to provide aid in public calamity.

In implementation of such constitutional authority, the General Assembly provided in Section 207.010, RSMo, that:

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"1. The division of welfare is an integral part of the department of public health and welfare and shall have and exercise all the powers and duties necessary to carry out fully and effectively the purposes assigned to it by law and shall be the state agency to [administer state plans and laws involving]

* * *

(3) Aid or relief in cases of public calamity;
. . ."

Further, Section 208.060, RSMo, provides in part:

"Application for any benefits under any law of this state administered by the division of welfare acting as a state agency shall be filed in the county office. Application for aid to dependent children shall be made by the person with whom the child will live while receiving aid. All applications shall be in writing, or reduced to writing upon blank forms furnished by the division of welfare, and shall contain such information as may be required by the division of welfare or by any federal authorities under the social security law and amendments thereto. The term 'benefits' as used herein or in this law shall be construed to mean:

* * *

(3) Aid or public relief to individuals in cases of public calamity; . . ."

We conclude from the above that the Division of Welfare has the authority to administer relief programs.

Section 208.170, RSMo, which contains provisions for such relief funds provides in part:

"1. The state treasurer shall be treasurer and custodian of all funds and moneys of the division of welfare and shall issue checks upon such fund or funds in accordance with such rules and regulations as the division of welfare shall prescribe.

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"2. There is hereby established as a special fund, separate and apart from the public moneys of this state, the following:

* * *

(3) Relief fund;

* * *

"5. The relief fund shall consist of moneys appropriated by the state, and such moneys as may be received from the federal government or other sources for aid or relief in cases of public calamity. All expenditures for aid or relief in cases of public calamity shall be paid from this fund."

However, only persons who come within the eligibility requirements of Section 208.010, RSMo, can receive assistance under Chapter 208. In the premises, it appears that many of the victims of such a disaster will not meet the strict eligibility requirements which govern assistance administered by the Division of Welfare. Therefore, many of the persons inquired about in your opinion request could not be assisted by the Division of Welfare out of appropriations to the Division for aid in a public calamity.

You have also informed us that the Governor has declared an "emergency" to exist within the meaning of the term as defined in Section 44.010(4), RSMo. Section 44.100, RSMo, which authorizes the Governor to declare an emergency provides in part:

"1. The emergency powers of the governor shall be as follows:

(1) The provisions of this section shall be operative only during the existence of a state of emergency (referred to in this section as 'emergency'). The existence of an emergency may be proclaimed by the governor or by resolution of the legislature, if the governor in his proclamation, or the legislature in its resolution, finds that an attack upon the United States has occurred, or that a natural disaster of major proportions has actually occurred within this state, and that the safety and welfare of the inhabitants of this state require an invocation of the provisions of this section.

* * *

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(4) During the period that the state of emergency exists or continues, the governor shall:

(a) Enforce and put into operation all plans, rules and regulations relating to disasters and emergency management of resources adopted under this law and to assume direct operational control of all emergency forces and volunteers in the state;

(b) Take action and give directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this law and with the orders, rules and regulations made pursuant thereof;

* * *

(j) To perform and exercise such other functions, powers and duties as may be necessary to promote and secure the safety and protection of the civilian population."

Section 44.120, RSMo, provides:

"All expenses, salaries and other payments authorized by this law, and chargeable to the state, including any payments required by any compacts or agreements made hereunder, shall be paid out of the general revenues from the state treasury."

Further, Section 44.130, with respect to plans and regulations, provides:

"1. Every plan, rule and regulation adopted by the governor under the provisions of this law and every amendment thereof shall be filed in the office of the secretary of state.

"2. Any person violating any rule or regulation adopted under this law after it has become effective during an emergency or any person or officer violating any provision of this law shall be deemed guilty of a misdemeanor."

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Thus, it is obvious that once the Governor has declared an emergency within the meaning of Chapter 44, RSMo, he is legally vested with broad powers respecting the public welfare. The Governor may thus proceed with a plan adopted or may make or amend such plan to meet the exigencies of the situation. Further, under Section 44.110, RSMo, in carrying out the emergency powers under this law the Governor and the executive officers of the state are authorized and ". . . directed to utilize the services, equipment, supplies and facilities of existing departments, offices, and agencies of the state and political subdivisions thereof to the maximum extent practicable, . . ."

We conclude that the Governor has the power to use state appropriations for disaster purposes to provide emergency housing in such a case and may utilize such state agencies as he desires to carry out the objectives of the plan and in conformity with the plan.

In the premises, however, we are of the view that it is not the function of this office to determine the nature or extent of the relief that can or should be granted.

CONCLUSION

It is the opinion of this office that the Governor of the state of Missouri has authority under the provisions of Chapter 44, RSMo, to declare that an emergency exists because of a natural disaster of major proportions and to expend appropriations available for providing relief pursuant to a state plan for the benefit of persons affected by the disaster.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Yours very truly,



JOHN C. DANFORTH
Attorney General