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1979 Cal. AG LEXIS 24

Office of the Attorney General of the State of California

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Reporter

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Opinion No. 79-710

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Core Terms

energy, shortage, sudden, proclaim, political subdivision, region, disaster, city and county, earthquake, combat, air pollution, epidemic, flood, drought, peril, storm, riot, vest, equipment and facilities, extraordinary measure, labor controversy, safety of persons, personnel, mutual aid, enemy, unincorporated territory, territorial limits, magnitude, proclamation, imminent

Syllabus

[*1]

COUNTY DECLARED LOCAL EMERGENCY -- Cities within a county are bound by county rules and regulations during a county proclaimed local emergency when the local emergency includes both incorporated and unincorporated territory of the county even if the cities do not independently declare the existence of a local emergency.

Request By: GEORGE DEUKMEJIAN, Attorney General (Clayton P. Roche, Deputy)

Opinion

[**701] Requested by: DIRECTOR, OFFICE OF EMERGENCY SERVICES

The Honorable Alex R. Cunningham, Director, Office of Emergency Services, has requested an opinion on the following questions:

1. Are cities within a county bound by rules and regulations adopted by the county pursuant to [section 8634 of the Government Code](#) during a county proclaimed local emergency if the cities do not declare the existence of a local emergency independently?
2. If a county declares a local emergency pursuant to [section 8630 of the Government Code](#), is it necessary for cities within the county to also declare one?

CONCLUSIONS

1. Cities within a county are bound by county rules and regulations adopted by the county pursuant to [section 8634 of the Government Code](#) during a county proclaimed local emergency when the local emergency **[*2]** includes both incorporated and unincorporated territory of the county even if the cities do not independently declare the existence of a local emergency.
2. When the county has declared a local emergency based upon conditions which include both incorporated and unincorporated territory of the county, it is not necessary for the cities to also declare the existence of a local emergency independently.

ANALYSIS

The California Emergency Services Act is contained in [sections 8550-8668 of the Government Code](#).¹ It was enacted in 1970 (Stats. 1970, ch. 1454) to replace the similar California Disaster Act which was then found in [sections 1500-1601 of the Military and Veterans Code](#).

The California Emergency Services Act² is a comprehensive act which has as its purpose the assurance that state and local entities will adequately prepare for and deal with the effects of natural, manmade, or war-caused emergencies through the requisite coordination of the resources available at the state and local level. To this end the Act's purpose is also to confer emergency powers upon the **[**702]** Governor, the chief **[*3]** executives and governing bodies of local governments and to establish the California Office of Emergency Services within the Governor's Office. (§ 8550.)

The comprehensive character and scope of the Act may be demonstrated by a brief reference to some of the various articles of the Act. Article 1 sets forth the Act's purposes. Article 2 contains definitions of terms used in the Act such as "state of emergency," "local emergency," "mutual aid region," "master mutual aid agreement," etc. Article 3 sets forth the powers of the Governor under the Act such as his power to make and rescind orders and regulations (§ 8567), his powers to mitigate the effects of an emergency in accordance with the State Emergency Plan (§ 8570), and his power to commandeer private property during a state of emergency. Article 3.5 sets forth an emergency plan to deal with oil spills. Article 4 provides for the establishment of the California Emergency Council and its duties. Article 5 establishes the Office of Emergency Services and provides for its powers and duties. Article 7 sets forth the manner in which state agencies are to assist the Governor and the Office of **[*4]** Emergency Services under the Act. Article 10 provides for local disaster councils which are to provide for the mobilization of resources within cities and counties. Article 11 sets forth the Act's provisions relating to mutual aid both interstate and intrastate. Article 13 provides for the power of the governor to proclaim a state of emergency. Article 14 provides for the declaration of a local emergency by cities and counties. Article 17 provides for privileges and immunities of public employees and others in carrying out the provisions of the Act, and Article 19 provides for penalties for violations of the Act.

The California Disaster Act which the Act supplanted was similarly comprehensive. It like the present Act had as its main purpose preparing for and dealing with emergencies. It specifically recognized the existence of "local emergencies" as does the present Act. (Mil. & Vet. Code, prior § 1505.) However, it did not specifically provide for

¹ All section references are to the Government Code unless otherwise indicated.

² Hereinafter "the Act."

the declaration of local emergencies by cities and counties as does the present Act in section 8630. Section 8630 provides that "[a] local emergency may be proclaimed only by the governing body of a county, city and county, or [*5] city or by an official so designated by ordinance adopted by such governing body." Section 8634, which is the focus of the first question presented, then provides:

"During a local emergency the governing body of a political subdivision, or officials designated thereby, may promulgate orders and regulations necessary to provide for the protection of life and property, including orders or regulations imposing a curfew within designated boundaries where necessary to preserve the public order and safety. Such orders and regulations and amendments and rescissions thereof shall be in writing and shall be given widespread publicity and notice.

"The authorization granted by this chapter to impose a curfew shall not be construed as restricting in any manner the existing authority of counties [**703] and cities and any city and county to impose pursuant to the police power a curfew for any other lawful purpose."

The first question posed is whether regulations adopted by a county pursuant to this section during a county-proclaimed local emergency apply within city boundaries if the cities have not themselves declared the existence of a local emergency.

Our research has disclosed no case law nor [*6] opinions of this office which would resolve this question. We are thus presented with the problem of construing the statute.

In [*California Mfgs. Assn. v. Public Utilities Com. \(1979\) 24 Cal. 3d 836, 844*](#), the Court recently set forth a number of rules of statutory construction which are pertinent to our inquiry. The Court stated:

"Where a statute is theoretically capable of more than one construction we choose that which most comports with the intent of the Legislature. (E.g., [*Tripp v. Swoap \(1976\) 17 Cal. 3d 671, 679 \[131 Cal. Rptr. 789, 552 P.2d 749\]*](#); [*Select Base Materials v. Board of Equal. \(1959\) 51 Cal. 2d 640, 645 \[335 P.2d 672\]*](#).) Words must be construed in context, and statutes must be harmonized, both internally and with each other, to the extent possible. ([*Moyer v. Workmen's Comp. Appeals Bd. \(1973\) 10 Cal. 3d 222, 230 \[110 Cal. Rptr. 144, 514 P.2d 1224\]*](#); [*Select Base Materials v. Board of Equal., supra, at p. 645*](#); [*Johnstone v. Richardson \(1951\) 103 Cal. App. 2d 41, 46 \[229 P.2d 9\]*](#).) Interpretive constructions which render some words surplusage, defy common sense, or lead to mischief or absurdity, are to be avoided. ([*7] [*Fields v. Eu \(1976\) 18 Cal. 3d 322, 328 \[134 Cal. Rptr. 367, 556 P.2d 729\]*](#); [*Sanchez v. South Hoover Hospital \(1976\) 18 Cal. 3d 93, 98 \[132 Cal. Rptr. 657, 553 P.2d 1129\]*](#); [*Stanley v. Justice Court \(1976\) 55 Cal. App. 3d 244, 253 \[127 Cal. Rptr. 532\]*](#); [*Watkins v. Real Estate Commissioner \(1960\) 182 Cal. App. 2d 397, 400 \[6 Cal. Rptr. 191\]*](#).) In the present instance both the legislative history of the statute and the wider historical circumstances of its enactment are legitimate and valuable aids in divining the statutory purpose. ([*Steilberg v. Lackner \(1977\) 69 Cal. App. 3d 780, 785 \[138 Cal. Rptr. 378\]*](#); [*Alford v. Pierno \(1972\) 27 Cal. App. 3d 682, 688 \[104 Cal. Rptr. 110\]*](#).)"

Essentially, our task is to attempt to ascertain the intent of the Legislature, construe the statute so that it makes sense, and to do so in a manner harmonious with other provisions of the Act. We may also look to the history of the Act.

As to legislative intent, there are several overriding considerations which are of prime importance. The Act should be construed to further its policy and declared purposes that adequate preparations are made to deal with [*8] emergencies and that all governmental and private efforts to deal with emergencies are coordinated to the end that the most effective use is made of all manpower, resources and facilities for dealing with emergencies (see § 8550). Additionally, the Act [**704] recognizes that emergencies must be dealt with by governmental action at various levels of territorial jurisdiction, namely cities, counties, operational areas, mutual aid regions, the state level, and even at the multistate level. (See, e.g., §§ 8568-8569, 8600, 8605, 8610-8614, 8615-8619, 8630-8634, 8550, 8573.) Thus, the Act clearly demonstrates that dealing with emergencies within the state, even at the local level, is a matter of statewide, not local, concern. As stated in section 8550 of the Act:

"The state has long recognized *its responsibility* to mitigate the effect of natural, manmade, or war-caused emergencies which result in conditions of disaster or in extreme peril to life, property, and the resources of the state, and generally to protect the health and safety and preserve the lives and property of the people of the state...." (Emphasis added.)

That the matter of dealing with local emergencies is a matter of statewide concern **[*9]** is further supported by [section 53019 of the Government Code](#) relating to emergency powers of local entities. It states:

"It is hereby declared to be the public policy of the State of California that the control of fires and dangerous conditions caused by great public calamities *is a matter of statewide concern* and interest to all inhabitants and citizens." (Emphasis added.)

Accordingly, the Act should be construed in a statewide perspective, with the concept in mind that emergencies are to be dealt with on a territorial and organizational basis commensurate with the area involved and threatened by the conditions constituting the emergency.

Moving to the first question, that is, whether a county's regulations adopted pursuant to section 8634 apply within cities, we note that both cities and counties may declare that a state of local emergency exists.³ It is significant to note the conditions **[*705]** which section 8558 sets forth as examples of those which may give rise to a local emergency, that is, "such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, or earthquake." One thing which is patent from **[*10]** such enumeration is that *every one* of the examples is a condition which does not respect political boundaries, and could easily occur within both unincorporated territory and one or more cities in the county simultaneously. For example, it is not uncommon in

³ At this juncture it would appear appropriate to point out the Governor's power to declare emergencies, and in so doing we reach the definition section which includes the definition of "local emergency."

Section 8625 provides:

"The Governor is hereby empowered to proclaim a state of emergency in an area affected or likely to be affected thereby when:

"(a) He finds that circumstances described in subdivision (b) of Section 8558 exist; and either

"(b) He is requested to do so (1) in the case of a city by the major or chief executive, (2) in the case of a county by the chairman of the board of supervisors or the county administrative officer; or

"(c) He finds that local authority is inadequate to cope with the emergency. "

Section 8558, referred to in section 8625, provides:

"Three conditions or degrees of emergency are established by this chapter:

"(a) 'State of war emergency' means the condition which exists immediately, with or without a proclamation thereof by the Governor, whenever this state or nation is attacked by an enemy of the United States, or upon receipt by the state of a warning from the federal government indicating that such an enemy attack is probable or imminent.

"(b) 'State of emergency' means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, or earthquake or other conditions, other than conditions resulting from a labor controversy or conditions causing a 'state of war emergency,' which conditions, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and county, and require the combined forces of a mutual aid region or regions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission.

"(c) 'Local emergency' means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, or earthquake or other conditions, other than conditions resulting from a labor controversy, which conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to

this state for major fires to break out during the "fire season" which often cross city and even county boundary lines. Such fires can easily engulf both incorporated or unincorporated territory. Likewise, earthquake fault lines traverse large segments of land in this state. A major earthquake could occur within a single county, with significant injuries and damage occurring in both incorporated and unincorporated territory. The discussion could proceed through each of the enumerated conditions set forth in section 8558. Yet if a county may not declare an emergency within both incorporated and unincorporated territory, it would be theoretically possible for a county containing many cities to declare that a state of emergency existed with respect to an emergency condition with, however, all or none, or some combination thereof of the multitude of the cities in the county also declaring a local emergency. ⁴

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Accordingly, the fact that the Act gives both cities and counties the power to declare that a state of local emergency exists does not necessarily mean that both types of entities are legally required to do so, nor that a city's power to do so excludes a county's power to do so in incorporated territory. In fact, the Act itself, in defining "local emergency" does so with respect to emergency conditions "*within the territorial limits of a county... or city*" (§ 8558(c), *supra*, emphasis added). Cities, of course, lie within the territorial limits of counties. Furthermore, a city's power to declare an emergency is consistent with the power of a county **[**706]** to declare one in both incorporated and unincorporated territory. For example, a local fire emergency might be totally confined to the corporate limits of a single city. In such a case, it would be appropriate for only the legislative body of the city to declare the existence of the emergency in order to enlist the aid of other political subdivisions in the area. However, a local fire emergency could go beyond city boundaries and exist additionally in unincorporated territory, and in other cities within the county as **[*12]** well. In such a case, it would be reasonable and appropriate for the county, as the only single local agency which could declare an emergency in the total area comprising the

"(c) He finds that local authority is inadequate to cope with the emergency. "

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"(b) 'State of emergency' means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, or earthquake or other conditions, other than conditions resulting from a labor controversy or conditions causing a 'state of war emergency,' which conditions, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission.

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emergency, to do so. Otherwise, the delays inherent in many cities acting and the confusion attendant on those which do act in working together without recognized leadership at the local level could weaken the ability of local jurisdictions to combat a local emergency within the county. Furthermore, when the county has declared a local emergency pursuant to section 8630, it would be reasonable and appropriate to permit the county to promulgate rules and regulations of a uniform nature for the protection of life and property which would also apply uniformly throughout the area comprising the local emergency. Stated otherwise, it would not be reasonable to conclude that the Legislature, in granting cities and counties the clear authority to declare a local emergency, intended that they should have the power to enact a multitude of different and perhaps *even conflicting regulations* to apply to the same problem relating to the same emergency in the same county. The existence of such conflicting regulations [*13] would not be consistent with, and would conflict with the stated purposes of the Act that efforts of all governmental agencies *be coordinated*.

In short, the legislative history and background of the Act demonstrates that the Legislature intended to specifically provide that cities and counties can proclaim local emergencies, a power which was not expressly provided for in the prior California Disaster Act. However, as to *counties*, it would, in the words of the Supreme Court quoted above, "defy common sense" to conclude that as to matters such as fire, flood, epidemic or air pollution, matters which clearly do not respect corporate boundaries, a county's power and jurisdiction ended at such boundaries. Also, to so conclude would conflict with the stated purposes of the Act.

Another reason to find that the Legislature intended that a county should have authority to enact regulations during a local emergency which would apply within cities affected by such emergency emerges from a consideration of the effects of a contrary conclusion. A contrary conclusion would undermine a county's ability to effectively deal with a county-proclaimed local emergency which includes incorporated [*14] as well as unincorporated territory of the county. If, for example, a county declared a local emergency to exist to cope with such conditions, and its declaration thereof and concomitant power to enact regulations under section 8634 did not apply within cities in the county, it is conceivable that the Governor's intercession would be required pursuant to section 8625, *supra* at

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"(c) 'Local emergency' means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, or earthquake or other conditions, other than conditions resulting from a labor controversy, which conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission."

"(b) He is requested to do so (1) in the case of a city by the major or chief executive, (2) in the case of a county by the chairman of the board of supervisors or the county administrative officer; or

"(c) He finds that local authority is inadequate to cope with the emergency. "

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note 3. This would be necessary to coordinate matters relating to the emergency which actually could be, and in all probability should be handled locally. Such a result would be contrary [****707**] to the apparent intent of the Legislature to insure that local emergencies may be dealt with locally.⁵

We, therefore, conclude that section 8630 permits counties to declare that local emergencies exist both in unincorporated and incorporated territory of the county where the nature of the emergency includes incorporated territory as well as unincorporated territory of a county. We also [***15**] conclude as a correlative that section 8634 permits a county to promulgate rules and regulations which apply in both corporate and unincorporated territory. And finally we conclude, consistent with the above, that a city need not independently declare a local emergency where the county has declared that one exists in both corporate and unincorporated territory.⁶

In concluding that county rules and regulations apply within cities within the county, we recognize that such conclusion is contrary to the general rule that police power regulations⁷ adopted by a county are not applicable in

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a city, whether or not the city has adopted any regulations on the particular subject. (See [Ex Parte Pfirrmann](#))

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"(c) 'Local emergency' means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, or earthquake or other conditions, other than conditions resulting from a labor controversy, which conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission."

A mutual aid region consists of two or more county operational areas. An "operational area" is a single county and all political subdivisions therein. (§ 8559.)

⁴ Interestingly, the definition of "state of emergency" and "local emergency" are virtually the same, the difference being their magnitude. Thus a "state of emergency" is one which would "require the combined forces of a mutual aid region or regions to

[\(1901\) 134 Cal. 143; *In re Knight* \(1921\) 55 Cal. App. 511.](#)) However, as discussed above, implementation of the Emergency Services Act is a matter of statewide concern. Thus, when a county declares a state of emergency, it acts for the state as a subdivision thereof and its regulations may apply in incorporated as well as unincorporated territory. As noted in [County of Los Angeles v. Riley \(1936\) 6 Cal. 2d 625, 627-628](#), "[c]ounties perform many functions which are state functions, as distinguished from purely local functions." (See also generally, [County of Marin v. Superior Court \(1960\) 53 Cal. 2d 633, 638-639.](#))

In reaching the conclusions herein we are not unaware of the provisions of section 8668, subdivision (b), which provides:

"(b) Nothing in this chapter shall be construed to diminish or **[**708]** remove any authority of any city, county, or city and county granted by Section 7 of Article XI of the California Constitution."

This provision, however, clearly does not mean that cities or counties retain *all* police powers within their jurisdictions despite provisions of the Act to the contrary. For example, section 8620 of the Act (and part of the chapter alluded to in section 8668, subdivision (b)) demonstrates this conclusively. It provides that "[d]uring a state of war emergency the Governor shall have the right to exercise within the areas or regions designated *all* police power vested in the state." (Emphasis added.) Accordingly, section 8668, subdivision (b) must be read to mean that the Act may still specifically provide for the exercise of and supercede local police power authority within cities and counties as section 8634 does generally, and even specifically with respect to the imposition of a curfew. In short, insofar as measures taken by different levels of government with **[*18]** respect to the same emergency conflict, the measures taken by the agency with the more inclusive territorial jurisdiction (e.g., county versus a city) must govern.

In summary, it is the opinion of this office that a county may declare the existence of a local emergency which includes incorporated territory as well as unincorporated territory of the county pursuant to section 8630 and promulgate rules and regulations pursuant to section 8634 for the protection of life and property which will apply within cities in the county. It is also the opinion of this office that under such a local emergency cities in the county need not independently declare that a local emergency exists as to the same conditions relied upon by the county for its declaration.

combat, " whereas a "local emergency" is one which would "require the combined forces of other political subdivisions to combat. "

A mutual aid region consists of two or more county operational areas. An "operational area" is a single county and all political subdivisions therein. (§ 8559.)

⁵ That the county should have paramount powers to deal with emergencies is also seen in the various existing emergency plans which have been entered into pursuant to the provisions of the Act. (See §§ 8560, 8605, 8615-8618.)

⁶ Cf. [People v. Pina \(1977\), 72 Cal. App. 3d Supp. 35](#), wherein the court held that the sheriff's consent given pursuant to **Penal Code section 830.1** that a city police department's authority should extend to any place within the county authorized the particular city police department to act within *any city* in that county. The court stated:

"Where there is no ambiguity or uncertainty as to the meaning of a section of the Penal Code, it should be applied according to its plain terms without further judicial construction. ([In re Andrews \(1976\) 18 Cal. 3d 208, 212 \[133 Cal. Rptr. 365, 555 P.2d 97\].](#)) Section 830.1, subdivision (b) empowers the sheriff to give such consent if the 'place' is 'within the county.' Obviously, a 'place' within the city is also a 'place' within a given county. If the Legislature wanted to limit the sheriff's power, the statute would have provided that the sheriff could give such consent only if the place was within the *unincorporated portions* of a county. Inasmuch as the Legislature did not choose to so limit the sheriff's authority, we must assume that the Legislature knew what it was saying and meant what it said. ([Pac. Gas & E. Co. v. Shasta Dam etc., Dist. \(1955\) 135 Cal. App. 2d 463, 468 \[287 P.2d 841\].](#))" (*Id.*, at p. Supp. 39.)

⁷ Article XI, section 7 of the California Constitution provides:

"A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."

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