

# MAINE STATE LEGISLATURE

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August 30, 1950

To Colonel Spaulding Bisbee,  
Re: Local Enforcement Powers under Civil Defense Act

In the letter of August 29, 1950, from Lyman Moore, City Manager of Portland, to Col. Stephenson, the following paragraph appears:

"The most troublesome question which is common to all of our folks is what local powers exist, if any, to compel men to perform emergency work at the expense of caring for their families and personal effects in the event of a disaster. Is this power available to the Governor only after martial law has been declared? Is it a power that can be delegated to local directors of Civil Defense? Can it be further delegated by the local director? I would appreciate any advice you can give me on this point."

You have asked me to advise you with respect to the questions raised in this paragraph. I hesitate at this time to give my opinion with any degree of finality, since I have not had an opportunity to confer with other attorneys connected with the program and do not have the benefit of their thinking.

As I read the Civil Defense Act, I believe that the law enforcement powers would be predicated more or less upon the following. Section 6 of the Act contains, I believe, the prerequisite to the activation of all law enforcement powers under the Act, namely that there shall be a proclamation by the Governor that an emergency exists. This emergency may be in any or all sections of the State, and it is presumed that the areas to be covered by the proclamation will be specified in the proclamation.

Under paragraph VI the Governor has power to delegate any authority vested in him under the provisions of the charter and to provide for the subdelegation of any such authority.

I presume that, when the organization is finally completed, the plan and program, orders, rules and regulations, as adopted pursuant to the other paragraphs of Section 6 will provide for the delegation of authority through the official chain of command down through to persons actually engaged in on-the-scene activity. If I am correct in this assumption, it points out the need for careful organization so that there will not be overlapping by the on-the-scene officers in giving conflicting orders to any person.

That such delegation of authority is contemplated by the chapter (if it is within the scope of the plan) I believe is substantiated by the fact that all persons appointed to serve in an organization for Civil Defense and Public Safety shall take a prescribed oath with respect to the performance of their duties, and also substantiated by the penalty provisions of Sections 16 and 17, the enforcement provisions of Section 18, and the jurisdiction given to municipal courts in Section 17.

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Before accepting the foregoing finally I think it would be well to have the opinions of other attorneys associated with the program, and, if they are in substantial agreement with me, that it would be well for a legal committee to study the officially adopted plan to see whether or not the delegation of enforcement authority is sufficiently well spelled out in the plan to give enforcement officials a legal status when acting under an emergency proclamation. . .

John S. S. Fessenden  
Deputy Attorney General

jsf/c