



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>MARK BRNOVICH ATTORNEY GENERAL</p> <p>March 31, 2020</p>	<p>No. I20-006 (R20-006)</p> <p>Re: Authority of Local Officials and County Sheriffs to Enforce Violations of Lawful Emergency Declarations Issued By Cities and Towns</p>
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To: The Honorable Paul Boyer
Senator
Arizona State Senate

Question Presented

If a city or town issues a lawful emergency declaration, what authority do local law enforcement and county sheriffs have to enforce such declarations?

Summary Answer

Local law enforcement officials and county sheriffs have authority under A.R.S. § 26–316 to enforce provisions of lawful emergency declarations issued by cities and towns. In exercising such authority, law enforcement officials must continue to be mindful of constitutional rights and should execute their duties in a manner that promotes justice.

Background

In response to public health concerns surrounding the COVID-19 pandemic, cities and towns in Arizona may issue (and some have already issued) emergency declarations under the authority granted to them in A.R.S. § 26–311. This statute generally allows “the mayor of an

incorporated city or town or the chairman of the board of supervisors for the unincorporated portion of the county” to declare an emergency by proclamation whenever the mayor or chairman “deem[s] that an emergency exists due to ... any [] natural or man-made calamity or disaster ... which endanger[s] life or property within the city[.]” A.R.S. § 26–311(A).

When such an emergency is declared, the mayor or chairman has “authority to impose all necessary regulations to preserve the peace and order” of the city, town, or unincorporated areas of the county, *see* A.R.S. § 26–311(B), but this authority “shall not be inconsistent with orders, rules and regulations promulgated by the governor[.]” *see* A.R.S. § 26–307(A); *see also* A.R.S. § 26–303(D), (E) (establishing the governor’s power to “proclaim a state of emergency” and other powers of the governor during a state of emergency); A.R.S. § 36–787(B) (establishing governor’s authority to issue orders relating to public health during a state of emergency “in which there is an occurrence or imminent threat of an illness or health condition caused by ... an epidemic or pandemic disease”).

Analysis

Under A.R.S. § 26–316, “[t]he law enforcing authorities of the state and political subdivisions shall enforce orders, rules and regulations” issued under the emergency management laws in Chapter 2 of Title 26, which includes A.R.S. § 26–311. As relevant here, “[c]ounties are political subdivisions of the state.” *Grosvenor Holdings, L.C. v. Figueroa*, 222 Ariz. 588, 595, ¶ 15 (App. 2009). Any person who “knowingly fails or refuses to obey any lawful order or regulation issued as provided in this chapter”—i.e., a lawful provision of an emergency declaration issued by the mayor of an incorporated city or town or by the chairman of an unincorporated portion of the county—is “guilty of a class 1 misdemeanor.” A.R.S. § 26–317.

In exercising their duties and enforcement authority under A.R.S. § 26–316, municipal and county law enforcement agencies must be mindful of the constitutional and statutory liberties that Arizonans enjoy. For example, although the Arizona Department of Health Services “or local health authority” has the authority to issue quarantine or isolation orders during a state of emergency, such orders must be “by the least restrictive means necessary to protect public health” and the individual’s home may be an acceptable place of isolation or quarantine. A.R.S. § 36–788(B)(1), (2); *see also* A.R.S. § 36–788(D) (requiring that a quarantined person “ shall not go beyond the isolation or quarantine premises and shall not come in contact with any person not subject to isolation or quarantine other than” medical and health officials). The civil liberties of isolated or quarantined individuals are also protected by statutory due process requirements, including the right to speedy hearings and appointed counsel, *see* A.R.S. § 36–789, as well as the command that authorities make “[a]dequate food, clothing, medication and other necessities, competent medical care and means of communicating” with the outside world available to them, *see* A.R.S. § 36–788(C).

Established court precedents in various contexts demonstrate the careful balance that must be struck in protecting the public health while respecting individual rights. *See, e.g., Sell v. City of Columbus*, 47 Fed. Appx. 685, 693–96 (6th Cir. 2002) (emphasizing that emergency orders must be authorized by law and that officers must understand their constitutional responsibilities) (unpublished); *Jew Ho v. Williamson*, 103 F. 10, 26 (C.C.N.D. Cal. 1900) (overturning two San Francisco bubonic plague quarantine ordinances that exempted from quarantine non-Chinese residents of the quarantine zone as “unreasonable, unjust, and oppressive” and unlawfully “discriminat[ory]”).

Conclusion

As a matter of law, local law enforcement officials and county sheriffs have authority to enforce provisions of lawful emergency declarations issued by cities and towns, and violations of such orders are class 1 misdemeanors. *See* A.R.S. §§ 26–316, –317. Law enforcement agencies that enforce lawful emergency orders of cities and towns must take care to maintain constitutional safeguards that exist to protect individual rights and fundamental liberties and continue to enforce the law in a manner that promotes justice.

Mark Brnovich
Attorney General