

**Opinion Request from Representative John Kavanagh**  
**December 28, 2020**  
**R20-017**

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Please provide me with an opinion on the following questions:

1. When the governor declares a state of emergency, other than a state of war emergency, the emergency can be ended *“by concurrent resolution of the legislature declaring it at an end,”* as per ARS 26-306 {F}. Is the legislature’s only option to end the emergency and consequently terminate all of the governor’s actions related to the emergency or could the legislature:
  1. Modify the governor’s actions by either scaling them back or expanding them under the authority of ARS 26-306 {F} or any other law?
  2. Make the application of the governor’s emergency powers contingent upon the existence of specified conditions, such as in the case of an epidemic, infection levels and hospital ICU bed or ventilator availability, under which the governor’s authority would both end and even later be automatically revived based upon ongoing changes in the conditional metrics?
2. If the legislature terminates a state of emergency declared by the governor, thereby terminating all of the governor’s emergency actions, can the governor:
  1. Immediately declare a new state of emergency and reinstitute some or all of the previous actions? If so, would the legislature have to reconvene to end the reinstated actions, would the actions have no force because they are illegal or would a court have to issue an order ending the governor’s reinstated actions?
  2. Later in time, unilaterally declare another state of emergency in response to the same epidemic incident, if conditions worsened, or would the legislature have to reconvene to allow such reinstatement of previously terminated gubernatorial action?
3. ARS 26-307 {A} gives counties, cities and towns the power to *“make, amend and rescind orders, rules and regulations necessary for emergency functions but such shall not be inconsistent with orders, rules and regulations promulgated by the governor.”*
  1. Does this section of law give these local government bodies the same emergency powers that state law gives the governor to deal with states of emergency, other than a state of war emergency, so long as they do not conflict with an order, rule or regulation issued by the governor, pursuant to his or her emergency powers?
  2. Are the emergency powers of counties and municipalities *only available* during times that the governor has declared a state of emergency or can these local governments declare their own state of emergency and then enact emergency measures to deal with such emergency?

3. ARS 26-307 {D} states, *“In the absence of specific authority in state emergency plans and programs, the governing body of each county, city and town of the state shall take emergency measures as deemed necessary to carry out the provisions of this chapter.”* Does such *“specific authority”* exist in any *“state emergency plans and programs”* and, more importantly, are there any provisions in any *“state emergency plans and programs”* that would limit county and municipal action?
4. If an emergency situation existed and the governor did not declare a state of emergency, declared one but then rescinded it or the legislature voted to terminate a state of emergency declared by the governor, would that leave the counties, cities and towns free to issue orders, rules and regulations to deal with the emergency within the parameters permitted by ARS 26-307 {A} *as they so choose* (assuming no 26-307 {D} constraints) because they would not be constrained by the legal limitation of not acting *“inconsistent”* with a gubernatorial order, rule or regulation?
5. Since both counties and municipalities within counties can *“make, amend and rescind orders, rules and regulations necessary for emergency functions but such shall not be inconsistent with orders, rules and regulations promulgated by the governor,”* which local government entity is supreme? If there is inconsistency between county and municipal actions or if the county implements an action that a municipality has *not enacted* or even *voted not to enact*, which government’s action prevails within that particular municipal boundary – the county or municipality emergency measure?

Thank you for any consideration you might give my request.