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MEMORANDUM

To: House Committee on Judiciary

From: Office of Revisor of Statutes

Date: May 15, 2020

Subject: Summary of emergency powers and health emergency statutes

The purpose of this memorandum is to provide a summary of the statutory powers granted to government officials during a state of disaster emergency and a public health emergency related to infectious or contagious disease and provide a timeline of recent events related to use of these statutory powers.

Timeline of Events

On March 12, 2020, Governor Kelly issued a state of disaster emergency proclamation. Following that proclamation, the Governor issued many executive orders impacting both government and private industry. On March 19, 2020, the Legislature passed HCR 5025, ratifying and continuing the state of disaster emergency until May 1, 2020, “subject to additional extensions by concurrent resolution of the Legislature or as further provided in this concurrent resolution.” The resolution provided that the Legislative Coordinating Council was authorized to review and revoke certain executive orders and proclamations.

On April 7, 2020, Governor Kelly issued Executive Order 20-18, and on April 8, 2020, the Legislative Coordinating Council revoked Executive Order 20-18. On April 9, 2020, Governor Kelly filed a lawsuit in the Kansas Supreme Court challenging the Legislative Coordinating Council’s action. The Kansas Supreme Court issued a ruling on April 11, 2020, narrowly holding that “House Concurrent Resolution 5025 does not authorize the Legislative Coordinating Council to revoke Executive Order 20-18. Its plain text requires, as a condition precedent to exercise any Legislative Coordinating Council power, action by the State Finance Council to permit extension of the time of the Governor’s state of disaster emergency declaration.”

On April 30, 2020, Governor Kelly issued a new state of disaster emergency proclamation to be valid through May 14, 2020. She also issued Executive Order 20-28, extending certain executive orders that were issued under the original state of disaster emergency declaration. On May 13, 2020, the State Finance Council met and extended the state of disaster emergency through May 26, 2020.

Summary of Statutory Powers

The Governor

- K.S.A. 48-924 authorizes the governor to issue a proclamation declaring a state of disaster emergency “upon finding that a disaster has occurred or that occurrence or the threat thereof is imminent.”
- Such proclamation is required to “indicate the nature of the disaster, the area or areas threatened or affected by the disaster and the conditions which have brought about, or which make possible, the termination of, the state of disaster emergency.”
- The state of disaster emergency continues until the governor finds that the threat or danger of disaster has passed, or the disaster has been dealt with to the extent that emergency conditions no longer exist, and upon making such findings, the governor shall terminate the state of disaster emergency by proclamation.
- K.S.A. 48-925 authorizes the governor to “issue orders and proclamations which shall have the force and effect of law during the period of a state of disaster emergency.
- K.S.A. 48-925 lists 11 powers that the governor may exercise by issuing orders during a state of disaster emergency:
 - Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders or rules and regulations of any state agency which implements such statute, if strict compliance with the provisions of such statute, order or rule and regulation would prevent, hinder or delay in any way necessary action in coping with the disaster;
 - utilize all available resources of the state government and of each political subdivision as reasonably necessary to cope with the disaster;
 - transfer the supervision, personnel or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency management activities;
 - subject to any applicable requirements for compensation under K.S.A. 48-933, and amendments thereto, commandeer or utilize any private property if the governor finds such action necessary to cope with the disaster;
 - direct and compel the evacuation of all or part of the population from any area of the state stricken or threatened by a disaster, if the governor deems this action necessary for the preservation of life or other disaster mitigation, response or recovery;
 - prescribe routes, modes of transportation and destinations in connection with such evacuation;
 - control ingress and egress of persons and animals to and from a disaster area, the movement of persons and animals within the area and the occupancy by persons and animals of premises therein;
 - suspend or limit the sale, dispensing or transportation of alcoholic beverages, explosives and combustibles;
 - make provision for the availability and use of temporary emergency housing;
 - require and direct the cooperation and assistance of state and local governmental agencies and officials; and
 - perform and exercise such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population.

The Legislature

- When the governor issues a state of disaster emergency pursuant to K.S.A. 48-924, such emergency “may continue for no longer than 15 days unless ratified by a concurrent resolution of the legislature”.
- “At any time, the legislature by concurrent resolution may require the governor to terminate a state of disaster emergency. Upon such action by the legislature, the governor shall issue a proclamation terminating the state of disaster emergency.”
- House Concurrent Resolution 5025 authorizes the Legislative Coordinating Council to take certain actions with respect to executive orders issued by the Governor.

The State Finance Council

- K.S.A. 48-924 provides that “upon specific application by the governor to the state finance council and an affirmative vote of a majority of the legislative members thereof, a state of disaster emergency may be extended once for a specified period not to exceed 30 days beyond such 15-day period.”
- “The state finance council may authorize additional extensions of the state of disaster emergency by a unanimous vote of the legislative members thereof for specified periods not to exceed 30 days each.”

Department of Health and Environment

- K.S.A. 65-101 requires the secretary of health and environment to “exercise general supervision of the health of the people of the state”.
- That statute allows the secretary to take actions related to many health matters, including the power to “investigate the causes of disease, including especially, epidemics and endemics...”
- K.S.A. 65-126 allows the secretary of health and environment to quarantine an area when local health officials neglect to properly isolate and quarantine infected people.
- K.S.A. 65-128 requires the secretary to adopt rules and regulations designating diseases that are infectious or contagious in nature. This statute also authorizes the secretary to issue orders as “may be medically necessary to prevent the spread and dissemination of diseases...including, but not limited to, providing for the testing for such diseases and the isolation and quarantine of persons afflicted with or exposed to such diseases.”
- K.S.A. 65-129b allows the secretary to issue orders requiring individuals exposed to a contagious disease to seek evaluation and treatment and isolate or quarantine. Such official may also order the sheriff to assist with enforcing such orders.
- K.S.A. 65-129c specifies what is to be included in an isolation or quarantine order. An individual ordered to quarantine may request a hearing in district court to contest the quarantine, and the statute provides items for the court to consider during such a hearing.

County Health Officials

- K.S.A. 48-932 allows the chairman of the board of county commissioners or the mayor of a city with a disaster emergency plan, to declare a state of local disaster emergency on a finding that a disaster has occurred or there is an imminent threat of such a disaster in such county or city.

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- K.S.A. 65-201 provides that the “county commissioners of the several counties of this state shall act as county boards of health for their respective counties.” This statute also provides that each board “shall appoint a person licensed to practice medicine and surgery...who shall serve in an advisory capacity...” The appointing authority of a local health officer with a population of less than 100,000 may appoint a qualified local health program administrator as the local health officer if a person licensed to practice medicine and surgery or a person licensed to practice dentistry is designated as a consultant. “The local health officer or local health program administrator shall hold office at the pleasure of the board.”
- K.S.A. 65-118 requires that when certain people become aware of “information indicating that a person is suffering from or has died from a reportable infectious or contagious disease as defined in rules and regulations, such knowledge or information shall be reported immediately to the county or joint board of health or the local health officer...”
- K.S.A. 65-119 outlines the powers and duties of local health officers with respect to contagious disease. When such an officer becomes aware of an infectious or contagious disease, such officer “shall immediately exercise and maintain a supervision over such case or cases during their continuance, seeing that all such cases are properly cared for and that the provisions of this act as to isolation, restriction of communications, quarantine and disinfection are duly enforced.”
- K.S.A. 65-119 also authorizes such health officers to prohibit public gatherings when necessary for the control of these diseases.
- K.S.A. 65-122 prohibits a person with an infectious or contagious disease from being admitted to schools or childcare facilities.
- K.S.A. 65-129b allows a local health official to issue orders requiring individuals exposed to a contagious disease to seek evaluation and treatment and isolate or quarantine. Such official may also order the sheriff to assist with enforcing such orders.
- K.S.A. 65-129c specifies what is to be included in an isolation or quarantine order. An individual ordered to quarantine may request a hearing in district court to contest the quarantine, and the statute provides items for the court to consider during such a hearing.