

STATE OF TENNESSEE

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Opinion No. 06-172

Authority to compel emergency evacuations

QUESTIONS

1. Does Tenn. Code Ann. § 58-2-107(e)(5) require the governor to declare a state of emergency by either issuing a proclamation or activating the Tennessee Emergency Plan before persons can be compelled to evacuate an area in the event of a disaster or emergency?

2. After a state of emergency has been validly declared, does the governor's authority to direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state include the authority to forcibly remove persons who refuse to comply with evacuation orders?

3. Can the governor's authority to direct and compel an evacuation be delegated to chief executive officers of counties or cities?

4. Do chief executive officers of Tennessee counties and cities have any lawful authority, independent of authority being delegated to them by the governor, to direct and compel an evacuation of all or part of the population from any stricken or threatened area within their jurisdictions, including the authority to forcibly remove persons who refuse to comply with evacuation orders?

OPINIONS

1. Yes. Tenn. Code Ann. § 58-2-107(e)(5) requires the governor, or his designee, to declare a state of emergency by issuing a proclamation or activating the Tennessee Emergency Plan, pursuant to Tenn. Code Ann. § 58-2-107(b), before persons can be compelled to evacuate stricken or threatened areas.

2. Yes. The governor's authority to direct and compel evacuations under Tenn. Code Ann. § 58-2-107(e)(5) includes the authority to forcibly remove persons who refuse to comply with an evacuation order.

3. Yes. The authority that is granted to the governor under Tenn. Code Ann. § 58-2-107(a)(1) is delegable, without limitation, to any person, as the governor deems prudent.

4. Statutory authority to order and compel evacuations in response to emergencies or disasters independently of a delegation of authority from the governor is granted to city and municipal officials only. County officials have no such independent authority.

ANALYSIS

1. Tenn. Code Ann. § 58-2-107 sets forth the emergency management powers of the governor. Subsection (a)(1) provides a broad grant of authority to assume directional operation and control over all or part of the state's emergency management functions in the event of an emergency beyond local control. It states:

The governor is responsible for addressing the dangers presented to this state and its people by emergencies. In the event of an emergency beyond local control, the governor, or, in the governor's absence, the governor's successor as provided by law, may assume direct operational control over all or any part of the emergency management functions within this state, and such person has the power through proper process of law to carry out the provisions of this chapter. The governor is authorized to delegate such powers as the governor may deem prudent.

Id.

The primary purpose of statutory construction is to give effect to the intent of the legislature. *Eastman Chemical Co. v. Johnson*, 151 S.W.3d 503 (Tenn. 2004). If the statutory language is unambiguous, courts must apply the plain and ordinary meaning of the statutory language. *Bostic v. Dalton*, 158 S.W.3d 347 (Tenn. 2005). The meaning of a statute is to be derived from the language as a whole. *State v. Cross*, 93 S.W.3d 891 (Tenn. Crim. App. 2002).

The language of Tenn. Code Ann. § 58-2-107(a) is clear and unambiguous. Its language, read as a whole, indicates that the legislature intended for such powers to be exercised in emergencies only. The language of Tenn. Code Ann. § 58-2-107(b) sets forth the time and manner in which an emergency may be declared. By its terms the governor may invoke the statute only if he finds that an emergency exists, or if the threat of an emergency is imminent, and takes the required steps to declare a state of emergency. The term "emergency" is defined in Tenn. Code Ann. § 58-2-101(6), which states:

"Emergency" means an occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.

Id.

After the governor makes a finding that such a natural or manmade event has occurred or is

imminent, the governor must take one of the two acts prescribed by Tenn. Code Ann. § 58-2-107(b). It states, in relevant part:

- (b) The governor or the governor’s designee, shall declare a state of emergency in one (1) of two ways:
 - (1) By executive order or proclamation; or
 - (2) By the activation of the TEMP.¹

Id.

In statutory construction, the express inclusion of specific items normally means the exclusion of items that are not mentioned. *State v. Hawk*, 170 S.W. 3d 547 (Tenn. 2005). By setting forth the specific means to declare an emergency, the legislature intended to exclude any method that is not mentioned.

2. Tenn. Code Ann. § 58-2-107(e) authorizes the governor to exercise a broad range of emergency management powers, including the authority to order evacuations, after the declaration of a state of emergency. Subsection (e)(5) states:

(e) In addition to any other powers conferred upon the governor by law, the governor may:

* * *

(5) Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if the governor deem this action necessary for the preservation of life or other emergency mitigation, response, or recovery.

The plain language of Tenn. Code Ann. § 57-2-107(e)(5) indicates that the legislature intended to authorize the governor to use force, if necessary, to enforce an order to evacuate. In its ordinary usage, the term “compel” means to use force or coercion to bring about a desired result.

3. Tenn. Code Ann. § 58-2-107(a)(1) states that the emergency management powers of the governor may be delegated as he deems prudent. Such language is sufficiently broad to authorize the governor to delegate all or part of his emergency management powers to specific county and municipal officials if he deems it prudent to do so.

4. Chief administrative officers of municipalities and metropolitan governments have independent authority to compel evacuations within their jurisdictions in civil emergencies. Tenn. Code Ann. § 38-9-104(9) states:

¹Tennessee Emergency Action Plan.

After proclamation of a civil emergency, the chief administrative officer may, at the officer's discretion, in the interest of public safety and welfare:

* * *

(9) Issue such orders as are necessary for the protection of life and property.

Id.

The use of such broad language indicates that the legislature intended to give chief administrative offices, as defined by statute, the authority to take appropriate action to protect life or property. Evacuations of people from danger zones, including forcible evacuations, could be regarded as a reasonable step to protect life.

Under the language of the statute, the powers may be exercised by chief administrative officers only. In addition, the language of the statute provides that such authority may only be exercised after the proclamation of a civil emergency.²

Tenn. Code Ann. § 38-9-101 (1) defines "chief administrative officer" to include mayors of metropolitan governments, city managers of municipalities and, in some situations, mayors of municipalities. County mayors and other executive officers of county government are not included in the definition. The inclusion of various types of metropolitan and municipal officers only indicates that the legislature did not intend to authorize county officers to exercise emergency management powers without a specific delegation of authority from the governor.

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²Civil Emergency is defined in Tenn. Code Ann. § 38-9-101(2). Although it uses different language, its meaning is similar to the meaning of the term "emergency" as defined in Tenn. Code Ann. § 58-2-101(6).

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