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CIVIL DEFENSE ORGANIZATION—MAY GO INTO ACTION PRIOR TO DECLARATION OF EMERGENCY — VOLUNTEER CIVIL DEFENSE WORKER COVERED BY WORKMEN'S COMPENSATION LAW—§§4123., 5915.05, 5915.06, R.C.

SYLLABUS:

1. In case of attack or other disaster a civil defense organization may go into action upon the request or order of the appropriate official of the respective city or county prior to a declaration of an emergency; but such organization can exercise the emergency powers granted by Section 5915.06, Revised Code, or other sections of law, or by regulations of the governor, only when a state of emergency has been declared by the president or the congress of the United States, or by the governor.

2. Upon declaration of an emergency by the president or congress of the United States or by the governor an emergency for the purposes of Chapter 5915., Revised Code, then exists and there is no requirement that local officials must also declare an emergency.

3. Under the authority of Section 5915.06, Revised Code, if the regulations adopted by the governor pursuant to Section 5915.05, Revised Code, allow a local civil defense organization to operate in another political subdivision, such organization may operate in such other subdivision on the order of the appropriate official of such organization, but such operations are subject to authority granted by said regulations of the governor.

4. A volunteer civil defense worker who is performing a civil defense duty under order of a duly appointed director or authorized staff member of a civil defense organization is covered by the workmen's compensation law, Chapter 4123., Revised Code.

Columbus, Ohio, August 25, 1959

Hon. Loren G. Windom, The Adjutant General  
Director of Civil Defense, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion in which you ask:

"1. Under the authority granted in the Sections of the Code pertaining to Civil Defense (5915.01 *et sequi*, can Civil Defense organizations go into action upon the request or the order of the appropriate official of the city or county prior to the declaration of a state of emergency by the Governor or the President?

"2. In the event of such a declaration by the President and/or the Governor, are similar declarations by local officials necessary?

"3. Can they go into action upon the request of the appropriate officials of other political subdivisions than their own, if such requests are approved by the responsible official of their own community or other political subdivision?

"4. What basic requirement for being ordered or authorized to take action in a natural disaster or emergency must be met to insure that volunteers are covered under the Workmen's Compensation Act?"

Your first question asks whether civil defense organizations can "go into action" upon the request or the order of the appropriate official of the city or county prior to the declaration of a state of emergency. Regarding the function of "civil defense," division (C) of Section 5915.01, Revised Code, reads:

"(C) 'Civil defense' includes all those activities and measures designed or undertaken to minimize the effects upon the civilian population caused or which would be caused by an attack, or other disaster, to deal with the immediate emergency conditions which would be created by any such attack, or other disaster, and to effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by any such attack, or other disaster. Such term shall include, but shall not to be limited to: *measures to be taken in preparation for anticipated attack*, including the establishment of appropriate organizations, operational plans, and supporting agreements, the recruitment and training of personnel, the conduct of research, the procurement and stock piling of necessary materials, the

provision of suitable warning systems, the construction or preparation of shelters, shelter areas, and control centers, and, when appropriate, the non-military evacuation of civil population; *measures to be taken during attack, or other disaster*, including the enforcement of passive defense regulations prescribed by duly established military or civil authorities, the evacuation of personnel to shelter areas, the control of traffic and panic, and the control and use of lighting and civil communications; and measures to be taken following attack, or other disaster, including activities for fire fighting, rescue, emergency, medical, health, and sanitation services, monitoring for specific hazards of special weapons, unexploded bomb reconnaissance, essential debris clearance, emergency welfare measures, and immediately essential emergency repair or restoration of damaged vital facilities.”

(Emphasis added)

Under these provisions there would be no necessity for the declaration of an emergency before a civil defense organization could “take measures in preparation for anticipated attack.” Also, the actions enumerated after “measures to be taken during attack, or other disaster,” other than where the word “emergency” is directly used, do not require that an emergency shall be declared.

As to the powers of a local organization for civil defense, Section 5915.06, Revised Code, provides in part:

“\* \* \* Each local organization for civil defense shall perform civil defense functions within the territorial limits of the political subdivision within which it is organized, and in addition, shall conduct such functions outside of such territorial limits as are required pursuant to regulations promulgated by the governor.

“In addition to other powers, upon the declaration of an emergency, any local, county-wide or regional civil defense organization may:

“(A) Where the safety of the people is jeopardized, compel the evacuation of any person;

“(B) Furnish emergency aid in the form of cash or goods to persons made destitute by reason of an attack.”

You will note that each local organization is to perform the civil defense duties which are enumerated in division (C) of Section 5915.01, *supra*, and *upon the declaration of an emergency*, is given the *added powers* listed in divisions (A) and (B) of Section 5915.06, *supra*. Division (D) of Section 5915.01, Revised Code, defines an emergency as follows:

“(D) ‘Emergency’ means any period during which the president or the congress of the United States or the governor has proclaimed that an emergency exists.”

In addition to the provisions of Chapter 5915., Revised Code, civil defense organizations are also governed by regulations promulgated by the governor pursuant to Section 5915.05, Revised Code, reading in part:

“The governor shall promulgate and enforce, and when necessary he may amend, or rescind the regulations with respect to the establishment of a civil defense organization for the state for the purpose of providing a defense for its people against enemy action, or other disaster. \* \* \*”

On reviewing the existing regulations of the governor, adopted pursuant to Section 5915.05, Revised Code, effective June 1, 1957, I find no provision which would limit the activities of a civil defense organization to “emergencies.” Section 6. of such regulations does give a civil defense organization certain powers *in addition to other powers*, reading:

“Section 6. *Emergency.*

“a. When the President or the Congress of the United States or the Governor has proclaimed that an emergency exists, as defined in Section 5915.01 (D) of the Revised Code, in addition to other powers, any local, county-wide or regional Civil Defense organization may:

“(1) Where the safety of the people is jeopardized, compel the evacuation of any person. Such action shall be in accordance with applicable Operational Instructions published by the Headquarters, Ohio Civil Defense Corps. See Annex D.

“(2) Furnish aid in the form of cash or goods, except screened and allocated Federal Surplus Property, to persons made destitute by reason of attack, major disaster or emergency.”

Here again the declaration of an emergency gives added powers to an organization, however, there is no requirement that an emergency be declared before an organization can perform the basic functions of civil defense.

The Agreement For the Creation and Operation of the Ohio Valley Civil Defense Authority, which you have provided for my information, also, does not contain any requirement that an emergency be declared before the organizations involved may begin to operate.

The Hamilton County Civil Defense Organization, being a local organization under the provisions of Section 5915.06, Revised Code, has the power to “perform civil defense functions within the territorial limits of the political subdivision within which it is organized.” As seen before, the declaration of an emergency is not necessary for the commencement of such functions.

I am of the opinion, therefore, that, pursuant to the provisions of Section 5915.06, Revised Code, a civil defense organization may go into action upon the request or the order of the appropriate official of the respective city or county prior to the declaration of a state of emergency, but that such organization can exercise the emergency powers granted by law and by regulation of the governor only when an emergency has been declared by the president or the Congress of the United States or by the governor.

Answering your second question, I can find no requirement that local officials must declare an emergency after such has been declared pursuant to the provisions of division (D) of Section 5915.01, *supra*.

Answering your third question, you will note that Section 5915.06, Revised Code, states that each local organization “shall perform civil defense functions within the territorial limits of the political subdivision within which it is organized, and in addition, shall conduct such functions outside of the territorial limits as are required pursuant to regulations promulgated by the governor.” Thus, if the governor’s regulations adopted pursuant to Section 5915.05, Revised Code, allow a local civil defense organization to operate in another political subdivision, such organization may go into action in such other subdivision on the order of the appropriate official of such organization.

Your fourth question asks what basic requirement for being ordered or authorized to take action in a natural disaster or emergency must be met to insure that volunteers are covered under the workmen’s compensation law.

Qualifications for workmen’s compensation for civil defense workers are contained in Section 4123.031, Revised Code, reading:

“(A) ‘Civil defense worker’ is anyone who has been duly registered for service in connection with the development, maintenance, and operation, excluding emergency conditions due to enemy attack, of any civil defense organization authorized by

law and who has met the minimum requirements as set forth in sections 4123.031 to 4123.037 (4123.03.1 to 4123.03.7), inclusive, of the Revised Code, or who has been certified as a civil defense worker during a natural disaster and the emergency thereby created, by the state civil defense director, county commissioners, mayor or chief executive of a municipality in the locality where the disaster occurs.

“(B) ‘Civil defense duties’ mean and include any or all activities in connection with civil defense, including actual operations in natural disaster, training, organizing, attending meetings and conferences, answering calls to duty in case of false or test alerts including all authorized travel required or directly involved in such activities.”

Inclusion of civil defense workers within the workmen’s compensation laws is found in Section 4123.032, Revised Code, reading in part:

“Every civil defense worker of the civil defense corps of the state, as defined in sections 4123.031 to 4123.037 (4123.03.1 to 4123.03.7), inclusive, of the Revised Code, shall, with respect to the performance of his duties as such civil defense worker, be in the employment of the state for purposes of sections 4123.01 to 4123.94, inclusive, of the Revised Code, and every civil defense worker or in case of death his dependents shall be entitled to the benefits payable on account of total disability, loss of member or death as accorded by such sections to employees covered by its provisions. \* \* \*”

Regarding action within the purview of the workmen’s compensation law, division (C) of Section 4123.036, Revised Code, reads in part:

“(C) At the time the accident or event occurs for which a claim is made under sections 4123.01 to 4123.94, inclusive, of the Revised Code, said civil defense worker shall have been acting in good faith in performing a civil defense duty, function or act in connection with the development, training, maintenance, or operation of a civil defense organization *under expressed or constructive instruction or orders of a duly appointed director of a civil defense or an authorized staff member of the civil defense organization charged with the authority and responsibility for issuing such instructions or orders.* \* \* \*” (Emphasis added)

Thus, a volunteer civil defense worker who is performing a civil defense duty under order of a duly appointed director or authorized staff member of a civil defense organization, would be covered under the provisions of Chapter 4123., Revised Code, the workmen’s compensation law.

Answering your specific questions, therefore, it is my opinion and you are advised:

1. In case of attack or other disaster a civil defense organization may go into action upon the request or order of the appropriate official of the respective city or county prior to a declaration of an emergency; but such organization can exercise the emergency powers granted by Section 5915.06, Revised Code, or other sections of law, or by regulations of the governor, only when a state of emergency has been declared by the president or the Congress of the United States, or by the governor.

2. Upon declaration of an emergency by the president or Congress of the United States or by the governor an emergency for the purposes of Chapter 5915., Revised Code, then exists and there is no requirement that local officials must also declare an emergency.

3. Under the authority of Section 5915.06, Revised Code, if the regulations adopted by the governor pursuant to Section 5915.05, Revised Code, allow a local civil defense organization to operate in another political subdivision, such organization may operate in such other subdivision on the order of the appropriate official of such organization, but such operations are subject to authority granted by said regulations of the governor.

4. A volunteer civil defense worker who is performing a civil defense duty under order of a duly appointed director or authorized staff member of a civil defense organization is covered by the workmen's compensation law, Chapter 4123., Revised Code.

Respectfully,

MARK McELROY

Attorney General