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WHEN A STATE OF EMERGENCY HAS BEEN PROCLAIMED IN AN AREA, THE CHIEF EXECUTIVE OFFICER OF A MUNICIPALITY MAY THROUGH THE LOCAL CIVIL DEFENSE DIRECTOR AUTHORIZE EXPENDITURE OF PUBLIC FUNDS FOR FOOD AND CLOTHING—§§5915.01, R.C., 5915.06, R.C., 329.09, R.C.

SYLLABUS:

Where the president, congress, or the governor has proclaimed that an emergency exists in an area in a time of disaster, the board of county commissioners or the chief executive officer of a municipality in the area may under Section 5915.06, Revised Code, and through the local civil defense director, authorize the expenditure of public funds for food, clothing and other needs of persons in the disaster area when these needs are the result of the disaster or attack which caused the emergency proclamation.

Columbus, Ohio, June 15, 1962

Hon. Paul R. Young, Prosecuting Attorney, Montgomery County  
Montgomery County Courthouse, Dayton, Ohio

Dear Sir:

Your request for my opinion reads in part:

“We have a question presented to us from the Miami Valley Civil Defense Authority the question reads:

“ ‘Dear Mr. Young:

“Does a Board of County Commissioners of a County, Board of Township Trustees, or a Mayor of a Municipality have the authority to spend public funds in time of a disaster for pri-

vate citizens welfare such as food, clothing and/or other needs for the general public under a state of emergency declared by the Governor or the President of the United States.’”

As the remaining portion of your letter suggests, the answer to your question may be found in the civil defense laws (Chapter 5915., Revised Code).

Section 5915.01, Revised Code, reads in part:

“As used in sections 5915.01 to 5915.143, inclusive, of the Revised Code:

“(A) ‘Agency’ includes any office, department, division, bureau, board, commission or authority of the state or of a political subdivision thereof, including volunteer agencies.

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“(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 be limited to: \* \* \* measures to be taken following attack, or other disaster, including \* \* \* *emergency welfare measures*, \* \* \*.

“(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.*

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\* \* \*”

(Emphasis added)

It should be noted that the legislature rather deliberately included the general phrase “other disaster”; thus, civil defense clearly includes meeting problems that derive from non-military disasters; secondly the measures that may be taken include welfare measures.

“Welfare”, though not defined, must include the distribution to private persons on an emergency basis of food, clothing, and other items of a similar nature that are necessary to sustain life. The fact that the distribution would be made to private persons is not alone reason against permitting such a distribution; all welfare laws, when metamorphosed into

concrete situations, result in benefits going to private persons. The important feature is not the private nature of the recipient but the relationship between him and the program under which the distribution is made. For example, in the poor relief program under Chapter 5119., Revised Code, the deciding factor is the poverty of the recipient; and in the aid for disabled program under Chapter 5106., Revised Code, the deciding factor is the recipient's disablement; similarly, under Section 5915.01 (C), *supra*, the deciding factor arises from the recipient's need for food and clothing when this need is due to the disaster.

The instant question has probably arisen because Section 5915.06, Revised Code, formerly contained a specific provision that any local, countywide or regional civil defense organization could:

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

This provision was removed from the law when the section was amended in 1961 (Amended House Bill No. 432 of the 104th General Assembly). Said Section 5915.06, Revised Code, now reads:

“Each county and municipality of this state may establish local civil defense in accordance with the regulations promulgated by the governor. Each county and municipality shall have a director of civil defense who shall be appointed by the board of county commissioners for the counties and by the chief executive for the municipal corporations. He shall co-ordinate the organization, administration, and operation of local agencies for civil defense, subject to the *direction and control of such board and chief executive* and not inconsistent with regulations promulgated by the governor.” (Emphasis added)

In spite of the fact that the specific authority to furnish cash and goods to destitute persons was removed from the law, I do not construe this to mean that such authority no longer exists. As noted above, “civil defense” includes emergency welfare measures, and the term “welfare measures” necessarily includes items such as the furnishing of food, clothing, and other needs—even including cash.

Prior to the present version of Section 5915.06, *supra*, any political subdivision had the power to establish local civil defense, and this included

townships. Opinion No. 5562, Opinions of the Attorney General for 1955, page 322. Under the present version, however, only a county or municipality has such power, and the local civil defense director performs his duties *subject to the direction and control* of the board of county commissioners or mayor (such performance of duties not to be inconsistent with the regulations of the governor). Thus, where an emergency has been proclaimed, a mayor of a municipality or a board of county commissioners, through the local civil defense director, could make the expenditures necessary for the distribution of food and clothing, so long as this would not be inconsistent with the regulations promulgated by the governor.

Aside from these civil defense powers, the only other section of law that I can find giving local officials power to distribute food and clothing to persons when needed due to a disaster is under Section 329.04, Revised Code, which, as pertinent, reads:

“The county department of welfare shall have, exercise, and perform, under the control and direction of the board of county commissioners, the following powers and duties:

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\* \* \*

“(F) To exercise such powers and duties relating to public welfare imposed upon the county department of welfare by law, by resolution of the board, or by order of the governor, when authorized by law, to meet emergencies during war or peace. The board may designate the county department of welfare to exercise and perform any additional welfare powers and duties which the board has.”

Since, however, the question specifically deals with instances where an emergency has been proclaimed by the governor or president, it appears that said question is directed to the civil defense laws alone.

In answer to your specific question, it is my opinion and you are advised that where the president, congress, or the governor has proclaimed that an emergency exists in an area in a time of disaster, the board of county commissioners or the chief executive officer of a municipality in the area may under Section 5915.06, Revised Code, and through the local civil defense director, authorize the expenditure of public funds for food,

clothing and other needs of persons in the disaster area when these needs are the result of the disaster or attack which caused the emergency proclamation.

Respectfully,

MARK MCELROY

Attorney General