

DATE: June 5, 1989

TO: The Honorable Maureen O'Connor, Mayor of San Diego

FROM: City Attorney

SUBJECT: Mayor's Emergency Powers

Your office has made a two part request for research from this office. The first part requires an evaluation of your powers to declare a state of local emergency under state law, municipal code and applicable charter sections. The second part requires an evaluation of what constitutes a "local emergency."

As a preliminary matter, it should be recognized that although California Government Code section 8625 (which you cited in your letter to the Governor) empowers the Governor to "proclaim a state of emergency in an area affected or likely to be affected thereby," this section has no application to the present situation.

The California Government Code makes a distinction between a "state of emergency" and a state of "local emergency." Whereas "state of emergency" is defined in section 8558(b) as "existence of conditions of disaster or of extreme peril to the safety of persons and property within the state . . ."; "local emergency" is defined in section 8558(c) as the "existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city . . ." (Emphasis added.)

Pursuant to California Government Code section 8625(a), a proclamation by the Governor of a state of emergency must be based upon a finding that "circumstances described in subdivision (b) of section 8558 exist." The circumstances giving rise to the Mayor's request are local, and if actually constituting an emergency, would most appropriately fall within the scope of California Government Code section 8558(c).

California Government Code section 8630 is the controlling statute by which the state grants to local governing bodies the authority to declare a "local emergency." Section 8630, in pertinent part, provides that "a local emergency may be proclaimed only by the governing body of a county, city and county, or city or by an official so designated by ordinance adopted by such governing body."

Addressing the issue of whether the Mayor is an "official so designated by ordinance" to declare a local emergency, requires an examination of the local provisions which define the duties of the Mayor.

The duties and powers of the Mayor are set out generally in the Charter of The City of San Diego. Article IV, Section 24 states "The mayor shall preside at the meetings of the Council and perform such other duties as may be prescribed by this Charter, or as may be imposed by the Council, consistent with the duties of her office." Section 24 continues, "In times of public danger or emergency, she may, with the consent of the Council, take command of the police, maintain order and enforce the law."

In defining the duties of the Mayor, this section provides no specific authority enabling the Mayor to declare a state of emergency; instead, it defines the scope of mayoral authority once an emergency has been declared (although the San Diego City Council, as a local legislative body, may declare a state of local emergency pursuant to the City Charter and Municipal Code section 51.0106, as it did in approving resolution number R-273544).

However, in contrast, Article V, Section 28 of the Charter entitled "Duties of the Manager," states:

In case of general conflagration, rioting, flood, or other emergency menacing life and property, the Manager shall marshal all the forces of the different Departments of the City for the maintenance of the general security, and shall have the power to deputize or otherwise employ such other persons as he may consider necessary for the purpose of protecting the City and its residents. The Council may, however, in any such emergencies authorize the Mayor to take command of the police, maintain order and enforce the law.

Chapter V, article 1 of the San Diego Municipal Code more fully addresses public emergency procedures. Sections 51.0105 and 51.0106 elaborate on the duties of the City Manager as they relate to public emergencies. Section 51.0105 designates the City Manager as the Director of Emergency Services. Section 51.0106 provides in pertinent part:

- A. The Director is hereby empowered to:
  - 1. Request the City Council to proclaim the existence or threatened existence of a "local emergency" if the City Council is in session, or to issue such proclamation if the City Council is not in session. Whenever a local emergency is proclaimed by the director, the City Council shall take action to ratify

the proclamation within seven days thereafter or the proclamation shall have no further force or effect.

2. Request the Governor to proclaim a "state of emergency" when, in the opinion of The Director, the locally available resources are inadequate to cope with the emergency.

Clearly, the Municipal Code and the City Charter vest within the City Manager the power to proclaim the existence of a local emergency, or in the alternative, request the Governor to declare a state of local emergency. In any event, local ordinance empowers the City Manager, not the Mayor to make the initial proclamation or request for the declaration of a state of emergency from the Governor. The Mayor however is not precluded from requesting the Council to declare a local emergency pursuant to the authority of California Government Code section 8630.

On the issue of what constitutes a local emergency, the Municipal Code offers marginal guidance. Chapter V, article 1, section 51.0102 defines "emergency" as:

The actual or threatened existence of conditions of disaster or of extreme peril to the public peace, health or safety of persons or property within this City caused by, but not limited to, such conditions as air pollution, fire, flood, storm, epidemic, riot or earthquake, or other conditions, including conditions resulting from war or imminent threat of war. (Emphasis added.)

Looking to the California Government Code for additional guidance reveals only a longer list of catastrophes, adding "drought," and "sudden and severe energy shortage" to the list provided by the Municipal Code.

The parameters of what constitutes an emergency are elusive at best. This issue was addressed by the California Supreme Court as early as 1886, in *People v. Lee Wah* 71 Cal. 80 (1886); and since then, has been revisited frequently. The Court has repeatedly recognized that "To state what constitutes an emergency is not an easy task. The term depends greatly upon the special circumstances of each case; and the authorities are not very helpful in the present inquiry. By definition, the term 'emergency' implies a sudden or unexpected necessity requiring speedy action. (Citations omitted.)" *Mullins v. Henderson*, 75 Cal. App. 2d 117, 127 (1946), citing *Los Angeles Dredging Co. v. Long Beach*, 210 Cal. 348 (1930).

In *San Christina Inv. Co. v. San Francisco*, 167 Cal. 762

(1914), the California Supreme Court defined emergency as "an unforeseen occurrence or combination of circumstances which calls for immediate action or remedy; a pressing necessity, an exigency . . . . It is the meaning of the word that obtains in the mind of the lawyer as well as in the mind of the layman." Id. at 773.

While the courts have attempted to define what constitutes an emergency, the Attorney General, in a 1982 opinion, approached the issue by declaring what does not constitute an emergency. In an opinion which addressed the issue of what circumstances constitute an emergency for the purpose of exceeding the appropriation limit for a governmental entity, the Attorney General opined:

The term "an emergency" refers to an extraordinary occurrence or combination of circumstances that was unforeseen and unexpected at the time a governmental entity adopted its budget for the fiscal year in which it occurs and which requires immediate and sudden action of a drastic but temporary nature . . . . While an emergency may stem from other than natural causes, an inability to or difficulty in carrying out a voluntarily undertaken normal governmental operation because of financial straits does not constitute an emergency . . . for the purpose

of exceeding the appropriation limits set by Proposition 13. (Emphasis added.)

65 Op. Cal. Att'y Gen. 151 (1982).

By way of Resolution Number R-273544, adopted on May 23, 1989, the City Council has requested that the Governor proclaim a state of emergency in The City of San Diego. The factual basis for this request is the increase in drug related and gang related drive-by shootings, and that the 42 percent of the law enforcement budget which is currently spent on drug related enforcement is not sufficient to meet and control this problem.

An argument can be made that these circumstances appear to stem from the "inability to or difficulty in carrying out a voluntarily undertaken normal governmental operations local law enforcement because of financial straits." On the other hand it cannot be said with certainty that the increase in drive-by shootings by gangs and drug dealers is not an unforeseen occurrence or combination of occurrences which calls for immediate action or remedy and therefore qualifies as an emergency.

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By

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Attachments

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