



Ohio Municipal Attorneys Association

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CONSIDERING THE NECESSITY AND ABILITY OF OHIO MUNICIPALITIES TO ISSUE DECLARATIONS OF EMERGENCY IN RESPONSE TO THE 2020 COVID-19 PANDEMIC

A brief outline of relevant thoughts from the Ohio Municipal Attorneys Association Executive Director and General Counsel Garry Hunter, Esq. and Rod Davisson, Esq., Village Administrator for the Village of Obetz, Ohio with samples from Ohio Municipal Attorneys Association members. Issued April 8, 2020.

The COVID-19 pandemic has thrust a gauntlet of legal issues upon the municipalities of Ohio. The situation remains volatile and we anticipate that these answers—like all answers during this time—may evolve subject to future developments, changes in existing laws, or the adoption of new laws calculated to battle the pandemic. Given the pace of change and need for quick answers, we cover the issues below succinctly.

I. WHAT ARE WE TRYING TO ACCOMPLISH IN A DECLARATION OF EMERGENCY?

- a. Informing the Public;
- b. Customizing and Accelerating processes (virtual meetings, expedited purchasing, payroll, etc.);
- c. Creating eligibility for aid from others;
- d. Enforcing orders; and
- e. Enacting temporary curtailments of liberties.

Of the broad purposes identified here, the stickiest is the curtailment of liberties. For most municipalities right now, the curtailment of rights such as the right to assemble are being handled at the state level and do not require municipal intervention. However, as things progress, municipalities may need to employ substantive powers of Local Self Government to further temporarily restrict liberties with measures such as local curfews. Such acts should be well reasoned and, depending on the act, may be subject to review under strict, intermediate, or rational basis standards. Ensure that restrictions on fundamental rights are narrowly tailored and use the least restrictive means to address the issue.

If a municipality is principally concerned with eligibility for aid, the Declaration of Emergency appears to be a “better to have it than not” solution. There are more than 500 federal laws and myriad state laws addressing emergency type situations. There is simply not time to review them all to see which ones require local Declarations of Emergencies for benefits. Many municipalities will therefore pass the Declarations so as not to miss opportunities for aid. That said, it is likely that municipalities would be eligible for aid under a declaration from the federal, state, or county governments.

II. WHERE DOES A MUNICIPALITY GET AUTHORITY TO ACT?

- a. EMERGENCY PROCEDURES CAN BE IN CONFLICT WITH U.S. CONSTITUTION 1ST AMENDMENT AND OHIO CONSTITUTION ARTICLE I, SECTION 3 RIGHTS OF FREEDOM OF ASSOCIATION. The rights of free speech and assembly, while fundamental in our democratic society, do not mean that anyone with opinions or beliefs to express may address a group at any public place and at any time. The constitutional guarantee of liberty implies the existence of an organized society maintaining public order, without which liberty itself would be lost in the excesses of anarchy. Athens v. Bromall, 20 Ohio App. 2d 140, 49 Ohio Op. 2d 166, 252 N.E.2d 298, 1969 Ohio App. LEXIS 511 (Ohio Ct. App., Athens County 1969). In other words, the right of freedom of Association is not unlimited. Where the limitation of individuals’ freedom of Association is outweighed by the public good, the limitations are most likely going to be upheld by the court system.
- b. THERE IS NO CLEAR STATE STATUTE ALLOWING A MUNICIPALITY TO DECLARE, OR ENACT EMERGENCY PROCEDURES. There is no state statute that grants a municipality the authority to declare, or enact, emergency procedures because of the governor’s COVID-19 declarations and the Ohio Department of Health stay at home orders. Some charters may contain this authority, however, it is our opinion, most charters do not contain such authority. Does this mean that charter municipalities that do not have emergency procedures contained therein and statutory municipalities do not have the authority to enact emergency procedures because of the COVID-19 pandemic? No, we believe the home rule provisions of Ohio constitution Article XVIII, Section 3 which provides, “Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws”,

grant charter municipalities (that have not addressed the issue in their charter) and statutory municipalities, the right to enact emergency procedures in situations such as the COVID-19 pandemic. A summary of these powers follows, suggested Whereases to use, and samples of local emergency declarations or ordinances can be found [here](#).