

OPINION NO. 1532**Syllabus:**

1. County or municipal civil defense officials have authority to evacuate persons from an area under their jurisdiction in order to minimize the effects upon the civil population of an attack or other disaster.

2. The governor may include a section in the Governor's Regulations of Civil Defense which permits the appropriate civil defense officials, upon the declaration of an emergency by the governor to (a) compel the evacuation of persons whose safety is jeopardized, (b) furnish aid in the form of cash or goods, except screened and allocated federal surplus property, to persons made destitute by reason of attack or other disaster.

To: Major General Erwin C. Hostetler, Adjutant General of Ohio, Columbus, Ohio

By: William B. Saxbe, Attorney General, November 10, 1964

I have before me your request for my opinion which reads as follows:

"1. Following the reasoning of Opinion No. 3069, (Opinions of the Attorney General for 1962, page 456) do the appropriate local government officials, or does the local civil defense director when authorized or directed by the county commissioners for a county or the chief executive officer for a municipality, have the authority to compel the evacuation of any person, where the safety of the people is jeopardized?

"2. Do the provisions of Sections 5915.01 (C), (D), 5915.05, and 5915.06, Revised Code, in conjunction with any other pertinent provisions of law, support the inclusion of a section as follows in the Governor's Regulations of Civil Defense:

"Section _____. Upon declaration of an emergency, 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, under the authority or direction of appropriate local government officials:

"(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 State Director of Civil Defense, or with local emergency plans approved by the State Director of Civil Defense.

"(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, or other disaster."

Your first question directs me to Opinion No. 3069, Opinions of the Attorney General for 1962, page 456, the syllabus of which reads as follows:

"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."

It was noted in Opinion No. 3069 that Section 5915.06, supra, formerly contained a specific provision that read:

"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."

This provision was removed from the law when the section was amended in 1961. 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."

My predecessor advised in Opinion No. 3069, supra, that although the specific authority to furnish cash and goods to destitute persons was removed from the law by the amendment in 1961, he did not construe this to mean that such authority no longer exists. The reasoning was that since Section 5915.06, supra, provides "each county and municipality of this state may establish local civil defense, * * *" and since civil defense as defined in Section 5915.01 (C), Revised Code, includes "emergency welfare measures", it therefore was permissible for the appropriate local civil defense officials to furnish cash and goods as these items were "emergency welfare measures". I concur with the conclusion and the reasoning of my predecessor.

You are now inquiring whether the conclusion reached in Opinion No. 3069, supra, supports a finding that the appropriate local civil defense officials have the authority to compel the evacuation of any person, where the safety of the people is jeopardized. Assuming that such a regulation has been adopted by the county or municipality and is not in conflict with the governor's regulations, it is my opinion that the appropriate local civil defense officials do have said authority.

While the first sentence of Section 5915.06, supra, read alone might appear to limit the activities of local civil defense agencies to those authorized by regulations of the governor, I am persuaded from a reading of the entire statute that it is intended to permit local agencies -- established pursuant to the regulations of the governor -- to engage in any civil defense activity not inconsistent with the regulations of the governor. I note, too, that a contrary construction would, as applied to municipal corporations, be in conflict with Section 3, Article XVIII, Constitution of Ohio, the "home rule" amendment.

Civil defense is defined in Section 5915.01, Revised Code, in part as follows:

"(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,* * * Such term shall include, but shall not be limited to: measures to be taken in preparation for anticipated attack, including * * * the non-military evacuation of civil population; measures to be taken during attack, or other disaster, including * * * the evacuation of personnel to shelter areas * * *."

It will be noted that this definition of "civil defense" specifically includes the evacuation of the civil population in anticipation of an attack or during an attack or other disaster. I am persuaded, however, that it also includes, by implication, the evacuation of the civil population whenever necessary "to minimize the effects upon the civilian population caused or which would be caused by an attack, or other disaster." Accordingly, I am of the opinion that local civil defense authorities have the authority under proper circumstances to compel the evacuation of non-military personnel.

Having concluded that a local civil defense agency may compel the evacuation of persons in jeopardy by enemy attack or other disaster, it follows that the governor may pass a regulation such as you set forth providing for the evacuation of persons imperiled by an enemy attack or other disaster, the reason being that the power of the governor to promulgate regulations under Section 5915.05, Revised Code, with respect to civil defense is at least as broad as the power of local agencies to act for civil defense.

I am further of the opinion that the furnishing of aid in the form of cash and goods to persons made destitute by an attack or other disaster may be considered a part of "civil defense" as defined in Section 5915.01, supra, and a regulation may be promulgated by the governor authorizing such aid.

Accordingly, it is my opinion and you are advised that:

1. County or municipal civil defense officials have authority to evacuate persons from an area under their jurisdiction in order to minimize the effects upon the civil population of an attack or other disaster.

2. The governor may include a section in the Governor's Regulations of Civil Defense which permits the appropriate civil defense officials, upon the declaration of an emergency by the governor to (a) compel the evacuation of persons whose safety is jeopardized, (b) furnish aid in the form of cash or goods, except screened and allocated federal surplus property, to persons made destitute by reason of attack or other disaster.