

## A Legal Analysis of Mississippi's Emergency Powers Statutes and Actions Taken During the COVID-19 Pandemic

**CONCLUSION:** Mississippi's Emergency Powers statutes provided sufficient protection to Mississippi citizens.

### Background

Mississippi law has always made provisions for addressing emergencies. Such laws have evolved incrementally since the beginning of the twentieth century with the laws initially focusing on emergencies involving riots, insurrection or military threats, and communicable disease epidemics. Since World War II, Mississippi's more recent emergency powers statutes have transitioned from the realm of civil defense to address a broader range of threats posed by natural, man-made, and technological emergencies.

### How adequate are Mississippi's emergency laws?

Mississippi's laws address the following categories of emergency response, which are the categories found in other states' laws:

- findings, purposes, and policy;
- preparedness and planning;
- surveillance and detection;
- state of emergency and emergency declarations;
- special powers, such as acquisition and management of property;
- protection of persons; and,
- communication.

### What are some policy concerns?

- The Governor's decision to declare an emergency is subject only to his own review every 30 days, while the Legislature has no formal role in the process.
- According to NCSL, 25 states provide the Legislature with the power to set an emergency declaration aside.
- Six states limit the duration of an emergency, giving the Legislature a role in the process of determining how the state should respond to the emergency.
- The COVID emergency has required the Governor to take actions that many never contemplated ever taking place.
- A good argument can be made that Mississippi should join the majority of states in giving the Legislature a stronger voice in emergency policy making.
- A broad grant of power without legislative oversight and assent could constitute an unconstitutional delegation of powers.
- Two executive orders appear to exceed the Governor's authority to suspend the operation of state laws. Executive Order 1499 suspended the requirements of several CODE sections requiring the appointment of members to certain boards and commissions. Executive Order 1504 suspended the application review and selection deadline for the position of the Director of the Public Utilities staff.

### How have Mississippi state and local governments responded to the pandemic?

Governor Reeves issued an emergency proclamation on March 14, 2020, and additionally issued over 60 executive orders addressing a broad range of matters. The Mississippi State Department of Health has also issued mandatory quarantine directives for persons exposed to COVID-19. Local governments have the authority to issue emergency orders when such are not in conflict with those issued by the Governor. While not indicative of all such orders, three orders issued by local governments suffered from constitutional defects that resulted in litigation in federal court (see conclusion 6 on back page).

## Report Conclusions

1 In its *Jacobson v. Commonwealth of Massachusetts* decision, the U.S. Supreme Court concluded that when addressing emergencies, a state can adopt regulations to protect the many in the face of a threat, even if the regulations impair personal liberty, unless the governmental action is unreasonable or palpably impairs a constitutionally protected right.

2 In its *Hawkins v. Hoye* decision, the Mississippi Supreme Court upheld as reasonable a legislative delegation of the state's police powers to a local government to regulate health conditions.

3 Model state health emergency powers laws promulgated by two groups define the criteria or attributes that states should consider when enacting such laws, but the groups' model laws have been met with considerable criticism.

4 While Mississippi has not adopted the Model State Emergency Health Powers Act, Mississippi's current emergency powers laws address most subjects contained in the model act.

5 The Governor's executive orders issued in response to the COVID-19 pandemic, some of which appear to exceed the scope of the Governor's emergency powers conferred by law, were generally directed toward the protection of Mississippi citizens. However, current state management laws on which the orders were based lacked formal provisions for the Legislature to have oversight of policy for long-term emergencies.

6 Executive orders issued by the mayors of the City of Jackson, the City of Holly Springs, and the City of Greenville to address the COVID-19 pandemic appeared to abridge the fundamental freedoms protected by the U.S. Constitution and the Mississippi Constitution.

## Recommendations

1. The Legislature should consider adopting a law such as the ones in Kansas or Utah that limit the duration of an emergency to a finite number of days, thereby requiring legislative action for any extensions.
2. The Legislature should amend MISS. CODE ANN. Section 33-15-5 (1972) to include within the definition of "natural emergency" the terms "epidemic" and "pandemic" to ensure that the Governor could invoke the broadest emergency powers in the event of such occurrences.
3. The Legislature should enact laws to accomplish the following:
  - a) empower the Governor to direct, in certain instances, that local health care professionals be used to provide medical assistance in areas impacted by natural, man-made, or technological disasters and to address the licensure of out-of-state volunteer providers who come to Mississippi to assist in the wake of a disaster; and,
  - b) provide that the Mississippi State Department of Health may, in certain emergencies, take responsibility for human remains in local jurisdictions.
4. On a periodic basis, the Attorney General's office should conduct training sessions, in conjunction with the Mississippi Municipal League and the Mississippi Association of Supervisors, regarding the proper crafting of local emergency orders.