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March 25, 2020

GUIDANCE FOR MUNICIPALITIES

FROM: Steve Marshall
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SUBJECT: Shelter-in-place Orders/Quarantine

On Wednesday, March 25th, the City of Birmingham issued a “shelter in place” order in response to the COVID-19 public health emergency. This followed the City’s declaration of a state of emergency on March 16th. Birmingham’s action has raised an array of questions from other political subdivisions regarding the authority of municipalities to issue shelter-in-place orders that are more stringent than the state health order issued on March 20th.

Section 11-47-131 of the Code of Alabama speaks to the powers of cities and towns when acting to “prevent the introduction of contagious, infectious, or pestilential diseases.” ALA. CODE § 11-47-131(1). This section provides that “the councils or other governing bodies of . . . cities and towns . . . may provide by ordinance or resolution . . . a sufficient quarantine, *not inconsistent with laws of the state*, in the towns and cities and within the police jurisdiction thereof and to punish any breach of quarantine law.” ALA. CODE § 11-47-131(2).

The Alabama Administrative Code defines “quarantine” as “the forced isolation or restriction of free movement of a person or persons to prevent the spread of a notifiable disease or health condition. Quarantine may refer to the restriction of access to or egress from any building, place, property, or appurtenance.” ALA. ADMIN. CODE r. 420-4-1-.02(10).

Assuming that a municipal ordinance meets this definition of quarantine, the city must then look to Chapter 12 of the Code of Alabama which deals exclusively with quarantine laws and regulations. Though Section 22-12-2 provides that the State’s quarantine authority is paramount to that of any county, city, or town, Section 22-12-12 speaks to a county or city’s authority to act separate and apart from a statewide order:

Upon the recommendation of the board of health of a county, and subject to the approval of the State Board of Health, quarantine may be proclaimed for a county by the probate judge thereof or, in case of his inability to act, then, by the presiding officer of the county

commission and for an incorporated city or town by the mayor or chief executive officer thereof. *In case of emergency, quarantine may be proclaimed by said officers without such recommendations,* subject, however, to approval, modification or withdrawal by the board of health of the county.

Ala. Code §§ 22-12-12.

A plain reading of Section 22-12-12 yields the conclusion that a city or town may act on its own during a time of emergency, but that a recommendation from the county board of health, where applicable, is advisable and strongly preferred. ALA. CODE § 22-12-12. Section 22-12-12 further provides that enforcement of a city-issued quarantine is “subject to the approval . . . of the State Health Board;” thus, direct coordination with the State Health Officer in these circumstances is advisable in counties that do not maintain a board of health.

Yet another chapter of the code, Chapter 1, addresses conflicts between municipal and general health laws. Section 22-1-2 states that: “In the event that any of the provisions of Title 11 of this Code relating to municipal corporations shall be in conflict with any of the provisions of the general health and quarantine laws of the state, the provisions of such general health and quarantine laws shall prevail.” ALA. CODE § 22-1-2.

Section 89 of the Alabama Constitution of 1901, Article 4, § 89, prohibits a municipality from passing an ordinance “inconsistent with the general laws of this state.” ALA. CONST. art. IV, § 89. Whether a municipal ordinance in this context is in “inconsistent with” state law—an analysis that is also required under the aforementioned Section 11-47-131(2)—must be answered on a case-by-case basis and depends on “whether the municipal law prohibits anything which the State law specifically permits.” *Lanier v. City of Newton*, 518 So.2d 40, 43 (Ala.1987) (quoting *Congo v. State*, 409 So. 2d 475, 478 (Ala. Crim. App. 1981)). Merely because an ordinance is more restrictive than the statute does not mean that it is inconsistent “unless the statute limits the requirement for all cases to its own terms.” *Congo*, 409 So. 2d at 478. In other words, to preclude a municipality from passing an ordinance within a field of regulation, the Legislature must either manifest a clear intent to preempt the entire field or indicate a desire to have uniformity in regulations across the state. *Peak v. City of Tuscaloosa*, 73 So. 3d 5, 19 (Ala. Crim. App. 2011). Because Sections 11-47-131 and 22-12-12 give municipalities authority to proclaim a quarantine, it is evident that the Legislature did not intend to preempt the entire field. Put simply, a municipal ordinance proclaiming a quarantine that is more restrictive than a regulation or order issued by the State Board of Health is likely not “inconsistent” or “in conflict with” the laws of the state.

Municipalities should also be advised of the constitutional implications of shelter-in-place ordinances during this state of emergency. Specific quarantine measures should be reasonably related to protecting the public from the spread of contagious diseases. *See, e.g., Jacobson v. Commonwealth of Mass.*, 197 U.S. 11,

30-39 (1905). Any municipal quarantine regulation should recite the specific circumstances that make more restrictive measures than similar state orders necessary, be limited in duration, and allow for periodic reevaluation in light of new information. *See Pritchett v. Nathan Rodgers Constr. & Realty Corp.*, 379 So. 2d 545, 547 (Ala. 1979) (stating Alabama Code § 11-47-131 allows a municipality to “regulate for the protection of its citizens’ health” but “is not a license to abuse the police power by applying it arbitrarily and capriciously.”).

In conclusion, whether or not a municipality is acting within its lawful authority to issue a shelter-in-place ordinance that is more restrictive than similar state orders requires a fact-specific analysis. Municipal governing bodies are urged, to the degree possible, to coordinate with their county boards of health, where applicable, and the state health officer to ensure that the municipal action in question will be supported by, and is not inconsistent or in conflict with, current or impending state actions related to quarantine.