

## **USE OF EMERGENCY HEALTH POWERS**

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With the increasing prevalence of COVID-19 in our Wyoming cities and towns, questions have arisen as to the existence and use of emergency powers by mayors or councils to act to meet important health issues caused by the pandemic. The purpose of this paper is to outline several alternatives for further research and consideration regarding of such powers.

The first question that must be addressed is whether your municipality has enacted an ordinance relating to the exercise of emergency powers by the mayor or governing body. Without any such ordinance, it appears doubtful that any mayor or governing body would have the authority to act. This is true regardless of whether the governing body or chief executive seeks to regulate, prevent or suppress any conduct which disturbs or jeopardizes the public health, safety, peace or morality in any public or private place as specified in Wyo. Stat. § 15-1-103(a)(xx). This is also true where a municipality attempts to establish quarantine ordinances, which require appointment of a board of health by the municipality. Wyo. Stat. § 15-1-103(a)(xxix). More on boards of health or health officers will be provided later in this paper. Finally, the statutes also permit municipalities to adopt ordinances, resolutions and regulations necessary for the general health, safety and welfare of the city or town. Wyo. Stat. § 15-1-103(a)(xli). It is clear that even if there is a necessity for health, safety and welfare protection, any ordinance, resolution or regulation must be adopted first, assuming the power can be used in this instance involving COVID-19.

Regarding mayors in first class cities, any such mayor is required to communicate with the governing body such information and recommend such measures as in the opinion of the mayor may tend to improve the health, comfort and general prosperity of the city. Furthermore, the mayor has jurisdiction to act as may be placed in him by an adopted ordinance. Please see Wyo. Stat. § 15-3-202(a) and (b). These provisions only apply to first class cities, and they require an ordinance be adopted which places the authority in the mayor to exercise his/her jurisdiction in the first place.

It then seems clear that an ordinance is required for a mayor to attempt to exercise health regulations or where that authority is sought to be placed in a governing body as a whole.

Wyoming Statutes relating to public health and safety also provide some specific guidance. Wyo. Stat. § 35-1-240 places powers and duties relating to public health issues in the State of Wyoming. The powers placed in the State are very broad. See, Wyo. Stat. § 35-1-240(a).

Title 35 of the Wyoming Statutes permits municipalities to create a local board of health. Wyo. Stat. § 35-1-305. The statutes also provide that a municipality may appoint a health officer where a local board of health is not established. See, Wyo. Stat. § 35-1-306. Specific requirements are in place in the statute regarding qualifications for the position and duties of the health officer. In this regard, it appears that the public health officer has the authority to issue orders, but the orders may need to be approved by the State.

Finally, Wyo. Stat. § 35-4-101, et. seq. applies to communicable diseases. Assuming COVID-19 is considered a communicable disease, these sections of the statutes place primary responsibility for rules, regulations and enforcement of the disease in the State, with specific provisions that the state health officer has the power and authority to direct a municipal health officer declare an infected place to be in quarantine. Once that is done, the municipal health officer can place restrictions on ingress and egress to locations which are necessary to prevent the spread of the disease from an infected locality. The statutes require a municipal health officer who does place an act of quarantine to immediately report his/her actions to the state health officer and furnish all supplies and resources necessary for maintaining a quarantine. The state health officer does have the power to determine, act or abrogate any quarantine regulations established by a municipal health officer.

In summation, the statutes appear to place the general power regarding regulation of public health with the State of Wyoming, unless a local board of health has been duly created, or if there is a duly designated local health official. In the latter event, there may be certain actions that the municipal health official can only take in consultation with or approval by the State. Also, check your current codes to see if your mayor or council have, by ordinance, been granted any power similar to local health boards or officials. Even if such ordinances exist, you may have to ask your legal counsel to measure the ordinance against statutes which may provide for regulatory control with the State.