

MEMORANDUM

State of Alaska
Department of Law

TO: Annalee McConnell, Director
Office of Management and Budget

DATE: September 9, 1996

FILE NO.: 661-97-0150

TELEPHONE NO.: 269-5136

SUBJECT: DES: Petersburg Water
Shortage

FROM: Mary A. Gilson
Assistant Attorney General
Governmental Affairs Section, Anchorage

You have asked for a memorandum confirming that under AS 26.23.300(c) money may be spent from the disaster relief fund ("DRF") to address the water shortage situation in the City of Petersburg. Specifically, you have asked whether monies from the DRF can be expended under AS 26.23.300(c) without the governor issuing a declaration of a "condition of disaster emergency" under AS 26.23.020(c). As explained below, a declaration of disaster emergency under AS 26.23.020(c) is not necessary in order for monies to be spent from the DRF under AS 26.23.300(c). However, in the absence of a declaration the amount spent may not exceed \$500,000.

BACKGROUND

On July 30, 1996, the City of Petersburg issued a disaster declaration and requested assistance from the state to deal with a severe water shortage. On August 6, 1996, Governor Knowles issued Administrative Order No. 167 in which he determined that the water shortage in the City of Petersburg "poses a direct and imminent threat of a disaster of sufficient magnitude and severity to justify state action." In the order, the governor also designated the Director of the Division of Emergency Services (DES) to coordinate the state's response to the city's request for assistance and directed state agencies to respond to a DES request for state support and resources to the fullest extent allowed. The governor did not issue a declaration of a condition of disaster emergency. However, the governor wished to provide state assistance as the situation was serious.

ANALYSIS

The DRF is established in the Office of the Governor under AS 26.23.300. The Department of Revenue is the custodian of the fund. Alaska Statute 26.23.300(c) provides that during a fiscal year, the governor may, without additional legislative authorization, spend not more than \$500,000 from the fund to "prevent or minimize the effects of an event that occurs in the state and that, *in the determination of the governor poses a direct and imminent threat of a disaster of sufficient magnitude and severity to justify state action.*"¹ (Emphasis added.)

In Administrative Order No. 167, the governor made the determination required by AS 26.23.300(c). The determination the governor must make under AS 26.23.300(c) prior to spending money from the disaster relief fund is similar to the determination that precedes a declaration of disaster emergency under AS 26.23.020(c). Therefore, the question has arisen as to whether AS 26.23.300 implicitly contemplates that there would be a disaster declaration under AS 26.23.020(c) prior to spending any money from the disaster relief fund.

As noted above, AS 23.26.300(c) requires the governor to determine that the event, in this case the water shortage, "poses a direct and imminent threat of a disaster of sufficient magnitude and severity to justify state action."

AS 26.23.020(c) provides, in pertinent part, that:

If the governor finds that a disaster has occurred or that a disaster is imminent or threatened, the governor shall, by proclamation, declare a condition of disaster emergency. The disaster emergency remains in effect until the governor finds that the danger has passed or that the disaster has been dealt with so that the emergency no longer exists. . . .

We do not find that the governor must declare a condition of disaster emergency under AS 26.23.020(c) prior to expending monies, not to exceed \$500,000, from the DRF under AS 26.23.300(c). The language setting out the required determinations under AS 23.26.300(c) and AS 26.23.020(c), while similar, is not identical. If the findings were intended to apply to identical situations it is reasonable to assume that the same language would be used. Further, the determination made prior to a declaration that there is a condition of disaster emergency is set out in a different statutory section of the Alaska Disaster Act than the determination which is required before monies can be spend from the DRF under AS 23.26.300. The two sections serve distinct purposes.

Finally, there is no reference in AS 26.23.300 to the governor declaring a condition of disaster emergency prior to expenditure of monies from the DRF under that section. As noted,

¹ Expenditures under AS 26.23.300(c) are also subject to the requirement in AS 26.23.300(d) that the governor present to the legislature an annual accounting of the money expended from the DRF.

under AS 26.23.300(c) the maximum amount that can be spent from the DRF under that subsection in a fiscal year is \$500,000. If more than \$500,000 is proposed to be spent under the parameters of AS 26.23.300(c), AS 26.23.025 applies. In contrast to AS 26.23.300, the language of AS 26.23.025 does expressly contemplate that the governor would declare a condition disaster emergency under AS 26.23.020(c) prior to expenditures under that section.

AS 26.23.025 states, in pertinent part:

- (a) The provisions of this section apply when the governor declares a condition of disaster emergency under AS 26.23.020(c) and in response to the disaster the governor proposes to expend (1) more than \$1,000,000 of the assets of the disaster relief fund under AS 26.23.300(b); (2) more than \$500,000 of the assets of the disaster relief fund under AS 26.23.300(c)
.....

The language of AS 26.23.025 indicates that when the legislature intends that there be a declaration of a condition of disaster emergency in conjunction with monies being spent from the DRF, the statute expressly states that requirement.

In light of the foregoing, we believe that AS 26.23.300(c) allows for expenditures from the disaster relief fund, not to exceed \$500,000, without the necessity of a declaration that a condition of disaster emergency exists.

MAG:akb

cc: Bob Heavilin, Director
Division of Emergency Services
Department of Military and Veterans Affairs
Carol Carroll, Director
Administrative and Support Division
Department of Military and Veterans Affairs