

CIVIL DEFENSE: Constitutional Amendment #1 adopted November 8, 1960, provides in Section 46 of the Amendment that emergency powers are granted to the Legislature only after an enemy attack. If the Legislature passes laws with such emergencies in view before an enemy attack, it must do so within the powers presently granted to that body and the constitutional restrictions ordinarily imposed upon any legislation.

February 15, 1961



Mr. Dean Lupkey  
Director  
Civil Defense Agency  
Jefferson City, Missouri

Dear Mr. Lupkey:

This is in reply to your letter of January 27, 1961, requesting an opinion from this office as to whether the legislature may presently provide for the emergency conditions of an enemy attack under the emergency powers granted to that body by Section 46 (a) of Article III of the Missouri Constitution as amended by approval of the voters at the last election on November 8, 1960. Section 46 (a) provides:

"The General Assembly, in order to insure continuity of state and local governmental operations in periods of emergency only resulting from disasters occurring in this state caused by enemy attack on the United States, shall have the power to such extent as the General Assembly deems advisable. In the event there occurs in this state a disaster caused by enemy attack on the United States, the General Assembly shall immediately convene in the City of Jefferson or in such place as designated by joint proclamation of the highest presiding officers of each house, and shall have power

(1) To provide by legislative enactment for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying

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on the powers and duties of such offices,  
and

(2) To adopt by legislative enactment such other legislation as may be necessary and proper for insuring the continuity of governmental operations. Notwithstanding the power conferred by this section of the constitution, elections shall always be called as soon as possible to fill any elective vacancies in any office temporarily occupied by operation of any legislation enacted pursuant to the provisions of this section." (Emphasis ours.)

Your attention is called to the second sentence of Section 46, supra, and in particular to the underscored portion thereof. We interpret this provision to mean that the general assembly is given the power in the event of the extraordinary conditions of an enemy attack to enact emergency measures to the extent provided by that amendment, but these powers are not granted to the general assembly in the absence of such a national emergency. Therefore, the general assembly in enacting Civil Defense legislation at any time before such an emergency arises must act within the powers granted to the general assembly and within the present framework of government.

#### CONCLUSION

Therefore, it is the opinion of this office that Constitutional Amendment No. I, adopted by the voters on November 8, 1960, provides extraordinary legislative powers to the general assembly only in the event of disaster through enemy attack and any legislation presently enacted with such emergency in view must be enacted within the present powers granted to the legislature by the Missouri Constitution.

This opinion was written by my assistant Jerry B. Buxton.

Very truly yours,

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THOMAS F. EAGLETON  
Attorney General

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