

Governor's Executive Order Authority

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Issue

You asked (1) by what authority the governor can issue executive orders and whether there are any limitations on their subject matter, (2) how courts determine whether an executive order violates the constitutional separation of powers doctrine, and (3) if, and under what circumstances, orders have been issued to amend statutory law.

The Office of Legislative Research is not authorized to give legal opinions and this report should not be considered one.

Summary

Although governors of this state have been issuing executive orders since 1836, neither their issuing authority nor the permissible scope of these orders has been judicially determined in Connecticut. However, the state Supreme Court has held that the power to legislate is vested solely in the legislature. The Court has also ruled that the governor's role is to enforce existing laws and any other decision-making authority must be found in the constitution or statute. Courts in other jurisdictions have ruled that their governors may issue executive orders in the exercise of their constitutional and statutory powers and duties, but the orders cannot usurp the legislature's exclusive authority to formulate public policy by statute. Likewise, they have ruled that governors cannot create a board or commission by executive order and assign it legislative functions unless specifically authorized to do so by the constitution or state law.

Occasionally, the governor's authority to issue orders is expressly stated in statute (e.g., proclaiming certain days and bank holidays and issuing orders during a state of emergency). But most often this

authority is not expressly granted by the state constitution or statute. Instead, his authority to issue executive orders appears implicit based on his broad constitutional and statutory powers. A review of the basis for the executive orders issued over the last century could be categorized in one of four ways: (1) as an exercise of his constitutional authority as chief supreme power of the state, (2) in the fulfillment of his constitutional duty to enforce state laws, (3) in the exercise of his duty as chief commander of the state militia, or (4) to declare a state emergency or promulgate emergency plans.

Thus, it appears that the governor may issue executive orders in the exercise of his constitutional and statutory powers and duties, but the orders generally cannot create law, a power the state constitution's separation of powers provision vests solely in the legislature. A statutory exception exists when the governor declares a state of emergency. During a declared emergency, the law allows him, by order, to modify or suspend any statute, regulation, or requirement if such actions are necessary to efficiently and expeditiously execute civil preparedness functions or protect public health. The order must specify the reasons for the suspension or modification and how long it will remain in effect, which can be no more than six months ([CGS § 28-9\(b\)\(1\)](#)). In Connecticut, the scope of this authority has not been determined by the courts.

The basic questions a court would have to consider in ruling on the constitutionality of an executive order are whether the governor's action was a legitimate exercise of (1) executive, rather than legislative, power or (2) power delegated to him by the legislature. To find the governor's action in violation of the separation of powers provision of the state constitution, a court would have to conclude that the governor (1) assumed a power that lies exclusively under the legislature's control or (2) significantly interfered with the orderly conduct of the legislature's essential functions. To hold that the legislature delegated its authority to the governor, a court would have to find an explicit declaration of legislative policy and standards for carrying it out.

We reviewed executive orders or proclamations dating back to 2003 and found that the majority of orders suspending or modifying various statutes occurred during a state of emergency. We provide examples of these orders later in the report.

Governor's Authority to Issue Executive Orders

State Constitution

The state constitution grants the governor powers, but not express authority, to issue executive orders. Under the state constitution, the governor (1) is the supreme executive power in the state (Article Fourth, § 5), (2) must make sure that state laws are faithfully executed (Article Fourth, § 12), (3) serves as captain general of the state militia outside of U.S. service (Article Fourth, § 8),

and (4) can grant reprieves after conviction, except for impeachments, until the end of the next legislative session (Article Fourth, § 13). He can also make recommendations to the legislature on the state of government, adjourn the General Assembly when the two houses disagree on adjournment, and veto bills that must be presented to him for his signature (Article Fourth, §§ 10, 11, 15, and 16).

Although no Connecticut court has determined the scope of the governor’s power as supreme executive, courts in other jurisdictions with similar provisions in their state constitutions have held, that such a provision vests little or no inherent power in the governor. See e.g., *Holmes v. Osborn*, 57 Ariz. 522, 115 P.2d 775; *Royster v. Brock*, 258 Ky. 146, 79 S.W.2d 707; *Richardson v. Young*, 122 Tenn. 471, 125 S.W. 664; 81 C.J.S., States, §60; cf. *Patterson v. Dempsey*, 152 Conn. 431, 207 A.2d 739. The state Supreme Court cited this body of cases when deciding that the governor’s statutory power to supervise the execution of the budget did not authorize him to modify budgetary allotments to towns: “The governor is authorized to see that the laws are faithfully executed, but the remainder of the governor’s authority must be found in other constitutional provisions and in the statutes” (*Bridgeport v. Agostinelli*, 163 Conn. 537 (1972)).

State Statutes

The governor has express authority, under certain statutes, to issue orders or proclamations. Table 1 shows the citation and subject matter of several statutes that expressly grant the governor the power to issue orders or proclamations. (Please note that this may not be an exhaustive list.)

Table 1: Governor’s Authority to Issue Orders or Proclamations

<i>Statutory Citation</i>	<i>Subject Matter</i>
CGS § 3-6a	Issue an order for travel on state streets and highways closed due to natural emergency
CGS § 3-6b	Proclaim or issue an order declaring a transportation emergency
CGS §§ 4-11 and 12	Issue an order to suspend or remove an executive branch commissioner
CGS § 5-254	Issue an order listing paid state holidays
CGS § 16a-11	Proclaim an energy emergency
CGS § 19a-131a	Declare a public health emergency
CGS § 22a-148	Issue an order, during an emergency, waiving the prohibition against the use of ionizing radiation
CGS § 22a-161	Issue an executive order for the state to become a party to the Northeast Interstate Low-level Radioactive Waste Management Compact
CGS § 27-2 et seq.	Issue military orders during time of peace
CGS § 27-5	Issue an executive order making applicable to the Navy any provision of state militia law necessary and proper for regulating the Navy that does not conflict with U.S. Navy regulations
CGS § 28-9	Declare a civil preparedness emergency
CGS § 42-231	Declare a product supply or service emergency

Determining Violations of Separation of Powers

Principal Doctrine

Article Second of the Connecticut Constitution provides in relevant part: “The powers of government shall be divided into three distinct departments, and each of them confided to a separate magistracy, to wit, those which are legislative, to one; those which are executive, to another; and those which are judicial to another.” The separation of powers provision serves a dual function: it limits the exercise of power within each branch yet ensures the independent exercise of that power (*State v. Kinchen*, 243 Conn. 690 (1998)). This doctrine, however, cannot always be rigidly applied to render mutually exclusive the role of each branch of government (*Massameno v. Statewide Grievance Committee*, 234 Conn. 539, 552 (1995)). The powers granted to departments of government necessarily overlap to some extent and the concept of separation of powers is not one that is capable of a precise legal definition yielding clear solutions to intergovernmental disputes (*Stolberg v. Caldwell*, 175 Conn. 586, 596 (1978)).

Legislature’s Powers

Article Third, § 1 of the state constitution vests the legislative power of the state “in two distinct houses or branches; the one to be styled the senate, the other the house of representatives, and both together the general assembly.” Unlike the U.S. Constitution, which enumerates Congress’ legislative powers, the Connecticut Constitution does not specifically enumerate the General Assembly’s powers. It is well established that the General Assembly therefore has the power to enact any legislation except that which violates the U.S. Constitution or other provisions of the state constitution (see *Patterson v. Dempsey*, 152 Conn. 431, 444 (1965)).

Connecticut courts have consistently held that Article Third, § 1 of the state constitution grants exclusive legislative power to the General Assembly (*State v. Malm*, 143 Conn. 462 (1956); *Patterson v. Dempsey*, *supra*; and *Adams v. Rubinow*, 157 Conn. 150 (1968)). Citing this exclusive authority, the state Supreme Court held that a partial veto by the governor was unconstitutional because it distorted or frustrated the interest of the legislature and enabled the executive to legislate (*Caldwell v. Meskill*, 164 Conn. 299 (1973)).

Legislative Delegation

In some circumstances the legislature can delegate a portion of its constitutional authority to another branch of government. The state Supreme Court has held that a delegation of legislative power is accomplished when a statute declares a legislative policy and either “establishes primary standards for carrying it out” or “lay[s] down an intelligible principle to which the administrative officer or body must conform” (*State v. Stoddard*, 126 Conn. 623, 628 (1940); see also *Wilson v.*

Connecticut Product Development Corp., 167 Conn. 111, 120 (1974)). However, the legislature cannot delegate its authority to enact laws or formulate public policy (*Rudy's Limousine Service v. Dept. of Transportation*, 78 Conn. App. 80 (2003)).

In fact, the legislature has delegated a number of powers to the governor (see Table 1 above). For example, by statute he may “personally or through any authorized agent, investigate into, and take any proper action concerning, any matter involving the enforcement of the laws of the state and the protection of its citizens. He may appoint any officer of the state whose office is provided for by law but for whose appointment no other provision is made by the constitution or statutes. He may demand in writing from any officer, department, board, commission, council or other agency of the state a report on any matter relating to the official duties of such agency” ([CGS § 3-1](#)).

Judicial Determination

Whether the governor, as supreme executive power of the state, can issue an executive order without violating the above-stated separation of powers provision will turn on whether the action constitutes: (1) an assumption of power that lies exclusively under the legislature’s control or (2) a significant interference with the legislature’s orderly conduct of its essential functions (*Massameno v. Statewide Grievance Committee*, supra). Courts have recognized, however, that governmental powers can overlap.

In March 2012, a lawsuit was filed in the Superior Court alleging that, by issuing Executive Orders [Nos. 9](#) and [10](#) (providing collective bargaining rights to child care providers and personal care assistants, respectively), Governor Malloy had exceeded his authority and violated the constitutional principle of separation of powers. The court ultimately did not decide on the constitutionality of the orders, however. It granted the motion to dismiss in October 2012, concluding that the issue was moot following the enactment of [PA 12-33](#) and because no practical relief could be given to the plaintiffs. The judgment was affirmed upon appeal (*We The People of Connecticut, Inc., Et. Al. v. Malloy*, 150 Conn. App. 576 (2012)).

Attorney General Opinions

As stated earlier, the state Supreme Court has held that the state constitution grants exclusive legislative power to the General Assembly (*Malm*, supra). Although no court in this state has decided whether the governor’s issuance of an executive order in an area under the exclusive control of the legislature would be unconstitutional, the attorney general has.

In 2017, the attorney general issued an opinion ([Atty. Gen. Op. 2017-08](#)) regarding the governor's authority to direct the expenditure of funds by executive order in the absence of a legislatively

enacted budget. In his opinion, the attorney general cited the principal source of judicial guidance as *State v. Staub*, 61 Conn. 553 (1892) that held that (1) where the legislature by statute has required the expenditure of monies, the executive, even in the absence of an enacted budget, has the authority to expend those monies and (2) “essential services of government must continue and must continue to be paid for in the absence of a budget.” He cautioned, however, that practical problems would inevitably arise in applying the 125-year old *Staub* standard, which has not been applied in the absence of an entire state budget, and it was uncertain how the Supreme Court might interpret it today to address these issues.

In 2005, the attorney general issued an opinion ([Atty. Gen. Op. 2005-019](#)) regarding Governor Rell’s [Executive Order No. 7](#), which established the State Contracting Standards Board with similar provisions, but some significant differences as well, to [PA 05-286](#) that she had vetoed. In the opinion, he stated, “As an interim step toward continued reform, the Executive Order is generally constitutional with certain suggested changes. Without statutory changes, the Board’s role will be largely advisory. It can propose a new procurement code to the Governor and Legislature. It can recommend action on specific contracts to agency heads responsible for those contracts... Eventually, there must be an independent and empowered Board, which only a legislative enactment can accomplish.”

In 2002, the attorney general issued an opinion ([Atty. Gen. Op. 2002-013](#)) finding unconstitutional an [executive order](#) that would have placed a moratorium on previously proposed or new gas or electric transmission projects (a subject already acted on by the legislature). In the opinion, he stated: “As a fundamental principle of law, an Executive Order may not contradict or supersede a statute or constitutional provision, and may not suspend, modify or revoke any statutory provision enacted by the General Assembly.” The language that saved the order limited its reach to actions “insofar as permitted by law.” In the absence of this deference to the legislature, he indicated that the executive order would have had the effect of directing state agencies to withhold actions required by statutes in apparent violation of the state constitution.

Executive Orders Amending Statute

In our review of executive orders or proclamations dating back to 2003, we found that the majority of orders suspending or modifying various statutes occurred during a state of emergency. Table 2 below briefly summarizes these orders and their effective period. Please note the table does not include executive orders that continued operations of the state in the absence of an enacted budget or that suspended or modified regulations. For information on Governor Lamont’s executive orders in response to COVID-19, please refer to OLR’s [series of reports](#).

Table 2: Executive Orders From 2003 to 2019 Suspending or Modifying Statutes

EO #	Governor	Effective
Malloy		
EO 6	Expedites procurement of emergency equipment and services in response to Governor's Declaration of Civil Preparedness Emergency signed on August 25, 2011, in response to Hurricane Irene Rescinded by EO 8	Up to 6 months unless revoked
EO 7	Suspends registration requirements of trailer-mounted generators in response to Hurricane Irene Rescinded by EO 8	Up to 6 months unless revoked
EO 8	Terminates declaration of civil preparedness emergency signed on August 25, 2011, in response to Hurricane Irene	
EO 12	Extends voter registration deadline for November 8 municipal elections in response to Governor's Declaration of Civil Preparedness Emergency signed on October 29, 2011 (due to severe snow storm and power outages)	Up to 30 days unless revoked
EO 13	Extends personal property tax declaration filing deadline in response to October 2011 severe snow storm and power outages	Up to 30 days unless revoked
EO 14	Extends unemployment insurance tax filing deadline in response to October 2011 severe snow storm and power outages	30 days unless revoked
EO 16	Extends filing deadlines for certain property tax exemptions applications and applications for open space classification in response to October 2011 severe snow storm and power outages	30 days unless revoked
EO 21	Extends voter registration deadlines for November 6 election in response to Hurricane Sandy Rescinded by EO 33	30 days unless revoked
EO 22	Allows properly credentialed out-of-state telecommunications electrical workers to perform work in the state that is normally performed only by Connecticut-licensed Public Service Technicians in response to Hurricane Sandy Rescinded by EO 33	30 days unless revoked
EO 23	Extends the deadline for employers to file unemployment tax filing and payments from November 1 to November 15, 2012, in response to for Hurricane Sandy Rescinded by EO 33	30 days unless revoked
EO 24	Extends from November 1 to November 15, 2012, the personal property tax declarations filed by businesses in response to Hurricane Sandy Rescinded by EO 33	30 days unless revoked
EO 25	Extends the deadline from November 1 to November 15, 2012, to file certain property tax exemption applications related to farm machinery, classification of land as farmland, forest land, and open space land, and various other property tax exemptions in response to Hurricane Sandy Rescinded by EO 33	30 days unless revoked

Table 2 (continued)

EO #	Governor	Effective
Malloy		
EO 26	Extends the tax filing deadline from October 31, 2020 to November 15, 2012 for those who pay property taxes on a quarterly basis in response to Hurricane Sandy Rescinded by EO 33	30 days unless revoked
EO 27	Allows any propane supplier to respond to a request to fill a propane tank irrespective of whether they are owner of the tank in response to Hurricane Sandy Rescinded by EO 33	30 days unless revoked
EO 28	Extends the 120-day temporary practice provision for physical therapist candidates who have been scheduled to take the October 20, 2012 licensure examination which was postponed due to the snowstorm Rescinded by EO 33	Until December 6, 2012
EO 29	Permits the Towns of Newtown and Monroe to enter into an agreement that will immediately allow Newtown's Sandy Hook Elementary School to temporarily utilize Monroe's Chalk Hill Middle School building for its classes	30 days unless revoked
EO 33	Ends the declaration of civil preparedness emergency signed on October 27, 2012 and February 8, 2013	
EO 44	Extends the tax filing deadline from February 1 to February 3, 2015, for those that pay property taxes on a semi-annual or quarterly basis in response to Governor's Declaration of Civil Preparedness Emergency on January 26, 2015 due to severe winter weather Rescinded by EO 48	3 days unless revoked
EO 48	Ends the declaration of a civil preparedness emergency signed on January 26, 2015	
Reil		
EO 8	Gives the New York State Police concurrent jurisdiction on commuter trains traveling between CT and NY and shall have the same powers with respect to criminal matters and the enforcement of laws of the Connecticut State Police while they are working within the borders of CT pursuant to this order Extended by EO 8a for a period of 30 days unless revoked or suspended.	30 days unless revoked or suspended
EO 12	Deems NY State Police Offices as "peace officers" with respect to all criminal matters and the enforcement of law when they are in the performance of their official duties on commuter trains in the State of CT	30 days unless revoked or suspended
Rowland		
EO 28	Gives NY State Police concurrent jurisdiction with CT State Police while working within this state and on commuter trains Revoked by EO 28a	6 months or until revoked

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