

March 16, 2001
Opinion No. 01-99

Chief David Camp
President
Webster Parish Fire Chief's Association
Springhill Fire District #11
P. O. Box 535
Springhill, LA 71075

Opinion No. 01-99

47-1 Fire Marshal, State
47-A-1 Fire Protection Districts
90 Police Juries-Powers & Functions
LSA. R.S. 3:17; LSA. R.S. 40:1563; LSA. R.S. 29:724;
LSA R.S. 14:329.6; LAC 33:111s 1109; LSA. R. S.
3:3602 (9).
A Police Jury President cannot override a state ban,
i.e. the Governor's Proclamation and lift a burn ban in
the Parish. The State supersedes the Parish. A Fire
Chief has no legal statutory authority to invoke a burn
ban.

Dear Chief Camp:

This office is in receipt of your letter regarding parish-wide burn bans. Specifically, you ask if the Police Jury President can over ride a state ban and lift a burn ban or does the State supersede the Parish.

The second question is: Does a Fire Chief have the authority to invoke a burn ban in its own district and if so you would like a copy of the statute?

LSA R. S. 3:17 provides for Prescribed burning.

A. ... Prescribed burning is a land management tool that benefits the safety of the public, the environment, and the economy of Louisiana.... (2) Most of Louisiana's natural communities require periodic fire for maintenance of their ecological integrity. Prescribed burning is essential to the perpetuation, restoration, and management of many plant and animal communities. ... B. The Commissioner of Agriculture and Forestry shall adopt and promulgate voluntary rules and regulations, consistent with applicable state and federal law, and the general intent and purpose of this Section, to authorize and promote the continued use of prescribed burning for ecological, silvicultural, wildlife management, agricultural and range management purposes.

The Fire Marshal shall take all steps necessary and proper to protect life and property from the hazards of fire and of panic which may arise from fire or from the threat of fire or explosion. LSA R. S. 40:1563.

C (1-2) Where there is a fire prevention bureau the fire marshal does not have to make or supervise inspections and investigations unless specifically requested by the local governing body or a complaining citizen. However, the state fire marshal shall monitor the inspections performed on behalf of the state fire marshal by certified local fire prevention bureaus. ... F. The fire marshal shall have the authority in order to carry out the purposes of this Part or any other law for which he is given responsibility for supervision or enforcement... to prepare, adopt and promulgate rules and regulations in accordance with the Administrative Procedure Act. ...LSA R. S. 40:1563

The procedure for the State Fire Marshal to act is as follows: The Governor issues a Proclamation under the Emergency Preparedness and Disaster Assistance Act. The State Fire Marshal acts under the Governor's Proclamation.

LSA. R. S. 29:724 provides for the Powers of the Governor: A. The governor is responsible for meeting the dangers to the state and people presented by emergencies or disasters, and in order to effectuate the provisions of this Chapter, the governor may issue executive orders, proclamations, and regulations and amend or rescind them. Executive Orders, proclamations, and regulations so issued shall have the force and effect of law. B.(1) A disaster or emergency, or both, shall be declared by executive order or proclamation of the governor if he finds a disaster or emergency has occurred or the threat thereof is imminent. ... D. In addition to any other powers conferred upon the governor by law, he may do any or all of the following: (1) Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency. (2) Utilize all available resources of the state government and of each political subdivision of the state as reasonably necessary to cope with the disaster or emergency. ...

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The Police Jury President cannot supersede a State order.

LSA. R. S. 14:329.6 states that: During times of great public crisis, disaster, rioting, catastrophe, or similar public emergency within the territorial limits of any municipality or parish, or in the event of reasonable apprehension of immediate danger thereof, and upon a finding that the public safety is imperiled thereby, the chief executive officer of any political subdivision or the district judge, district attorney, or the sheriff of any parish of this state, or the public safety director of a municipality, may request the governor to proclaim a state of emergency within any part or all of the territorial limits of such local government. ...

The Governor by proclamation controls the State agencies and local governments regarding issues of public safety. However, a city can pass a burn ban. The Department of Environmental Quality and the Department of Agriculture and Forestry also have authority over burn bans. See: LAC 33:111 s1109 of the Louisiana Air Quality Regulations and LSA. R. S. 3:3602(9).

Specifically, in answer to your questions, a Police Jury President cannot override a state ban, i.e. the Governor's Proclamation and lift a burn ban in the Parish. The State supersedes the Parish. A Fire Chief has no legal statutory authority to invoke a burn ban.

Thank you for your kind attention to this matter. I sincerely hope that this opinion clarifies the issue and resolves your concerns. If you have any questions, please do not hesitate to contact me at 1-800-351-4889 or 225-342-3978.

Very truly yours,

RICHARD P. IEYOUB
Attorney General

By: _____
Kordice M. Douglas
Assistant Attorney General

Syllabus

- 47-1 FIRE MARSHAL, State
- 47-A-1 FIRE PROTECTION DISTRICTS
- 90 POLICE JURIES – Powers & Functions

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Date Received:

Date Released: March 16, 2001

Kordice M. Douglas
Assistant Attorney General