

OUR VIEW

State should address lack of clarity in emergency statutes

The Legislature must clarify the Oregon governor's authority to issue emergency orders in a public health crisis.

Gov. Kate Brown has been issuing orders curtailing the freedoms of Oregonians with no expiration date. Does that sound right to you?

Willamette University Professor Paul Diller wrote about the issue on his blog. *Willamette Week* did a story about it.

One way to think about what's going on is to look at the example of Oregon City. Oregon City Mayor Dan Holloday had talked about about reopening businesses in his city before Gov. Kate Brown lifted her "Stay Home, Save Lives" executive order. Attorney General Ellen Rosenblum responded by sending him a letter on April 24.

If you were to try to sum up what Rosenblum wrote, it was basically: Don't do it or you will be in trouble. "The governor has authority under ORS 401.165(1) to declare a state of emergency when she determines either that an emergency has occurred or is imminent," Rosenblum wrote. "The type of emergencies covered under this authority expressly include diseases. The governor declared a state of emergency on March 7, 2020, through Executive Order 20-03, in response to the threat to public health and safety caused by the spread of COVID-19. The governor has not terminated that state of emergency. Nor has the Legislative Assembly."



AP Photo/Anna Reed, File

The Oregon Legislature needs to clarify the Oregon governor's authority to issue emergency orders in a public health crisis. Gov. Kate Brown has been issuing orders curtailing the freedoms of Oregonians with no expiration date.

The letter goes on to say the governor has powers to protect public health including to control or limit entry and "movement within and the occupancy of premises in any public area subject to or threatened by a public health emergency if such actions are reasonable and necessary to respond to the public health emergency." Violating the executive order could lead to criminal or civil penalties, Rosenblum wrote.

According to news reports since that letter was issued, Oregon City will be follow-

ing the governor's order. So, debate over? Not really.

Gov. Brown's executive orders do basically what similar governors' orders have done in other states — shut down schools and almost all businesses. The difference is the Oregon governor is not clearly compelled by law to periodically justify continuing them. Brown's initial declaration of an emergency actually included a 60-day limit. That means it will expire in the second week of May unless she renews it. If

she didn't renew it, the orders she issued related to it — such as Stay Home, Save Live — would also expire. But if she renewed it, the other orders would presumably stay in effect indefinitely because that's the way they were written.

Oregon has two statutes covering such issues, as explained by Diller. One is the one that Rosenblum mentioned in her letter. That one has no expiration date. The second more recent statute describes authority the state has during a public health crisis and has a renewable 14-day limit on orders issued.

So which one takes precedence? It's not crystal clear. Diller wrote that the more recent statute generally takes precedence. But the more recent statute also does not say it limits the governor's authority in the first. Another legal consideration, though, is what would be the point of putting the limit in the second statute if it is not important?

Nothing we have written should be taken as justification for violating the governor's executive orders. If there was a time when a governor needed the power to issue emergency orders, it is now. Brown has been explaining why she has continued the emergency. But there is a lack of clarity in the law that the Legislature should address. If the state of Oregon is going to deprive residents of essential freedoms, it is not outrageous to suggest — even during a public health crisis — that there be a legal requirement to regularly renew the justification.

OTHER VIEWS

For the sake of our economy, delay the Corporate Activity Tax

Editor's note: Do you have a point you'd like to make or an issue you feel strongly about? Submit a letter to the editor or a guest column.

Several of my Democratic colleagues shared an opinion column with the *Statesman Journal* last week in which they argued that Oregon should continue forward with the new Corporate Activity Tax. With all due respect to my friends on the other side of the aisle, I could not disagree more.

Already, more than 250,000 Oregonians have lost their jobs. Never in our state's history have we gone from a roaring economy to state-mandated near-standstill virtually overnight. While I understand the necessity of many of the measures taken to combat the spread of COVID-19, the consequences to our economy have been severe. Just as we have taken action to protect the public health, we must be equally dedicated to protecting Oregonians from further job loss and economic harm.

We can accomplish this by temporarily suspending the new Corporate Activity Tax. Employers in my community have stated cash flow is by far their biggest challenge. The CAT will only exacerbate cash flow issues. Many businesses will owe this tax even though they are not turning a profit. That's just wrong, and it's not going to make it easier for businesses to keep Oregonians employed.

It's been said that the CAT only applies to large corporations, but that's not the case. The Legislative Revenue Office previously estimated that 40,000 Oregon businesses will be on hook for the CAT. Those businesses include thousands severely impacted by the

coronavirus restrictions. Many restaurants are subject to the tax and will have their first payments due at a time when they have had to close or limit their businesses. Surely, we can agree that these types of businesses could use our support.

Finally, it's also been said that suspending the CAT would disrupt funding for our schools. It's important to note, the tax hasn't been collected yet. Responsible budget adjustments can and should be made in response to the impact of the coronavirus

outbreak. Gov. Kate Brown has already announced that she has directed school districts to put a freeze on any new hires that were to be made with funds from this tax. To the extent that education funding could be affected by the suspending the CAT, the state has a constitutionally dedicated Education Stability Fund specifically created to support schools during periods of crisis. We should tap these funds to shore up any deficits in our school system rather than asking businesses struggling to survive to shoulder the burden.

While the federal government has taken action to support employers through the Paycheck Protection Program and other measures, our state government has done comparatively little. I urge Gov. Brown and my colleagues in the Legislature to take bold action to support Oregon employers in their time of need by temporarily suspending the Corporate Activity Tax. Taking this action now will provide critical relief to protect businesses. Let's work together to get this done.

Daniel Bonham, a Republican, is the Oregon state representative for House District 59.



DANIEL BONHAM
COMMENT



YOUR VIEWS

Housing crisis made worse by city's shortcomings

Rapid crisis response and professional real estate management deals so far elude city management. No, I'm not referring to the recent Umatilla River flooding or the COVID-19 response, they came through in spades in both instances. It's the severe housing shortage that city officials referred to as a "crisis."

Remember that one? The city made a substantial investment in not only consultant studies to justify immediate action, but various property donations and tax incentives to jump start a city-sponsored building program unlike anything we've witnessed in the history of Pendleton. City management felt their actions were the most expeditious way to add 300-plus affordable housing units sorely needed, according to those city-commissioned studies.

Direct negotiations with one contractor resulted in the completion of 32 units in the Pendleton Heights subdivision. However, those units proved to be far from affordable and, despite renegotiating new incentives and conditions several times, financial difficulties encountered by the contractor have left the plan to add an additional 100 units at a standstill.

Another project on land donated by the city for an additional 200 units has yet to bear fruit. Despite announcements from city officials to the contrary, construction on these two projects plus a new hotel at the airport has been limited to promises and shuffling paper.

Understanding those real estate experts at city hall is becoming a real challenge. Unloading the old fire station, a building valued at over \$500,000, for a whopping \$300,000 doesn't make a whole lot of sense.

Of course, they say that it was actually \$350,000, but when a \$50,000 grant was included to seal the deal, it's a bit misleading. With just two bidders on the sale, it doesn't say much for their marketing skills or their faith in the free market system. I would be

curious, based on original cost, improvements, and adjustments for inflation how the taxpayers fared on this deal, and what the county property tax appraisal will amount to. That will be the bottom line on grading the performance of management on this particular deal.

Premature announcements on private projects using public funding, and questionable real estate deals, have left residents skeptical that city officials can make rational decisions when it comes to managing public property. Real estate agents are in business for one reason, to make money for both themselves and their clients. Perhaps it's time for city officials to recognize their shortcomings and rely on the professionals with some skin in the game.

**Rick Rohde
Pendleton**

Voting process must be fair and available for all

Republicans across the nation are supporting Trump's statement that if it were easier to vote "you'd never have a Republican elected in this country again." Every eligible voter should be allowed to vote; suppressing the vote in any way is unconstitutional. We are in the midst of a pandemic and the Republicans are asking us to risk our lives to vote; all should be able to vote by mail — and scratch the gerrymandering.

The administration's press briefings do not provide valuable, science-based medical information. The person living in the White House uses them to scoff at medical science, he illustrates his incompetence by lying about what is happening and blames others for his failures — bullying others and lacking empathy, self-discipline or accountability. We are better than this.

We will vote and 2020 will be a turning point where voting on one day will be a relic like landlines. Voting will be a week — or weeks — we will vote.

**Louise Shawkat
Ashland**