



STATE OF NORTH CAROLINA  
OFFICE OF THE LIEUTENANT GOVERNOR

DANIEL J FOREST LIEUTENANT GOVERNOR

June 25, 2020

The Honorable Roy Cooper  
Governor of the State of North Carolina  
Via E-mail

Dear Governor Cooper,

On March 17, 2020, you issued Executive Order No. 118, entitled "Limiting Operations of Restaurants and Bars and Broadening Unemployment Insurance Benefits in Response to COVID-19." That executive order contained section 1, which limited the sale of food and beverages by restaurants to carry-out, drive-through, and delivery only. You had requested concurrence from the Council of State for section 1 of Executive Order No. 118, but as I am sure that you will recall, a majority of the members felt that a further discussion was needed, and therefore they did not concur in your request. Despite the Council of State's objections, you proceeded to issue the order.

On March 27, 2020, you issued Executive Order No. 121, which put all North Carolinians under a stay-at-home order and closed businesses that you deemed non-essential. You did not seek nor receive concurrence of the Council of State for this order.

On April 23, 2020, you issued Executive Order No. 135, which extended the stay-at-home order issued under Executive Order No. 121. You did not seek nor receive concurrence of the Council of State for this order.

On May 5, 2020, you issued Executive Order No. 138, easing restrictions, but still substantially limiting freedom of movement of all North Carolinians and continuing to require other businesses to remain closed. You did not seek nor receive concurrence of the Council of State for this order.

On May 20, 2020, you issued Executive Order No. 141, further easing restrictions, but your order continued to substantially limit freedom of movement of all North Carolinians and continued to require many businesses to remain closed. You did not seek nor receive concurrence of the Council of State for this order.

On June 24, 2020, you issued Executive Order No. 147, and continued the provisions of Executive Order No. 141, with the addition of requiring all North Carolina citizens to wear masks. You did not seek nor receive concurrence of the Council of State for this order.

The Emergency Management Act requires that you seek and receive concurrence from the Council of State prior to exercising the most expansive statewide emergency powers of the Governor. N.C. Gen. Stat. § 166A-19.30(b). I do not believe that any provision found in N.C. Gen.

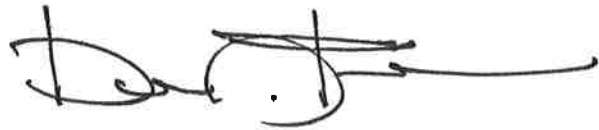
Stat. § 166A-19.30(c) or any other provision of North Carolina law eliminates the requirement of Council of State approval before the exercise of these extensive powers.

The North Carolina Constitution does not create a unitary executive, but rather disburses executive power throughout the Council of State. Your exercise of these emergency powers without the concurrence of the Council of State makes it impossible for me, as Lieutenant Governor, and all of the other members of the Council of State to fulfill our oaths to uphold the laws of North Carolina.

I ask that you waive the requirements of N.C. Gen. Stat. § 147-17 to allow me to be represented by counsel other than the Attorney General so that I may file suit to require you to follow the Emergency Management Act and allow me to fulfill the duties of my offices. It is my position that the Attorney General has a conflict of interest in that his office assisted in the drafting of the Executive Orders at issue. I also understand the budget crunch brought about by the COVID-19 shutdown, and rather than employing outside counsel, I plan on using my in-house general counsel.

I respectfully ask for your reply to this request no later than 4:00 p.m. today.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Forest", with a long horizontal line extending to the right.

Lieutenant Governor Dan Forest

cc: Josh Stein, Attorney General, via e-mail

William McKinney, General Counsel to Governor Cooper, via e-mail