
VIA Email (mgallagher@leacounty.net) and Hand Delivery

May 16, 2020

Mr. Mike Gallagher
County Manager
Lea County
100 N. Main Ave, Suite 4
Lovington, NM 88260
mgallagher@leacounty.net

Re: Notice of Lea County's Legal Obligation to Comply with Public Health Orders Issued During a Declared Public Health Emergency

Dear Mr. Gallagher:

It has come to my attention that you have publicly stated an intent to prematurely open your community, contrary to orders issued by Governor Lujan Grisham and the Department of Health. I urge you to act in the best interests of the safety of your community and collaboratively communicate with the Department of Health. As Secretary of Health, I am willing to work with you and your local health entity to review your proposed safety plan for reopening.

The Public Health Emergency Response Act provides a grant of authority to the Governor to declare a state of public health emergency. *See* NMSA 1978, Section 12-10A-5(A). And, upon making the declaration, the Act allows the Governor to confer upon the Secretary of Health the authority to coordinate a response to the public health emergency. The New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -10, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Secretary for the protection of public health.

As such, as Secretary of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers, I have issued Public Health Orders limiting mass gatherings and implementing other restrictions, citing the further spread of COVID-19 in New Mexico and the threat it poses to the health, safety, and wellbeing of the residents of the state.

Your actions not only directly violate state law and undermine the rule of law, but directly imperil the health and safety of your constituents, educational institutions, nursing home facilities and greatly expose local businesses to severe, yet unnecessary penalties.

OFFICE OF THE SECRETARY

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Any person violating any of the provisions of the Public Health Order is guilty of a petty misdemeanor and shall be punished by a fine not to exceed one hundred dollars (\$100) or imprisonment in the county jail for a definite term not to exceed six months or both such fine and imprisonment in the discretion of the court. NMSA 1978 § 24-1-21. As Secretary of Health, I am also authorized to enforce the provisions of the Public Health Emergency Response Act by imposing a civil administrative penalty of up to five thousand dollars (\$5,000) for each violation of the Act. NMSA 1978, § 12-10A-19.

Social distancing is the best way to minimize spread of COVID-19 and prevent a spike in illnesses, particularly serious illnesses in vulnerable populations. Continued social distancing and self-isolation measures are necessary to protect public health given the potentially devastating effects that could result from a rapid increase in COVID-19 cases in New Mexico. Planning for reopening requires expertise and coordination with partners and stakeholders through the state. Furthermore, any plan to resume operations shall include contingencies for a resurgence and identify mitigation measures.

Therefore, you are immediately notified of your legal obligation to comply with all Public Health Orders. I demand that you immediately cease and desist from any action that directly interferes with the current Public Health Orders, and I strongly discourage any further attempt to undermine them. I further require that you provide me your proposed plan to resume operations in your community that includes safeguards and protocols that meet the requisite safety standards set forth by my orders. This shall include a plan for continued virus testing, reporting, contact tracing and monitoring public healthcare systems and their capacity for a resurgence. Please provide this detailed documentation within five (5) business days. If you do not meet this demand, I will take appropriate legal action to protect the health and safety of New Mexicans. I look forward to your response and continuing to work with you on these issues.

Sincerely,



Kathyleen M. Kunkel
Cabinet Secretary
New Mexico Department of Health

cc: Governor Michelle Lujan Grisham, State of New Mexico
New Mexico Attorney General Hector Balderas, State of New Mexico
Dean Jackson, Lea County Commissioner
Rebecca Long, Lea County Commissioner
Gary Eidson, Lea County Commissioner
Jonathan Sena, Lea County Commissioner
Don Jones, Lea County Commissioner
Steve Kopelman, Executive Director, NM Counties