



## **MIAMI COUNTY ATTORNEY'S OFFICE**

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Miami County Board of County Commissioners  
Administration Building  
201 S. Pearl, Ste. 200  
Paola, KS 66071

RE: Executive Order 20-68

Dear Commissioners:

At the request of Chairman Roberts, I have reviewed Executive Order 20-68 as a whole and offer my opinion as to the applicability and enforcement of the Order.

Generally, Executive Order 20-68 requires a face covering to be worn in public places when one is indoors. It also applies if one is outdoors and unable to practice social distancing. This order does not apply to any county currently following Executive Order 20-52 or a county or municipality that has their own regulations requiring a face coverings in public. With regards to Miami County, the order would be applicable to unincorporated areas and those cities without current ordinances.

K.S.A. 49-925 (h) as amended by 2020 Special Session House Bill 2016, Sec. 33, governs whether or not the County can chose to "opt-out" of this Executive Order. This statute requires specific findings to be made in order to "opt out" and not just a disagreement with the order or the opportunity to give blanket local control of the issue. It does not appear that the statute was written in such a way to give the citizens of the county a chance to agree or disagree/take a vote on the concept of face covering as to whether they should be a personal choice. Instead, the statute appears to have been written to avoid a one size fits all statewide approach when warranted by the numbers/evidence.

K.S.A 39-257(h) states (emphasis added):

The board of county commissioners of any county may issue an order relating to public health that includes provisions that are less stringent than the provisions of

an executive order effective statewide issued by the governor. *Any board of county commissioners issuing such an order must make the following findings and include such findings in the order: (1) The board has consulted with the local health officer or other local health officials regarding the governor's executive order; (2) following such consultation, implementation of the full scope of the provisions in the governor's executive order are not necessary to protect the public health and safety of the county; and (3) all other relevant findings to support the board's decision.*"

"Findings" does not appear to be defined in the statute. A google dictionary definition of "findings" is "a conclusion reached as a result of an inquiry, investigation or trial" so it is more than just "I think" or "I want". Findings in court are also called findings of facts. Court findings are what facts a judge determines to be true/supported by the evidence. The plain language of the statute is for the Commissioners to consult with the local health officer and make a decision based on his/her guidance, which must be supported by defensible findings.

Should the requirements in order to "opt-out" not be reached, the Executive Order would go into effect in Miami County. At that point, violations of the Executive Order in unincorporated areas and those cities without ordinances, would be investigated and prosecuted by my office through the filing of a civil action in the District Court. A violation must be determined to be intentional. The maximum civil penalty is \$2,500 *per violation* and the action is brought against an individual. Any money collected from these actions would be deposited in the County General Fund. This authority is set forth in K.S.A. 48-939 as amended by 2020 Special Session House Bill 2016, Sec. 36.

It has been my experience that the vast majority of Miami County citizens are respectful of laws and regulations and therefore will follow them, even if they may not agree with them. As such, I am hopeful that education would gain voluntary compliance with any order that would be in effect. My preference would be to utilize that mechanism, prior to filing civil suit.

Executive Order 20-68 would expire with the Statewide Disaster Emergency order, or earlier if rescinded by the Governor, but the latest expiration would be January 26, 2021, unless otherwise changed by the legislature. As such, enforcement of the order would also end at that time.

If you have any other questions, please let me know.

Sincerely,



Elizabeth Sweeney-Reeder  
Miami County Attorney