# American Jurisprudence: Constitutional Law

16 Am, Jur 2d Sections 58 and 59, plus Section 52

## "2. **State Constitutions** [Sections 58 and 59]

### Section 58. Generally

A state constitution is the supreme written will of the people of a state regarding the framework for their government and is subject only to the limitations found in the Federal Constitution. It is the basic and supreme law of a state. It must be interpreted and given effect as the paramount law of the state, according to the spirit and intent of its framers. State constitutions derive their force, not from the conventions which framed them, but from the people who ratified them, and the intent to be arrived at when ascertaining the meaning of constitutional provisions is that of the people.

A state constitution declares general principles or policies and establishes a foundation for the law and the government, and is the direct and basic expression of the sovereign will. It is the mandate of a sovereign people to its servants and representatives, and no one of them has a right to ignore or disregard its mandates; the legislature, the executive officers, and the judiciary cannot lawfully act beyond its limitations. Thus, it is also the absolute rule of action and decision for all departments and officers of government with respect to all matters covered by it, and must control as it is written until it is changed by the authority which established it.

While the text of a state constitution must always be the primary guide to the purpose of a constitutional provision, it must be interpreted in a principled way that takes into account the history, structure, and underlying values of the document. Among the various interests that state governments seek to protect and promote, those interests represented by the state constitution are paramount to legislative ones, and thus no function of government can be discharged in disregard of or in opposition to the fundamental law.

Constitutional provisions control in any case of conflict with lesser laws, such as statutes, local ordinances, or administrative regulations. Thus, acts passed by the legislature inconsistent therewith are invalid. Neither an emergency nor economic necessity justifies a disregard of cardinal constitutional guarantees, nor can the common law or public policy considerations override constitutional mandates. It is the obvious duty of the legislature to act in subordination to the state constitution, for with reference to the subjects upon which the constitution assumes to speak, its declarations and necessary implications are conclusive upon the legislature. Thus, constitutional provisions prevent the enactment of any law which extinguishes or limits the powers conferred by the constitution.

A state constitution is equally binding on the political subdivisions and courts of the state, and on every department and officer and every citizen. Any attempt to do that which is proscribed in any manner other than that prescribed or to do that which is prohibited is repugnant to that supreme and paramount law and is invalid.

**Section 59. Effect of emergency**

The principles already stated with reference to the exercise of powers during emergency and the relation thereto of the provisions of the United States Constitution[1] are equally applicable to the provisions, inhibitions, and guarantees of the various state constitutions. Thus, no new power or authority is created by a public emergency, although such a situation may disclose the existence of latent power and may call for liberal construction of constitutional powers.

Many state constitutions or legislation enacted pursuant to such constitutions, provide for the exercise, usually by the state's governor, of emergency powers, although some do not so provide in specific situations."

(**Note: All citation references have been omitted in the interest of time and space.**)

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[1] (from the discussion in Am Jur 16 2d Section 52 on "effect of emergency" with respect to the Federal Constitution)

"**Section 52. - Effect of emergency**

No emergency justifies the violation of any of the provisions of the United States Constitution. An emergency, however, while it cannot create power, increase granted power, or remove or diminish the restrictions imposed upon the power granted or reserved, may allow the exercise of power already in existence, but not exercised except during an emergency.

The circumstances in which the executive branch may exercise extraordinary powers under the Constitution are very narrow. The danger must be immediate and impending, or the necessity urgent for the public service, such as will not admit of delay, and where the action of the civil authority would be too late in providing the means which the occasion calls for. For example, there is no basis in the Constitution for the seizure of steel mills during a wartime labor dispute, despite the President's claim that the war effort would be crippled if the mills were shut down.

> **IIII** *Observation:* The Supreme Court has not denied the reality of dangers from foreign or internal conflicts. Rather, it has recognized the need to respect constitutional requirements even in troubled times. Security interests may be affected by fluctuations in international trade and the supply of natural resources, by social unrest at home and abroad, and by public disclosure of policy deliberations; but such events cannot routinely justify invasions of privacy or restrictions on expression without devaluing and eventually destroying those rights. Nonetheless, the Court has recognized that authority of an emergency nature to protect national security information is vested in the President as head of the executive branch and as Commander in Chief."