

AG says counties can ignore mask mandate ban, but Ducey can enforce in other ways

BY JEROD MACDONALD-EVOY - APRIL 7, 2021 11:20 AM



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Gov. Doug Ducey's [recent executive order barring cities, counties and towns](#) from requiring face masks likely doesn't preempt local governments from issuing their own mandates, but he could probably still prohibit them through Arizona Department of Health Services rulemaking process, according to an opinion issued by the Attorney General's Office.

The [opinion](#) came at the request of three Republican lawmakers who asked the Attorney General's Office to weigh in on [Pima County's resolution](#) that mandates face coverings in certain public spaces after the county issued a bulletin stating the resolution was "still in effect" despite Ducey's executive order.

The governor still has authority to preempt cities, counties and towns on their ability to create and enforce mask mandates. However, the way to do so is through the Arizona Department of Health

Services, according to the Attorney General's Office.

In March Ducey issued an emergency declaration in response to the COVID-19 pandemic. Under a state of emergency, ADHS has the authority to enact emergency measures and create rules for the entire state.

But the county issued its mask mandate under a section of Arizona statute pertaining to public health, rather than the emergency management statute that Ducey used to issue his emergency declaration and executive order. Therefore, the governor's attempt to preempt local mask mandates likely doesn't apply to Pima County's requirement, the opinion read.

"That the Governor is attempting to preempt counties solely through Executive Order, and did not instruct ADHS to issue rules, has created serious issues regarding preemption here," the opinion states.

The distinction may not matter much. The Attorney General's Office opined that "the Governor has constitutional authority to enforce Title 26 directly if he disagrees with this analysis," referring to the section of law that authorizes his emergency declaration.

Ducey's office is reviewing the opinion to determine what impact it may have and what authority it may assert, gubernatorial spokesman C.J. Karamargin [told the Associated Press](#).

"But given local governments' inability, ineffectiveness and unwillingness to enforce mask ordinances when they were most necessarily, we believe it is largely inconsequential," Karamargin said.

[Phoenix, Flagstaff and Tucson](#) have all defied Ducey's executive order and are keeping their mask mandates in place.

ADHS Director Cara Christ said previously [in a press conference](#) that the only conversations about the decision to roll back local mask mandates and statewide requirements that businesses enforce mask-wearing and physical distancing were between the Governor's Office and ADHS, and they did not consult any medical experts or health care professionals.

As of Wednesday, there have been over 846,000 cases of COVID in Arizona and 17,000 deaths. On Wednesday, Arizona reported 750 new cases and 27 deaths.