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<p>FORMAL OPINION OF JOHN W. SUTHERS Attorney General</p>	<p>No. 06-08 AG Alpha No. EX AD AGBCA November 21, 2006</p>
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On April 6, 2006 the Governor requested an opinion concerning his power to authorize the Colorado National Guard to use lethal force when protecting infrastructure critical to the life, health or welfare of the State of Colorado.

Formal Opinion 06-06 was issued on August 29, 2006 in the affirmative, relying on the Governor's inherent constitutional authority as commander-in-chief and his statutory duty to protect life and property, as well as the general laws authorizing civil law enforcement and the public to use lethal force in certain circumstances.

The Governor has now requested clarification. Therefore, this opinion answers a more narrow question of whether the Governor must expressly include such authorization in any activation order, or whether such authorization is implicit in all activations.

*Question:* Whether a governor, when activating the National Guard, must separately and explicitly authorize the use of lethal force for the protection of critical infrastructure, or whether such authorization is inherent in all activations.

*Answer:* The Governor need not separately or explicitly authorize the use of lethal force for the protection of critical infrastructure in activating the National Guard. Such force is implicit in any activation.

As discussed in Opinion No. 06-06, the Governor's express authority and obligation to protect life and property, see § 28-3-104, C.R.S. (2006), carries with it the implied powers necessary to carry out that responsibility. See *In re Moyer*, 85 P. 190 (1904). Accordingly, the power to use lethal force where necessary for the protection of infrastructure critical to life,

safety and the immediate health of the public is implied in every activation order. Whether a particular facility or location is "critical" is a separate question requiring a case by case analysis.

Issued this 21<sup>st</sup> day of November, 2006.

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