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ATTORNEY GENERAL OPINION NO. 88- 10

Don Stumbaugh, Director  
Crime Victims Reparations Board  
117 W. 10th  
Topeka, Kansas 66612-1208

Re: State Boards, Commissions and Authorities -- Crime  
Victims Reparations Board -- Reparations and  
Funding Limitations

Synopsis: The Crime Victims Reparations Board (Board) does  
not have authority to pay reparations to claimants  
if it does not have funds. However, even if the  
Board has no money, the Board still has the duty to  
process claims and make awards. For reasons stated  
in this opinion, the Board does not have authority  
to prorate claims. Cited herein: K.S.A. 1987  
Supp. 74-7301; K.S.A. 74-7302; 74-7305; 74-7313;  
Kan. Const., Art. 2, § 24.

\* \* \*

Dear Mr. Stumbaugh:

As Director of the Crime Victims Reparations Board (Board),  
you request our opinion concerning awarding claims within the  
Board's appropriations. You state it appears that the Board  
will reach its 1988 fiscal year expenditure limitation by  
February or March 1988. Therefore, you ask the following  
questions:

- (1) Under K.S.A. 74-7302, is the Board compelled to cease awarding claims if the expenditure limitations on appropriations have been exhausted?
- (2) Does the Board have the authority to prorate claims against existing balances of the expenditure limitation on appropriations?
- (3) If so, when and how should the Board initiate a proration method of paying claims?
- (4) If claims are prorated during one year and not prorated in the next year can claimants who received prorated awards sue the State of Kansas for additional reparations?

The Crime Victims Reparations Board was established to provide compensation for persons who have sustained criminally inflicted injuries and damages. K.S.A. 74-7301 et seq. The Board may award reparations "only if the board finds that unless the claimant is awarded reparations the claimant will suffer financial stress as the result of economic loss otherwise reparable." K.S.A. 74-7305(d)(1). Factors the Board must consider in making its determination of financial stress are listed in K.S.A. 74-7305.

The Board receives appropriations from the legislature. See L. 1987, ch. 30, § 23; L. 1987, ch. 32, § 5. You are concerned that these appropriations will not be sufficient to award reparations to claimants throughout this fiscal year. The Kansas Constitution provides as follows:

"No money shall be drawn from the Treasury except in pursuance of a specific appropriation made by law." Kan. Const., Art. 2, § 24.

Only the legislature has authority to appropriate state monies:

"The term 'specific appropriation made by law' may be defined as an authority of the legislature, given at the proper time and in legal form to the proper officials, to apply a distinctly specified sum from out of the state treasury, in a given period, for a specified objective or demand against the state. In general terms a 'specific appropriation made by law' is the act of setting money apart

formally or officially for a special use or purpose by the legislature in clear and unequivocal terms in a duly enacted law." State, ex rel., v. Fadely, 180 Kan. 652, 661 (1957) (Emphasis added).

"[N]o state official, not even the highest, has any power to create an obligation of the state . . . unless there has first been a specific appropriation of funds to meet the obligation." 63 Am. Jur. 2d Public Funds § 37.

Clearly, reparations cannot be paid to claimants in excess of the Board's funds.

Several cases from other jurisdictions are instructive on the issues presented to us. In Wolf v. State, 325 So.2d 342 (La. App. 1975), an alleged mugging victim made application with the Department of Employment Security for reimbursement from the state's criminal victim indemnity fund. When the Department failed to process the application, the victim/claimant brought suit. The Department argued it did not have funds for the payment of an award. In remanding the case, the appellate court ruled:

"Although it may be that the legislature has not appropriated such funds and that no funds are available to plaintiff for the payment of his claim, this would not preclude plaintiff from having his claim administratively processed." 325 So.2d at 345.

On appeal after remand the court stated:

"The Board [of Review, Department of Employment Security] should have granted the award, but conditioned its order of payment upon receipt of available funds. . . ." Wolf v. State, 346 So.2d 320, 322 (La. App. 1977).

In White v. Violent Crimes Compensation Bd., 388 A.2d 206 (N.J. 1978), the court ruled that a victim's claim under New Jersey's Criminal Injuries Compensation Act was not barred by the limitations provision of the statute. Pertinent to the present issue, the court noted:

"We recognize that the Board is vested with a large measure of discretion in determining whether compensation shall be awarded to persons who meet the statutory criteria, as the statutory language is carefully couched in permissive terms.

"In addition, N.J.S.A. 52:4B-9 directs the Board to consider budgetary constraints in determining the amount of compensation payable under the Act. We regretfully note that the Board itself has been a victim of under-funding since its inception, which has hampered its fulfillment of the salutary legislative goal." 388 A.2d at 209, n. 1.

"[The] State as sovereign is not 'liable' for the payment of claims for victim compensation benefits in the sense that term is normally used. As we have observed . . . there is no 'right' to victim compensation benefits. Moreover, under the sui generis scheme of the Criminal Injuries Compensation Act, the Board is 'liable' for the payment of victim compensation benefits only to the extent of its funding by the Legislature; there is no 'excess' liability on the part of the public treasury for valid claims which cannot be paid because of insufficient funding. Hence, the principles normally applicable in considering sovereign liability for pecuniary claims are largely inapposite in this context. The situation here is in marked contrast to that involving claims against sovereign bodies under the Tort Claims Act, where the governmental entity is liable and public funds directly at stake without regard to appropriations limitations." 388 A.2d at 214, n. 3.

Your first question is whether the Board must cease awarding claims if the Board's funds are exhausted. The Crime Victims Reparations Act provides that "the board shall award reparations" if it finds that the requirements for reparations have been met. K.S.A. 74-7302. A distinction must be made

between processing and awarding claims, and paying to claimants the amounts awarded. The Board does not have authority to pay reparations to claimants if it does not have funds. However, it is our opinion that, even if the Board has no money, the Board still has the duty to process claims and make awards. See Wolf v. State, supra.

Since sufficient funds have not been appropriated to the Board to allow it to pay all awards which will be made to claimants this fiscal year, you ask whether the Board has authority to prorate claims. Such a method would allow more claimants to receive at least part of the money awarded to them. K.S.A. 74-7302 provides as follows:

"Within the limits of appropriations therefor, the board shall award reparations for economic loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for reparations have been met." (Emphasis added).

The question becomes, does the phrase "within the limits of appropriations therefore" mean that the Board may consider budgetary restraints in determining the dollar amount to award? Or, does the phrase mean that the Board cannot pay an award if it does not have sufficient funds? For several reasons, we believe it means the latter.

The phrase "within the limits of appropriations therefor" was added to the statute by the legislature in 1985. (L. 1985, ch. 262). The amendment was introduced after the Board received a letter opinion from this office that the Crime Victims Reparations Act does not create an entitlement right to reparations. Since awards made pursuant to K.S.A. 74-7301 et seq. are not entitlements, the state is not liable for awards regardless of appropriations limitations. Thus, the legislature amended the statute to make it clear that the state is not liable for awards greater than the Board's appropriations. Legislative history does not suggest that the intent of the amendment was to reduce individual awards to claimants. Rather, minutes of House Committee on Ways and Means reveal that the intent of Senate Bill No. 344 (Session of 1985) was "to make it clear that compensation is not an entitlement, but is subject to appropriation." (Committee minutes, April 9, 1985). Further, K.S.A. 74-7313 provides that awards may be paid to claimants by two methods: lump sum or installments. The act contains no statute which gives the

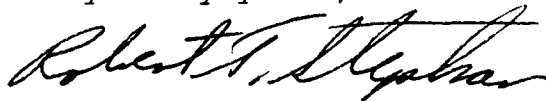
Board authority to prorate individual awards. The factors the Board is to consider in making an award are listed in K.S.A. 74-7305. There is no provision that the Board consider the funds it has left before making an award. In fact, S.B. 344 as originally introduced contained the following language:

"If the board determines that the amount of appropriations for the payment of reparations is insufficient to pay in full the amount of reparations awarded, the board shall prorate all payments made after such determination in proportion to the amount each claimant has been awarded and has not yet received."

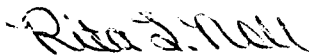
This language was deleted by the House Committee on Ways and Means. (Committee minutes, April 9, 1985; House Journal, 1985, p. 858). Therefore, we must conclude that the phrase "within the limits of appropriations therefore" means that the Board cannot pay out to claimants funds that it does not have, as such reparation awards are not monetary entitlements. Given our answer to your second question, it is unnecessary to discuss your third and fourth questions.

In summary, the Crime Victims Reparations Board does not have authority to pay reparations to claimants if it does not have funds. However, even if the Board has no money, the Board still has the duty to process claims and make awards. For reasons stated in this opinion, the Board does not have authority to prorate claims.

Very truly yours,



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