



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 91- 19

Betty A. Bomar, Director
Crime Victims Compensation Board
117 W. 10th
Topeka, Kansas 66612-1208

Re: State Boards, Commissions and Authorities--Crime
Victims Compensation Board--Claims for
Compensation; Conditions; Limitations

Synopsis: The crime victims compensation board (board) may award compensation to claimants for economic loss resulting from incidents of criminally injurious conduct occurring within one year prior to the filing of a claim with the board. In order to award compensation, the board must find that the criminally injurious conduct was reported to a law enforcement officer within 72 hours after its occurrence or that good cause existed for failure to report the criminally injurious conduct within that time. Cited herein: K.S.A. 1990 Supp. 21-3503; 74-7305.

* * *

Dear Ms. Bomar:

As director of the crime victims compensation board (board), you request our opinion regarding whether the board may award compensation to a claimant for expenses incurred over a three-year period prior to the filing of a claim with the board. You set forth the situation leading to your request as follows:

"A 14-year old child was a victim of indecent liberties over a period of 4 to 5 years. The victimization was not discovered until February 1990 at which time the incidents were reported to law enforcement officials. Expenses incurred since the date of the law enforcement report have been approved for payment by the Board."

"Expenses were incurred by the family (claimants) on behalf of the victim over a period of 3 years prior to date of report to law enforcement officials, inasmuch as there was a medical problem with the victim, however, the victimization was unknown. The need for the medical expenses incurred has been verified by medical professionals as a direct result of the victimization."

K.S.A. 1990 Supp. 74-7305 states in part:

"(b) Compensation may not be awarded unless the claim has been filed with the board within one year after the injury or death upon which the claim is based. . . .

. . . .

"(e) Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within 72 hours after its occurrence or the board finds there was good cause for the failure to report within that time." (Emphasis added.)

In determining whether the provisions of K.S.A. 1990 Supp. 74-7305(b) and (e) are mandatory or directory, it is a general rule that where strict compliance with the provisions is essential to the preservation of the rights affected and to the validity of the proceeding, the provisions are mandatory, but where the provisions fix a mode of proceeding and a time within which an official act is to be done, and is intended to secure order, system and dispatch of the public business, the provisions are directory. Paul v. City of Manhattan, 212 Kan. 381, Sy. ¶ 1 (1973); Board of Lincoln County Commissioners v. Berner, 5 Kan.App.2d 104, Sy. ¶ 4 (1980). The language of the enactment itself may provide guidance as to a determination of whether the enactment is mandatory.

"'Generally speaking, statutory provisions directing the mode of proceeding by public officers and intended to secure order, system and dispatch in proceedings, and by a disregard of which the rights of parties cannot be injuriously affected, are not regarded as mandatory, unless accompanied by negative words importing that the act required shall not be done in any other manner or time than that designated.'

[Shriver v. Board of County Commissioners, 189 Kan. 548, 556 (1962).] A critical feature of mandatory legislation is often a provision for the consequences of non-compliance." Paul, supra, 212 Kan. at 385. (Emphasis in original.)


K.S.A. 1990 Supp. 74-7305 clearly states that compensation may not be awarded unless the claim for compensation is filed within one year after the occurrence of the criminally injurious conduct and the criminally injurious conduct has been reported to a law enforcement officer within 72 hours of its occurrence unless the board finds good cause for failure to report within 72 hours. A consequence for non-compliance is set forth within the provisions of the statute. Therefore, the provisions of K.S.A. 1990 Supp. 74-7305(b) and (e) are mandatory. An administrative agency may not enlarge its powers by waiving a time requirement which is jurisdictional or prerequisite to the action taken. 2 Am.Jur.2d Administrative Law, § 323 (1962).


Acts constituting indecent liberties with a child are set forth in K.S.A. 1990 Supp. 21-3503. Each act may be regarded as a separate incident of criminally injurious conduct. See State v. Sisson, 217 Kan. 475 (1975). You indicate in your request that the claimants reported more than one incident of criminally injurious conduct to a law enforcement officer. In determining those incidents for which the claimants may be eligible to receive compensation, the board must be aware of the time limits set forth in K.S.A. 1990 Supp. 74-7305. The board may award compensation to claimants for economic loss resulting from incidents of criminally injurious conduct occurring within one year prior to the filing of the claim. In order to award compensation, the board must find that the criminally injurious conduct was reported to a law enforcement officer within 72 hours after

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its occurrence or that good cause existed for failure to report the criminally injurious conduct within that time.

Very truly yours,


ROBERT T. STEPHAN
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Assistant Attorney General

RTS:JLM:RDS:jm