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ATTORNEY GENERAL OPINION NO. 92- 26

Betty A. Bomar, Director  
Crime Victims Compensation Board  
700 S.W. Jackson, Jayhawk Tower  
Suite 400  
Topeka, Kansas 66603

Re: State Boards, Commissions and Authorities--Crime  
Victims Compensation Board--Definitions; Victim;  
Secondary Victim

Synopsis: The crime victims compensation board may properly  
consider for compensation those applications  
submitted by or on behalf of individuals deemed by  
established board policy described herein to be  
secondary victims. Cited herein: K.S.A. 1991  
Supp. 74-7301; 74-7302; 74-7304; 74-7333; 1978  
House Bill No. 2163.

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Dear Ms. Bomar:

As executive secretary of the crime victims compensation board (board), you request our opinion regarding whether those individuals designated as secondary victims by board policy may qualify for an award of compensation as a victim as defined under K.S.A. 1991 Supp. 74-7301(m). Those individuals deemed by Board policy to be secondary victims are "the spouse, children under the age of 18, and the parents of homicide victims; and the parents of children who are victims of indecent liberties provided the parent is not the offender."

The crime victims compensation board was established by the legislature with its adoption of 1978 House Bill No. 2163. The bill was to "take care of those people who had no where else to turn," Minutes, House Committee on Federal and State Affairs, February 4, 1977, by "establish[ing] a state-financed program of reparations to crime victims or their dependents who suffer personal injury or death as a result of criminal acts." Minutes, Senate Committee on Federal and State Affairs, March 15, 1978. The board may award compensation to claimants for economic loss suffered from criminally injurious conduct. K.S.A. 1991 Supp. 74-7302. Claimants are "any of the following persons claiming compensation under this act: A victim; a dependent of a deceased victim; a third person other than a collateral source; or an authorized person acting on behalf of any of them." K.S.A. 1991 Supp. 74-7301(c). Victim is further defined as "a person who suffers personal injury or death as a result of: (1) Criminally injurious conduct; (2) the good faith effort of any person to prevent criminally injurious conduct; or (3) the good faith effort of any person to apprehend a person suspected of engaging in criminally injurious conduct." K.S.A. 1991 Supp. 74-7301(m).

The interpretation of a statute is a question of law and it is the function of the court to interpret the statute to give it the intended effect. U.S.D. No. 279 v. Sec'y of Kansas Dept. of Human Resources, 247 Kan. 519, 524 (1990). The fundamental rule of statutory construction is that the purpose and intent of the legislature govern when that intent can be ascertained from the statute. Id. In construing statutes, the legislative intent is to be determined from a general consideration of the entire act; effect must be given, if possible, to the entire act and every part thereof. State ex rel. Stephan v. Kansas Racing Comm'n, 246 Kan. 708, 719 (1990). In determining legislative intent, the courts are not limited to a mere consideration of the language employed but may properly look into historical background of the enactment, the circumstances attending and subsequent to its passage, the purposes to be accomplished and the effect the statute may have under the various constructions suggested. Joe Self Chevrolet, Inc. v. Board of County Comm'rs of Sedgwick County, 247 Kan. 625, 633 (1990). Statutes providing for an award of compensation to crime victims are remedial in nature; it has been held that they should be construed liberally with a view toward the effective administration of justice and not in such a way as to defeat or frustrate the intention of the legislature in enacting them. 21A Am.Jur.2d Criminal Law, § 1053 (1981).

During its consideration of 1978 House Bill No. 2163, the legislature was made aware of the fact that 21 states had previously adopted legislation providing for compensation to crime victims. The programs implemented by eleven states were closely scrutinized. Although it is clear from the legislative history of 1978 House Bill No. 2163 that the program proposed in the bill was based on a model bill, the terms of the model bill are unknown. The programs scrutinized by the legislature have varying provisions regarding those individuals deemed to be victims. Some of the programs specifically include designated relatives of the injured party within the provisions regarding victims. Other programs limit the ability of individuals to be considered for compensation to those individuals directly injured by criminally injurious conduct. 1978 House Bill No. 2163 did not include such a restriction within its provisions. Taking into consideration the purpose for implementing the act regarding the crime victims compensation board, and that such statutes are to be construed liberally, it is determined that those individuals deemed by board policy to be secondary victims may receive consideration for compensation as victims of criminally injurious conduct.

This conclusion is buttressed by the fact that the board, by exercising its authority under K.S.A. 1991 Supp. 74-7304, established its policy recognizing secondary victims in 1985 or 1986. Executive construction of a statute is entitled to additional weight when it has been impliedly endorsed by the legislature, as by reenactment in the same or substantially same terms, or by failure of the legislature, with knowledge of such construction, to change the law or adopt amendments. Gorup v. Kansas Public Employees Retirement System, 3 Kan.App.2d 676, 680 (1979). The presumption of adoption of such interpretations has added force when the reenacted statute, in which the provision in question was not changed, made changes in other provisions. Id. Similarly, legislative inaction as evidence of implied endorsement is maximized by detailed changes made to related statutes. Id. The definitional provisions of the act have twice been amended. See L. 1986, ch. 306, § 1; L. 1989, ch. 239, § 9. In neither instance was the definition of victim further clarified. In its adoption of the bill of rights for victims of crime, the legislature narrowed the definition of victim to those persons who suffer direct or threatened physical, emotional, or financial harm as the result of the commission or attempted commission of a crime against such person. K.S.A. 1991 Supp. 74-7333. Through its inaction regarding K.S.A. 1991 Supp. 74-7301(m), the legislature in our opinion

has adopted the interpretation of victim as set forth in the policy of the crime victims compensation board. The board may properly consider for compensation those applications submitted by or on behalf of individuals deemed by established board policy described herein to be secondary victims.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Richard D. Smith  
Assistant Attorney General

RTS:JLM:RDS:jm