



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

July 30, 2003

Jeffrey B. Moore, Executive Director
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Dear Jeff:

You have asked our advice concerning a county council's diversion of its victims' services funds from an entity which possesses specific statutory duties and obligations to provide victims' services. You indicate that a situation has come to your attention in which county funds collected for victims' services have been withheld from a sheriff's department and, instead, directed by county council to the county alcohol and drug commission which is purportedly providing victims' services. In your view, there is no provision in the Victims' Bill of Rights which would allow a county council to make this diversion. Specifically, your question is as follows:

[m]ay a county council divert victims' funds from the county sheriff's office, which has specific duties and obligations to crime victims to another entity having no duties or obligations to crime victims?

Law / Analysis

S.C. Code Ann. Section 14-1-211(A)(1) provides for the imposition of a surcharge "on all convictions obtained in general sessions court and ... on all convictions obtained in magistrate and municipal court in this State." Such revenue is to be "retained by the jurisdiction which heard or processed the case and paid to the city or county treasurer, for the purpose of providing services for the victims of crime, including those required by law." Moreover, pursuant to this same subsection,

...[a]ny funds retained by the county or city treasurer pursuant to subsection (A)(1) must be deposited in a separate account for the exclusive use of all activities related to the requirements contained in this provision. For the purposes of funds allocation and expenditure, these funds are part of the general funds of the city or county. These funds must be appropriated for the exclusive purpose of providing victim services as required by Article 15 of Title 16; specifically, those service requirements that are imposed on local law enforcement, local detention facilities, prosecutors, and the summary courts. First priority must be given to those victims' assistance

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programs which are required by Article 15 of Title 16 and second priority must be given to programs which expand victims' services beyond those required by Article 15 of Title 16. These funds must be used for, but are not limited to, salaries, equipment that includes computer equipment and internet access, or other expenditures necessary for providing services to crime victims. All unused funds must be carried forward from year to year and used exclusively for the provision of services to the victims of crime. (emphasis added).

See also, §§ 14-1-206 through -208; § 16-3-1505 et seq.

This Office has issued several opinions previously which comment upon the expenditure of victims' services funds and answer your question. We will review each of these in some detail.

In an opinion, dated November 15, 1999, we indicated that we had received inquiries "that many counties and municipalities are withholding the fines, fees, assessments, and surcharges, or spending the [victims'] funds on unrelated projects, without appropriating the funds to the entities that are tasked with the duties." Following a detailed review of §§ 14-1-206 through -208 ("assessment statutes") and § 14-1-211 ("surcharge statute"), we concluded that the word "exclusive" has a clear and well-defined definition, meaning: "not shared with others." Thus, in our opinion,

[a]pplying the plain and ordinary meaning of the word "exclusive" to the assessment statutes and the surcharge statute leads to the following conclusions: revenue generated by these statutes must be used for the sole and undivided purpose of funding the victims' assistance programs of local law enforcement, local detention facilities, prosecutors, and the summary courts required by Article 15 of Title 16. After these programs are funded, a county or municipality may appropriate remaining revenue to programs which expand victim services beyond those required by Article 15 of Title 16. A county or municipality may not use the revenue generated by the statutes to fund projects or matters unrelated to victim services. Furthermore, local law enforcement, local detention facilities, prosecutors, and the summary courts may not use the appropriated funds on projects or matters unrelated to victim services. (emphasis added).

A subsequent opinion, dated January 4, 2000, opined that the framers of the Victims' Bill of Rights, "intended that the rights guaranteed to victims of crime be provided by the entities responsible for handling the victims' cases at each stage of the process, rather than by a central victims' assistance office established by a county or municipality." We noted that this conclusion is supported by the fact that the Victims' Bill of Rights amendment, found in Art. I, § 24 of the South Carolina Constitution, includes as a remedy the procurement of a writ of mandamus to enforce a victim's right in the event of a public official's non-performance of duty as required by the Constitution.

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In addition, we commented at length upon the General Assembly's enforcement of Art. I, § 24 of the Constitution. We noted that following voter approval of the Victims' Bill of Rights, the General Assembly enacted Act No. 141 of 1997, entitled "An Act ... To Amend Article 15, Chapter 3, Title 16, Relating to the Victim's and Witness's Bill of Rights, So As to Revise the Provisions of the Article." This enactment was codified as § 16-3-1505 et seq. of the South Carolina Code of Laws. The legislative intent underlying passage of Act No. 141 is stated in § 16-3-1505 which provides as follows:

[i]n recognition of the civic and moral duty of victims and witnesses to a crime to cooperate fully and voluntarily with law enforcement and prosecution agencies, and in further recognition of the continuing importance of this citizen cooperation to state and local law enforcement efforts and to the general effectiveness and the well-being of the criminal and juvenile justice systems of this State, and to implement the rights guaranteed to victims in the Constitution of this State, the General Assembly declares its intent, in this article, to ensure that all victims of and witnesses to a crime are treated with dignity, respect, courtesy, and sensitivity; that the rights and services extended in this article to victims of and witnesses to a crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded by criminal defendants; and that the State has a responsibility to provide support to a network of services for victims of a crime, including victims of domestic violence and criminal sexual assault. (emphasis added).

Our 2000 opinion found that this implementing legislation "details the manner in which the rights constitutionally guaranteed to victims of crime shall be provided and identifies the entities responsible for providing such rights." We noted that these entities are law enforcement agencies, prosecuting agencies, summary courts, departments and agencies having custody or custodial supervision of persons accused, convicted or adjudicated diligent of committing offenses, the Office of Attorney General, the Department of Corrections, the Department of Probation, Parole and Pardon Services, the Board of Juvenile Parole, and the Department of Juvenile Justice. We further stated that the "mechanism to fund the services required by Section 16-3-1505 et seq. is found in Sections 14-1-206 through 208 ... and Section 14-1-211" Thus, we stated as follows:

... it appears that the rights guaranteed to victims of crime are to be provided by the entities responsible for handling the victims' cases at each stage of the process, rather than by a central victims' assistance office established by a county or municipality. It also appears that the Victims' Bill of Rights effectively requires local appropriation authorities to fund victims' services programs located within the entities responsible for handling the victims' cases at each stage of the process (local law enforcement, local detention facilities, prosecutors, and the summary courts).

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Referencing the earlier opinion of November 15, 1999, discussed above, we reiterated that the revenue generated by the assessment statutes and the surcharge statute “must be used for the sole and undivided purpose of funding the victims’ assistance programs of local law enforcement, local detention facilities, prosecutors and the summary courts required by Article 15 of Title 16” We stressed that “[o]nly after these programs are funded may a county or municipality appropriate remaining revenue to programs which expand victims services beyond the requirements of Article 15 of Title 16.”

A third pertinent opinion was issued on October 1, 2001. There we addressed the issue of whether the Charleston County Sheriff’s Office could use monies collected from victim assessments pursuant to S.C. Code Ann. § 14-1-207(D) to fund a satellite monitoring program for defendants charged with drug-related offenses. We cited an earlier letter issued by the Attorney General in concluding that victims’ funds could not be so used, by stating the following:

[i]t is well recognized that public funds must be expended only for their designated purpose. The Attorney General has recently reviewed the language of Section 14-1-206(D), which is a verbatim match for § 14-1-207(D). Upon his review, the Attorney General concluded that the “legislature has thus mandated that any expenditure from this fund [for victims’ services] must go exclusively to crime victims rather than for general law enforcement purposes.”

Thus, we reasoned that the use of the victims’ services funds for a satellite monitoring program was unauthorized. We stated that in our opinion, “... a satellite monitoring program for defendants charged with drug-related offenses is not for the ‘exclusive purpose of providing victim services’ as required by law and could not be funded with monies collected from victim assessments pursuant to S.C. Code Ann. § 14-1-207(D).

In the most recent opinion, dated July 10, 2003, we advised that the Victims Advocate Fund for the City of Myrtle Beach” may be used only for the purpose of funding municipal entities which provide services exclusively to the victims of crime as defined in Section 16-3-1510(1).” In our opinion, the use of the Victim’s Advocate Fund for the purpose of funding any organization, including the American Red Cross, which provides services to non-crime victims would appear to be unauthorized pursuant the plain language of the statute.” We further observed that “when a statute designates that funds be used for a specified purpose, officials must spend these monies as the General Assembly directs.”

Conclusion

These opinions are controlling here as well. They may be summarized as follows: first, revenues generated by § 14-1-206 through 208 and 14-1-211 “must be used for the sole and undivided purpose of funding the victims’ assistance programs of local law enforcement (such as the Sheriff’s Office), local detention facilities, prosecutors and the summary courts required by

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Article 15 of Title 16.” Op. S.C. Atty. Gen., November 15, 1999. Id. Second, victims’ services for law enforcement, local detention facilities, prosecutors and summary courts must be funded, and, only after these programs are funded, may a county or municipality appropriate any remaining victim’s services revenues to programs “which expand victims services beyond those required by Article 15 of Title 16.” Id. Third, in no event, may a county or municipality use revenue generated by the foregoing statutes (victims assistance revenues) to fund projects or matters not related to victims’ services. I have included copies of the foregoing opinions for your review.

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an
Enclosures