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January

The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

January 4, 2000

The Honorable Kay Patterson  
Senator, District No. 19  
602 Gressette Building  
Columbia, South Carolina 29202

Dear Senator Patterson:

Your recent opinion request has been forwarded to me for reply. In your request, you state:

I am writing to request that your Office render an opinion on an issue of importance to the Joint Committee. Several years ago our State approved a constitutional amendment which outlines a victims' bill of rights. The amendment requires that victims be kept informed as their cases are processed and states that the "rights created in this section may be subject to a writ of mandamus." The amendment further states that a "willful failure to comply with a writ of mandamus is punishable as contempt." Subsequent to the adoption of this constitutional amendment, the General Assembly passed legislation that channeled certain court fine and fee revenues to local entities for the purpose of implementing the victims' bill of rights. S.C. Code Ann. 14-1-206 through 208 (assessment statutes) and 14-1-211 (surcharge statute) detail the manner in which court assessments and surcharges are to be collected and appropriated to victims' assistance programs.

The issue I am requesting your opinion on is whether the language of the constitutional amendment allows a local appropriation authority (i.e., county council or municipal council) to set up and fund a central victims' assistance office or whether the language of the constitutional amendment effectively requires the local appropriation authority to fund victims' services programs located within those local entities that have direct responsibilities for handling the victims' case (law enforcement, solicitor, courts, jails). In particular the Joint Committee wants to know

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if, under the constitutional amendment, a local service provider, such as the Sheriff, is subject to a writ of mandamus action if his or her county has made the decision to establish a central victims' office which is responsible for the enforcement of rights and provision of services described in the constitutional amendment.

I would also like your opinion on whether language contained in the assessment and surcharge statutes (or any other statute) restricts local appropriation authorities from creating a central victims' assistance office in lieu of appropriating funds directly to law enforcement, solicitors, courts, and jails. In other words, notwithstanding the constitutional amendment, has the legislature adopted laws that limit the flexibility of local governments in providing the required victims' services?

In May of 1996, the General Assembly proposed that Article I of the Constitution of South Carolina be amended by adding Section 24 to provide for the "Victims' Bill of Rights." The amendment was submitted to the voters in the 1996 general election and received a favorable vote. The amendment was ratified by the General Assembly in 1998.

The Victims' Bill of Rights sets forth those rights constitutionally guaranteed to victims of crime. These include, among others, the right to be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal and juvenile justice process, and informed of the victim's constitutional rights, provided by statute; be informed when an accused or convicted person is arrested, released from custody, or has escaped; be informed of and present at any criminal proceedings which are dispositive of the charges where the defendant has the right to be present; be informed of and be allowed to submit a statement at all hearings affecting bond or bail; be heard at any proceeding involving a post-arrest release decision, a plea, or sentencing; be protected from the accused or persons acting on his behalf throughout the criminal justice process; confer with prosecution, after the crime against the victim has been charged, before the trial or before any disposition and informed of the disposition; have access after the conclusion of the criminal investigation to all documents relating to the crime against the victim before trial; receive restitution from the person convicted of the criminal conduct that caused the victim's loss or injury; be informed of any proceeding when any post-conviction action is being considered, and be present at any post-conviction hearing involving a post conviction release decision.

Subsection (B) of the amendment provides that a writ of mandamus may be issued by any justice of the Supreme Court or circuit court judge to require compliance by any

public employee, public agency, the State, or any agency responsible for the enforcement of the rights and provisions of the services contained in the Victims' Bill of Rights. Wilful failure to comply with a writ of mandamus is punishable as contempt. Subsection (C)(3) of the amendment grants the General Assembly the authority to enact substantive and procedural laws to define, implement, preserve, and protect the rights guaranteed to victims by the constitution.

When construing a constitutional amendment, the court applies rules similar to those relating to the construction of statutes. McKenzie v. McLeod, 251 S.C. 226, 161 S.E.2d 659 (1968). The court's primary function in interpreting a constitutional amendment is to ascertain and give effect to the intention of its framers and the people who adopted it. McKenzie v. McLeod, *supra*. In attempting to discover the intent, the court may consider the history of the times in which the amendment was framed, the object sought to be accomplished, and legislative interpretation of its provisions. Reese v. Talbert, 237 S.C. 356, 117 S.E.2d 375 (1960). The court must give clear and unambiguous terms their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. Davis v. County of Greenville, 313 S.C. 459, 443 S.E.2d 383 (1994).

You first ask whether the language of the constitutional amendment allows a local appropriation authority (i.e. county council or municipal council) to set up and fund a central victims assistance office or whether the language of the constitutional amendment effectively requires the local appropriation authority to fund victims service programs located within the local entities that have direct responsibility for handling the victims' cases (law enforcement, solicitors, courts, jails). In reviewing the language of the Victims' Bill of Rights, it appears the framers 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. For example, the constitution guarantees victims of crime the right to be heard at any proceeding involving a post-arrest release decision, a plea, or sentencing. This right could not be provided by a central victims assistance office, but only by the courts. As another example, the constitution guarantees victims of crime the right to confer with prosecution. This again is a right which could not be provided by a central office, but only by the prosecution itself.

The inclusion of the writ of mandamus provision also supports the above interpretation. The primary purpose of a writ of mandamus is to enforce an established right,

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and to enforce a corresponding imperative duty created or imposed by law. Charleston County School District v. Charleston County Election Commission, 336 S.C. 174, 519 S.E.2d 567 (1999). To obtain a writ of mandamus requiring performance of an act, an applicant must show, among other things, that the opposing party has an indisputable and plainly defined duty to perform the act. Id. As stated above, the power and duty to perform most of the rights found in the Victims' Bill of Rights falls squarely on a specific entity such as a court or prosecutor. Therefore, mandamus would lie to compel such entities to perform their constitutional duties. On the other hand, mandamus will not lie to compel a public officer to perform an act which the law has not empowered, directed, or authorized him to do. Gardner v. Blackwell, 167 S.C. 313, 166 S.E. 338 (1932). As central victims assistance offices do not possess the power or duty to perform the acts required by the constitution, mandamus would not be appropriate.

This interpretation is supported by actions taken by the General Assembly following voter approval of the Victims' Bill of Rights. As stated in Subsection (C)(3) of the Victims' Bill of Rights, the General Assembly has the authority to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims of crime. Accordingly, the General Assembly enacted Act No. 141 of 1997. This Act was entitled, in part, "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." The relevant portions of the Act are codified as Section 16-3-1505 et seq. of the South Carolina Code of Laws. The legislative intent behind passage of this portion of the Act is stated in Section 16-3-1505, which provides:

In recognition of the civic and moral duty of victims of 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 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.

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. These entities are law enforcement agencies, prosecuting agencies, summary courts, departments and agencies having custody or custodial supervision of persons accused, convicted, or adjudicated delinquent of committing offenses, the Office of the 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.

The mechanism to fund the services required by Section 16-3-1505 *et seq.* is found in Sections 14-1-206 through 208 (the "assessment statutes") and Section 14-1-211 (the "surcharge statute"). These statutes impose assessments and surcharges on individuals who are convicted of, plead guilty or nolo contendere to, or forfeit bond for offenses tried in various court of the State. A certain percentage of the revenue generated by these statutes must be used "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."

The contemporaneous construction given by the Legislature to the constitution is entitled to great respect. McCull v. Marlboro Graded School Dist. No. 10, 143 S.C. 120, 141 S.E. 265 (1928). It is a rule of common sense, recognized and adopted by judges and text writers as a rule of law, that in doubtful questions of construction, arising under statutes and constitutions, due weight should be given to contemporaneous exposition and usage. Powers v. State Educational Finance Commission, 222 S.C. 433, 73 S.E.2d 456 (1952).

Here, great respect must be given to the fact that many of the framers of the Victims' Bill of Rights were also members of the General Assembly when significant portions of Section 16-3-1505 *et seq.*, Sections 14-1-206 through 208, and Section 14-1-208 were passed. These legislators evidently believed that the rights guaranteed by the constitutional amendment are to be provided by law enforcement agencies, prosecuting agencies, summary courts, departments and agencies having custody or custodial supervision of persons accused, convicted, or adjudicated delinquent of committing offenses, the Office of the 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. These legislators also established the manner in which the provision of required services is to be funded.

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Based on the foregoing, 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).

In regards to your second question, in an opinion dated November 15, 1999, this Office concluded that 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 [S.C. Code Ann. § 16-3-1505 *et seq.*]." Only 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. Therefore, this interpretation of the assessment statutes and the surcharge statute leads to the conclusion that a county or municipality may not create a central victims' assistance office in lieu of appropriating funds directly to law enforcement, solicitors, courts, and jails.


With best personal regards, I am

Sincerely yours,



Paul M. Koch  
Assistant Attorney General

REVIEWED AND APPROVED BY:



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Zeb C. Williams, III  
Deputy Attorney General