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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

October 25, 1999

Mia McLeod Butler, Director
State Office of Victim Assistance
Office of the Governor
1205 Pendleton Street, Room 401
Columbia, South Carolina 29201

RE: Informal Opinion

Dear Ms. Butler:

By your letter of September 27, 1999, you have asked a series of questions regarding the South Carolina Crime Victims Compensation Act, S.C. Code Ann. Section 16-3-1110 *et seq.* I will address these questions in the order presented in your request.

1. Can a victim of Criminal Domestic Violence be deemed "fully cooperative" during an investigation, as expressed in §16-3-1170(4) if the victim recants, declines to sign a warrant against the offender, or refuses to testify at trial?

As you know, the South Carolina Crime Victims Compensation Act ("the Act") creates a fund and establishes statutory guidelines to compensate innocent victims of crime. In Section 1 of the Act, the General Assembly found that:

. . . many innocent persons suffer personal physical injury or death as a result of criminal acts. . . . Such persons or their dependents may thereby suffer disability, incur financial hardships or become dependent upon public assistance. The General Assembly finds and determines that there is a need for financial assistance for such victims of crime. Accordingly, it is the intent of the General Assembly that no right to financial assistance be created by this article, but that aid, care and support be provided for such victims of crime as granted by this article.

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Clearly, the Act reflects a remedial legislative purpose and, therefore, should be liberally construed in order to effectuate that purpose. South Carolina Dept. of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1978).

Section 16-3-1170 sets forth the eligibility criteria for compensation and provides in relevant part as follows:

(A) No award may be made unless:

- (1) a crime was committed;
- (2) the crime directly resulted in physical or psychic trauma to the victim;
- (3) the crime was promptly reported to the proper authority and recorded in police records; and
- (4) the claimant or other award recipient has *fully cooperated* with all law enforcement agencies and with the [State Office of Victim Assistance]. (Emphasis added).

While the term "fully cooperated" is not defined in the Act or, apparently, by South Carolina case law, other states have addressed the term's meaning within the context of their own victims compensation statutes. For example, Ohio's victims compensation statute provides, "[a] single commissioner or a panel of commissioners, upon a finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies, may deny a claim or reconsider and reduce an award of reparations." Ohio Rev. Code Ann. §2743.60(C) (West 1999). The Ohio Court of Claims in In re Smith, 91 Ohio Misc.2d 145, 698 N.E.2d 131 (1997), quoting In re Lewis, (May 5, 1983), Ct. of Cl. No. V82-43655sc, unreported, defined the phrase "failure to fully cooperate" as: "any action, inaction, or inexcusable neglect by an applicant which substantially impedes or impairs investigation or prosecution proceedings which have been initiated by the law enforcement authorities, or which would have been initiated but for the action, inaction, or inexcusable neglect." In Smith, the Ohio court reversed the order of the single commissioner and concluded that a crime victim's decision to dismiss the domestic violence charge that had been lodged against her attacker was not a failure to fully cooperate with authorities, and thus she remained eligible for reparations. Moreover, the Ohio court acknowledged in In re Simmons, 61 Ohio Misc.2d 364, 579 N.E.2d 311 (1989), that "[a] well-established line of cases dictates that *the mere refusal of an applicant to prosecute does not in itself constitute 'failure to fully cooperate'* within the meaning of R.C. 2743.60(C)." (Emphasis added).

In addition to Ohio, the North Carolina Crime Victims Compensation Act does not appear to give the Crime Victims Compensation Commission discretion to deny reparations solely on the basis of the victim's refusal to prosecute. In the case of Ellis v. North Carolina Crime Victims Compensation Commission, 111 N.C. App. 157, 432 S.E.2d 160 (1993), a victim of domestic violence sought judicial review of a decision of the Crime Victims Compensation Commission

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denying her compensation for medical expenses incurred as the result of a domestic assault. In its administrative decision, the Commission stated that:

A crime victim has an affirmative obligation to pursue criminal prosecutions against the perpetrator. By her own admission, Petitioner failed to prosecute. She cannot, therefore, expect the State of North Carolina to compensate her for injuries resulting from the criminally injurious conduct. The Crime Victims Compensation Commission is intended to assist innocent victims of crime with the financial burden incurred as a result of injuries received, and to encourage those victims to participate in the criminal justice system and pursue prosecution of offenders.

Reversing the Superior Court of Forsyth County, which had affirmed the Commission's ruling, the Court Appeals of North Carolina found that the victim was wrongly denied compensation. Disagreeing sharply with the Commission's statutory interpretation imposing an affirmative obligation upon crime victims to pursue prosecutions as a prerequisite to receiving compensation, the appellate court held:

N.C.Gen.Stat. §15B-11 sets forth the grounds for denial of an award. ***Failure to prosecute is not listed among those grounds.*** Further, N.C.Gen.Stat. § 15B-14, entitled "Effect of prosecution or conviction of offender" states that 'an award of compensation may be approved whether or not any person is prosecuted or convicted. . . .' G.S. §15B-14(a) (1992). As petitioner correctly points out, 'compensation for criminally injurious conduct shall be awarded . . . if the requirements for an award have been met.' No information dealing with prosecution is among those ten requirements. In fact, a requirement of prosecution is absent from any section of the act. . . . ***If the Legislature intended to include failure to prosecute as a ground for denial, it would have done so in N.C.Gen.Stat. §15B-11(a) - (h).*** (Emphasis added).

The South Carolina statute that identifies those who are ineligible for an award is S.C. Code Ann. §16-3-1220, which provides as follows:

A person listed in Section 16-3-1210(1) is not eligible to recover under this article if the person:

(1) committed or aided in the commission of the crime upon which the claim is based or engaged in other unlawful activity which contributed to or aggravated the resulting injury;

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(2) is the surviving parent, spouse, or dependent of a deceased victim who would have been barred by subsection (1) had he survived;

(3) is a dependent of the offender who committed the crime upon which the claim is based, and the offender would be a principal beneficiary of the award.

Similar to the North Carolina and Ohio statutes addressed above, neither §16-3-1220 nor §16-3-1210 (entitled "Persons eligible for award") imposes an affirmative obligation upon crime victims to pursue prosecutions as a prerequisite to receiving compensation. Therefore, it is my opinion that the State Office of Victim Assistance (SOVA) possesses ample discretion to award compensation to a crime victim even though the applicant may have refused to prosecute. If a South Carolina court were to address this question, it would most likely adopt the North Carolina and Ohio view that an applicant's mere refusal to prosecute does not in itself constitute a failure to fully cooperate for the purposes of the Crime Victims Compensation Act.

2. Should a victim of Criminal Domestic Violence be eligible for Compensation if she still resides with the offender, and the offender might be a "principal beneficiary" of the award? Considering the "Cycle of Violence," should this be an absolute bar from Compensation, pursuant to §16-3-1220(3)?

As noted above, §16-3-1220(3) bars recovery if the claimant "is a dependent of the offender who committed the crime upon which the claim is based, and the offender would be a principal beneficiary of the award." The manifest intent of this provision is to prevent the unjust enrichment of an offender in those cases where the claimant is a family member of the offender. Ascertaining whether a particular claimant is a dependent of an offender and whether that offender would primarily benefit from an award requires a number of factual determinations. Factual questions such as these are beyond the scope of an opinion of this Office to resolve, Op. Atty. Gen. (Dec. 12, 1983). The responsibility for such determinations rests with SOVA, the agency primarily charged with administering the State's victims compensation laws. The construction of a statute by the agency charged with its administration is entitled to most respectful consideration and will not be overruled by the courts without cogent reasons. Logan and Associates v. Leatherman, 290 S.C. 400, 351 S.E.2d 146 (1986); Emerson Elec. Co. v. Wason, Inc., 287 S.C. 394, 339 S.E.2d 118 (1986). The Supreme Court has ruled that it may not substitute its judgment for that of the agency's where the agency's decision is factually supported. Byerly Hosp. v. S.C. State Health and Human Services Finance Commission, 319 S.C. 225, 460 S.E.2d 383 (1995). Thus, while the sharing of a residence between a victim and an offender may create the appearance of dependency, it is up to SOVA to ascertain on a case by case basis whether such a relationship exists in fact and, also, whether an offender would be unjustly enriched from an award.

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3. Should a minor victim of Criminal Sexual Conduct be barred from receiving Compensation because the non-offending parent or guardian refuses to "fully cooperate" with law enforcement as suggested by §16-3-1170(4)?

Claims may be filed on behalf of minors pursuant to §16-3-1230, which provides in relevant part as follows:

(1) A claim may be filed by a person eligible to receive an award, as provided in §16-3-1210, or, if the person is an incompetent or a minor, by his parent or legal guardian or other individual authorized to administer his affairs.

(2) A claim must be filed by the claimant not later than one hundred eighty days after the latest of the following events:

(a) the occurrence of the crime upon which the claim is based;

(b) the death of the victim; or

(c) the discovery by the law enforcement agency that the occurrence was the result of crime. Upon good cause shown, the time for filing may be extended for a period not to exceed four years after the occurrence or death. "Good cause" for the above purposes includes reliance upon advice of an official victim assistance specialist who either misinformed or neglected to inform a victim of rights and benefits of the Victim's Compensation Fund but does not mean simply ignorance of law.

Similar to §16-3-1210 and §16-3-1220, addressed above, §16-3-1230 does not impose an affirmative obligation upon minor victims or their parents or guardians to pursue prosecutions as a prerequisite to receiving compensation. In In re Bebout, 85 Ohio Misc.2d 34, 684 NE2d 110 (1996), the Ohio Court of Claims held that "a minor victim should not be precluded from participating in the crime victims reparations fund due to the dereliction of a parent in timely reporting the criminally injurious conduct, ***but this rule should be applied on a case-by-case basis due to the varying age and maturity levels of minors.***" (Emphasis added). Thus, the extent to which a non-offending parent's or guardian's conduct may be deemed a failure to fully cooperate involves factual determinations which the General Assembly has delegated to the discretion of the State Office of Victim Assistance to resolve.

I trust this information is responsive to your inquiry and that you will not hesitate to contact me should you have additional questions. This letter is an informal opinion only. It has been written by a designated Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

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With kindest regards, I remain

Very truly yours,

Zeb Williams

Zeb C. Williams, III
Deputy Attorney General

ZCW/an