

1983 WL 181725 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 24, 1983

***1 Re: Conditions of Restitution May be Included as a Parole Condition**

Mr. J. P. Pratt, II
Executive Director
South Carolina Department of Parole and Community Corrections
P. O. Box 50666
Columbia, SC 29250

Dear Mr. Pratt:

I am in receipt of your request dated January 18, 1983, in which you have asked for an opinion from this Office concerning whether or not the Parole Board has the authority to require an individual being placed on parole after service of the required portion of his sentence to pay restitution. It is the opinion of this Office that the Parole Board has the statutory authority to include restitution as a condition for parole.

In South Carolina, parole is granted by the Parole Board 'who shall issue an order authorizing the parole which shall be signed by at least a majority of its members, with terms and conditions, if any.' § 24-21-650, Code of Laws (1976). Our law does not specify what conditions, if any, are appropriate for conditional parole. The general rule is that a parole may be granted upon such terms as the granting power may see fit, so long as they are not immoral, illegal, or impossible of performance. 59 Am.Jur.2d., Pardon and Parole, § 83. Compare Crooks v. Sanders, 123 S.C. 28, 115 S.E. 760 (1922). It is the opinion of this Office that a condition of restitution (or reparation) to a victim is not immoral or illegal and generally not impossible of performance.

On January 1, 1983, the Victim's Compensation Fund Act fully took effect which provides a victim restitution vehicle inasmuch as 'the Department of Parole and Community Corrections shall also have the right to make payment to the debt or a portion of the debt to the State (from the Victim's Compensation Fund) as a condition of parole.' § 16-3-1260, Code of Laws (1976), as amended (1982). Therefore, the Parole Board has the express statutory authority to provide, through this fund, a condition of restitution to a victim (who suffers physical injury or death as a direct result of crime). See; § 16-3-1120(7), Code of Laws (1976), as amended (1982). Therefore, this Act should be utilized whenever it is appropriate.

This Office is also of the opinion that the Parole Board has the discretionary authority to condition parole or restitution to victims of property crimes. Such a condition is neither illegal nor immoral inasmuch as the sentencing judge may award such restitution (though the judge does not have the authority to set it as a condition for parole). Compare; § 17-25-120, 125 Code of Laws (1976) with State v. Sanders, 269 S.C. 215, 237 S.E.2d 53 (1977). Absent any statutory or constitutional provisions precluding such a condition for parole, the Parole Board does have the power to establish such restitution as an appropriate condition for parole pursuant to § 24-21-650, Code of Laws (1976). See; State v. Wilson, 274 S.C. 352, 264 S.E.2d 414 (1980). (the sentencing court has the authority to include, as a condition of probation the requirement that he pay reparations to the victim). The Parole Board, of course, must insure itself that a proper evidentiary basis exists for restitution for the amount of the payment and that the ability of the parolee to pay is considered. State v. Wilson 274 S.C. 352, 264 S.E.2d 414 (1980).

*2 I hope that this information satisfies your inquiry. If you have further questions, please advise me.

Sincerely,

Donald J. Zelenka

Assistant Attorney General

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