



ALAN WILSON
ATTORNEY GENERAL

September 24, 2013

Dr. Larry Barker, Director
State Office of Victim Assistance
1205 Pendleton Street, Room 401
Columbia, South Carolina 29201

Dear Dr. Barker:

Attorney General Alan Wilson has referred your letter of April 15, 2013 to the Opinions section for a response. The following is our understanding of your question presented and the opinion of this Office concerning the issue based on that understanding.

Issue: Does the State Office of Victim Assistance (SOVA) have legal authority to recover money it provided to a Victim of a crime when the Victim later received money from a settlement for pain and suffering in connection with the crime?

Short Answer: This Office believes a court will likely conclude SOVA has the right to recover the assistance it provided to the Victim of a crime to the full amount from the Victim's recovery for pain and suffering.

Law/Analysis:

The South Carolina Code of Laws concerning compensation to Victims of a crime says:

- (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 South Carolina Victim's Compensation Fund.**
- (B) For the purposes of item (3) of subsection (A), a crime reported more than forty-eight hours after its occurrence is not "promptly reported", absent a showing of special circumstances or causes which justify the delay.

S.C. Code § 16-3-1170. For purposes of your question, this Office is going to assume all prerequisites have been met for the award given. As you provide in your letter, South Carolina law states:

Any award made pursuant to this article [S.C. Code § 16-3-1110 to S.C. Code § 16-3-1360, Article 13, Compensation of Victims of Crime] may be reduced by or set off by the amount of any payments received or to be received as a result of the injury (a) from or on behalf of the person who committed the crime, (b) from any other private or public source, including an award of workers' compensation pursuant to the laws of this State or (c) as an emergency award pursuant to Section 16-3-1150; provided, that private sources shall not include contributions received from family members, or persons or private organizations making charitable donations to a victim.

S.C. Code § 16-3-1190 (1976 Code, as amended). The highlighted language in SOVA's form that every Victim must sign reads:

I agree to repay SOVA if I receive money from another source, up to the amount paid on my behalf. This includes any payment I may receive from the offender, any insurance policy or settlements, judgments, or civil law suits.

While there are various theories a court could employ, this Office believes if the court does not authorize SOVA to recover its funds from the Victim pursuant to S.C. Code § 16-3-1190, the court will use a legal or equitable method such as unjust enrichment for SOVA to recover its funds.¹ Unjust enrichment is an action in equity. It means "one shall not be allowed to profit or enrich himself at the expense of another contrary to equity." *Op. S.C. Atty. Gen.*, 1976 WL 4309 (March 24, 1976) (citing Restatement, Rest., § 1, *et seq.*). As quoted by the South Carolina Court of Appeals:

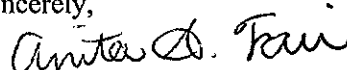
"A party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another." *Dema v. Tenet Physician Servs.—Hilton Head, Inc.*, 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009). The remedy for unjust enrichment is restitution. See *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 409, 581 S.E.2d 161, 167 (2003) ("Restitution is a remedy designed to prevent unjust enrichment."). To recover restitution in the context of unjust enrichment, the plaintiff must show: (1) he conferred a non-gratuitous benefit on the defendant; (2) the defendant realized some value from the benefit; and (3) it would be inequitable for the defendant to retain the benefit without paying the plaintiff for its value. *Campbell v. Robinson*, 398 S.C. 12, 24, 726 S.E.2d 221, 228 (Ct.App.2012); *Niggel Assocs., Inc. v. Polo's of N. Myrtle Beach, Inc.*, 296 S.C. 530, 532, 374 S.E.2d 507, 509 (Ct.App.1988).

¹ Please see the opinion by this Office dated September 23, 2013 concerning a similar question from your office. That opinion addresses a question by SOVA as to whether or not it may recover money from a Victim who received settlement money from an automobile insurance company for the same crime the Victim received money from SOVA. It discusses statutory subrogation pursuant to S.C. Code § 16-3-1250 along with other forms of subrogation and recovery. Please note the conclusion reached here differs slightly from the conclusion in the other opinion in that the other opinion suggests recovery for SOVA after a Victim recovers 100% of actual losses and expenses pursuant to unjust enrichment, contractual subrogation, or statutory subrogation under S. C. Code Section § 16-3-1250. While this Office can only opine as to how a court will rule on these emerging questions, we feel optimistic a court will rule for SOVA regarding these questions.

Inglese v. Beal, 403 S.C. 290, 742 S.E.2d 687 (Ct.App.2013). To put in plain terms, this Office does not believe the legislature intended for Victims of crime to be doubly reimbursed for expenses by SOVA and by a third party. SOVA, as an agency of the state government, has limited funds with which it is able to assist Victims of crimes. If a Victim receives funds sufficient to cover their losses, SOVA should be able to recover in equity for funds "had and received" based on unjust enrichment. Additionally, SOVA's contract with Victims makes it clear SOVA intends to be reimbursed if the Victim otherwise receives compensation for the crime.²

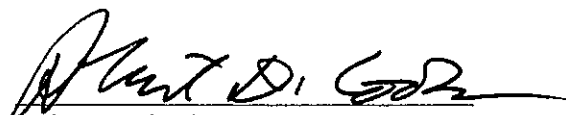
Conclusion: This Office believes a court will likely conclude SOVA [the State Office of Victim Assistance] has the right to recover (whether through unjust enrichment under the common law or through another method) the assistance it provided to the Victim of a crime. However, this Office is only issuing a legal opinion. Until a court or the legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,



Anita Smith Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General

² Without knowing or determining the facts concerning your question, if the Victim owned a policy and recovered under health insurance coverage, it is possible that, pursuant to S.C. Code § 16-3-1250, SOVA may be able to subrogate in order to recover any funds paid by the health insurance company over and above one hundred percent reimbursement to the Victim. As an aside, the South Carolina Court of Appeals previously upheld the denial of equitable subrogation for a health insurance provider where the policy did not contractually give the right to subrogation. See Shumpert v. Time Ins. Co., 329 S.C. 605, 496 S.E.2d 653 (Ct.App.1998). The South Carolina Code concerning subrogation for insurers says:

Any policy or contract of accident and health insurance issued in this State may include provision for subrogation by the insurer to the insured's right of recovery against a liable third party for not more than the amount of insurance benefits that the insurer has paid previously in relation to the insured's injury by the liable third party. If the director or his designee, upon being petitioned by the insured, determines that the exercise of subrogation by an insurer is inequitable and commits an injustice to the insured, subrogation is not allowed. Attorneys' fees and costs must be paid by the insurer from the amounts recovered. This determination by the director or his designee may be appealed to the Administrative Law Judge Division as provided by law in accordance with Section 38-3-210.