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The State of South Carolina

Office of the Attorney General

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December 1, 1987

Honorable David H. Wilkins
Member, House of Representatives
408 E. North Street
Greenville, South Carolina 29601

Re: Restitution Limits in Juvenile Delinquency Hearings Pursuant to Section 20-7-1330

Dear Representative Wilkins:

You have asked for an opinion from this office concerning an interpretation of S.C. Code Ann., Section 20-7-1330(a), concerning the limitation on the amount of restitution that can be imposed against a juvenile as a condition of probation. Your concern is whether Section 20-7-1330 limits the total amount of awarded restitution to five-hundred ($500) dollars or does it mean five hundred ($500) dollars per offense or petition. Our review of South Carolina case law does not reveal that this issue has been previously addressed by the South Carolina Supreme Court. In the recent case, In the Interest of Joseph Eugene M., 287 S.C. 312, 338 S.C.2d 328 (1985), the Supreme Court held that a family court had exceeded its statutory authority when it ordered $1,818.94 as restitution and committed him to the Department of Youth Services for an indeterminate period because the court only had jurisdiction to order restitution as a condition of probation. The amount of the restitution in that case was not addressed.

In any interpretation of a penal statute, general statutory construction requires that it be strictly construed against the State and any ambiguity or uncertainty must be resolved in favor of the defendant. State v. Cutler, 274 S.C. 376, 264 S.E.2d 420 (1980). Similar construction is accorded in cases involving juvenile delinquency. In the Interest of Joseph Eugene M., supra.

Restitution as a condition of probation was created by the General Assembly in 1980 Acts and Joint Resolutions, Act No. 437, which became effective on May 24, 1980. The amendments allowed for this special condition of probation in a family court proceeding that was previously outside of the scope of the family court judge's authority. See 1969-7 Opinion of Atty. General No. 2836, p. 62.

My review reveals the critical portion of Section 20-7-1330(a) to be as follows:

> The court may ...
>
> (a) place the child on probation ... If the court imposes as a condition of probation a requirement that restitution in a specified amount be paid, the amount to be paid as restitution may not exceed five hundred dollars. The Department of Youth Services shall develop a system for the transferring of any court ordered restitution to the victim or owner of any property injured, destroyed, or stolen ....

A quick review of this section might lead to an interpretation that the court is limited to five hundred dollars restitution per juvenile based upon the language of "the amount to be paid as restitution may not exceed five hundred dollars." However, a true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in light of its manifest purpose. City of Columbia v. Niagara Fire Ins. Comp., 249 S.C. 388, 154 S.E.2d 674 (1967). Therefore, we are not governed by one

clause, sentence, or part of a statute, but by the consideration of the whole act, read in light of conditions and circumstances as they appeared to the General Assembly.

In general law, "restitution" means return of a sum of money, an object, or the value of an object which the defendant wrongfully obtained in the course of committing the crime, State v. Stalheim, 552 P.2d 829, 832 (Ore. 1976), and it connotes restoring or compensating the victim for his loss. State v. Fader, 358 N.W.2d 42, 48 (Minn. 1984). It is not a punitive damage or a fine against a particular defendant, but is a means of making the injured party whole. Therefore, this clause may be seen not as limiting the amount the defendant must pay, but rather as limiting the amount of recovery a particular victim may receive from the juvenile justice process since restitution is victim-related, not defendant-related.

The very next sentence places a responsibility on the Department of Youth Services to develop a system to transfer the restitution "from the juvenile to the victim or owner of any property injured, destroyed, or stolen." Therefore, we submit that it is reasonable to interpret the statute as limiting restitution of five hundred dollars per victim rather than per juvenile. The use of the singular "victim" or "owner" leads to our interpretation in this matter. Admittedly, this interpretation is not free from doubt until resolved by the South Carolina Supreme Court or future legislation. Under our interpretation, the family court may make separate conditions of probation of restitution per victim up to five hundred dollars.

The remaining part of your inquiry concerns the restitution situation when there is more than one person or juvenile involved in the criminal event. A review of Section 20-7-1330 and Section 20-7-400 reveal that these provisions concern individual decrees for each child or juvenile. Therefore, the restitution limits discussed in the previous paragraph are related to each individual juvenile's case.

It conclusion, it is our opinion that the restitution limits established in Section 20-7-1330 in juvenile delinquency

cases are based upon individual decree of each juvenile for each victim. If you have any questions about these matters, please contact me.

Sincerely,

Donald J. Zelenka
Chief Deputy Attorney General

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APPROVED BY:

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