1978 WL 34925 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
June 2, 1978

***1** Mr. Michael Grant LeFever
Deputy Director
S. C. Department of Juvenile Placement And Aftercare
P. O. Box 5535
Columbia, S. C. 29250

Dear Mr. LeFever:
You have requested an opinion of this Office concerning the ability of the Board of Juvenile Placement And Aftercare to include restitution as a condition in a juvenile offender's conditional release agreement.

The pilot project you describe, which would provide for vocational training and employment of juvenile offenders and restitution to the victim, certainly sounds like a desirable project for the Board to undertake. It would appear that such a program would contribute to the primary goals of the Board, that is the rehabilitation and reformation of the juvenile offender. However, there appears to be no legal precedent for imposing restitution as a condition for release without specific legislative authorization. For many years, the courts have frowned upon the idea of imposing restitution on the juvenile offender because of the view that restitution was merely an attempt to determine and enforce civil liability on a juvenile and not wholly within the best interest of the child. Some courts even went so far as to say that restitution invites further delinquency and revolt against the authority of the court. In Re Trignani, 148 Pa.Super. 142, 24 A.2d 743; In Re Werner, 176 Pa.Super. 255, 106 A.2d 915. Only recently has the legal tide changed with the case of Durst v. United States, 55 L.Ed.2d 14, decided February 22, 1978, in which the United States Supreme Court held that restitution as a condition of probation is not inconsistent with the rehabilitative goals of the Federal Youth Corrections Act. Assuming that the effect of the Durst case is to provide restitution as a viable alternative in dealing with juvenile offenders, there still is no legal precedent for imposing restitution as a condition of parole without specific legislative authorization to do so. The Durst case dealt with the imposition of restitution as a condition of probation by the court, where there was a specific statutory provision for restitution. It remains unclear and uncertain how the courts will deal with a situation where restitution is imposed on a juvenile offender without legislative authorization.

While the question of restitution as a condition of parole has not been dealt with heretofore, this Office has held in a previous opinion that the Family Courts do not have the authority to impose restitution as a condition of probation under our present law. 1969-1970 Opinion, Attorney General No. 2836, p. 62. This opinion, while influenced by the courts' generally unfavorable attitude toward restitution, is primarily based on the fact that the Family Courts are inferior courts of limited jurisdiction and have only such jurisdiction and powers as are given them by statute. A similar argument may be made with regard to the Board of Juvenile Placement And Aftercare. Although the Board of Juvenile Placement And Aftercare is not a court of limited jurisdiction, it is a statutory agency with limited authority and therefore should be limited to specific statutory authority. The Board of Juvenile Placement And Aftercare presently has no specific authority to impose restitution as a condition of parole.

***2** Whether the extent of the general authority of the Board to place conditions and restrictions on a juvenile's release is broad enough to encompass the power to impose the condition of restitution is debatable. The Board of Juvenile Placement And Aftercare, as the paroling authority for juveniles in South Carolina, is charged with the responsibility of determining when a juvenile offender should be released and under what conditions and restrictions that release should be made. Section 24-15-360, Code of Laws of South Carolina, 1976. This is not unbridled discretion; it is tempered with the requirement that each action taken by the Board be in the best interest of the child and society. In addition to the

authority to grant releases, the Board also has the authority to place conditions and restrictions on the juvenile offender's release under the caveat that each child is placed in a proper environment and receives appropriate rehabilitative services. Sections 24-15-380, 24-15-330, Code of Laws of South Carolina, 1976. The Board under these provisions has the power to impose conditions and restrictions on the juvenile offender's release, but only those conditions and restrictions which are essential and necessary to assure that the juvenile offender will have a proper environment and appropriate rehabilitative services. In other words, those restrictions which the statute directly implies such as requirements that the juvenile not commit another crime, that he refrain from certain activities and certain individuals' company which could contribute to his delinquency, and that he refrain from certain undesirable habits, etc. It is doubtful that a court would find the condition of restitution directly implied from the Board's general statutory authority. However, it is conceivable in light of the Durst case and under certain circumstances where the imposition of restitution is not unduly harsh or restrictive and clearly not an attempt to enforce civil liability that the restriction might be sustained. The result, however, is too uncertain for prediction.

Regardless of whether restitution can be implied from the general authority of the Board, the argument may be advanced that the Board of Juvenile Placement And Aftercare as the paroling authority of the juvenile offender is in an analogous position with the Probation, Pardon, And Parole Board. This body under the auspices of its general statutory authority occasionally imposes restitution as a condition of parole. The Probation, Pardon And Parole Board like the Board of Juvenile Placement And Aftercare has no specific statutory authority to impose restitution as a condition of parole. If the Probation, Pardon And Parole Board exercises this authority through its general powers, the Board of Juvenile Placement And Aftercare should have the same authority available to it through its general authority to impose conditions and restrictions on the release of the juvenile offender. The logic of the argument is acceptable, but the premise upon which it is based, that is, that the Probation, Pardon And Parole Board has the authority to impose restitution, is probably unsupported by law. Assuming that the Probation, Pardon And Parole Board does not have the authority to impose restitution, the restriction can be justified under a simple contract theory. When an adult agrees to a condition which is later determined unconstitutional, the parole agreement can be declared void, parole revoked, and the defendant ordered to return to prison. The contract theory is not applicable in the juvenile setting where the law is clear that a juvenile does not have the capacity to bind himself by contract. Therefore, the result of a challenge to the imposition of restitution as a condition of parole without specific legislative authorization is uncertain.

***3** As revealed by the previous discussion, there is no obvious answer to your question. The arguments on either side appear to be equally as strong with neither side clearly outweighing the other. The present state of law being what it is, I am hesitant to advise the Board to proceed with making restitution a condition of parole at this time. It is the opinion of this Office, as well as my own personal opinion, that the best approach for the Board is to seek legislative authorization to impose restitution as a condition of parole before proceeding.
Very truly yours,

B. J. Willoughby
Staff Attorney

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