

**OPINION
76-153**

December 10, 1976 (OPINION)

Mr. Richard Gross

Executive Administrator

Crime Victims Reparations

Workmen's Compensation Bureau

Russel Building - Highway 83 North

Bismarck, ND 58505

Dear Mr. Gross:

This is in reply to your letter of December 2, 1976, in which you set forth the following facts and questions concerning the Crime Victims Reparations Act as enacted by the 1975 Legislature and codified as chapter 65-13 of the N.D.C.C., as amended. You state the following facts and questions:

"Enclosed is a statement of the current financial situation of the Crime Victims Reparations Fund.

Of the original \$100,000.00 amount appropriated to the Crime Victims Reparations Fund for the period up to July 1, 1977, \$48,111.14 has been expended on claims, administrative expenses, and other miscellaneous items. This leaves the Fund with a balance as of November 30 of \$51,886.86. (This figure may not be exact, as we do not always receive vouchers for supplies purchased during the month.)

The Crime Victims Reparations Fund has also been committed by the Board to pay claim numbers 65-13-102 and 65-13-138 up to the maximum award of \$25,000.00 each. Of this \$50,000.00 amount, \$10,117.02 has already been expended, leaving \$39,882.98 committed but not yet expended. At this time, the Board has no way of knowing how much of that committed amount will be expended. section 54-16-03 of the North Dakota Century Code states that no state board " . . . having the responsibility of disbursing or expending money appropriated by the state, shall expend, or agree to contract to expend in connection therewith any amount in excess of the sum appropriated therefore. . ." This section would seem to indicate that the committed amounts are not available to the Crime Victims Reparations Fund for any other purposes. Adding the committed but not yet expended amounts to what has actually been expended through November 30, yields the figure of \$87,994.92. This leaves an uncommitted balance of \$12,005.88 in the fund to cover claims and other expenses through June of 1977.

The only fixed administrative expenses for the Crime Victims

Reparations office which can be estimated is monthly salary. Salaries for the next seven months are estimated to total \$5,207.58, which leaves a total remaining of \$6,798.30.

In addition the Board has approved but not yet paid four claims which will total \$2,000.00 to \$2,500.00 when all the final bills are submitted. No specific amounts have yet been committed on these claims. However, assuming the total is \$2,500.00, the total remaining is \$4,298.30.

At what point must the Crime Victims Reparations Board discontinue expending funds for awards to victims? Must it continue to make awards from "committed" funds? May it do so? Can future claims be processed by the Board and, if so, to what point - that is, must the Board investigate claims even if no moneys are available to pay legitimate claims? Must the Board make awards contingent upon future appropriations? May it do so? Must the Board set aside funds for administration until June 30, 1977? If so, and this may be covered by previous questions, what will the "administration" consist of? May it set aside funds for administration?"

The Crime Victims Reparations Act was enacted as Chapter 587 of the 1975 Session Laws of North Dakota. Section 22 of that Act, which was not codified because it is an appropriations measure, provides:

"APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000.00, or so much thereof as may be necessary, to the workmen's compensation bureau for the purposes of carrying out the provisions of this Act for the biennium beginning July 1, 1975, and ending June 30, 1977."

We find nothing in the appropriation which would indicate it is not subject to the statutes governing legislative appropriations generally. Section 54-16-03 of the N.D.C.C. provides in part that "no state officer, or board, commissioners, directors, or other officers having the control or management of any public institution of the state, or any state activity or enterprise, or having the responsibility of disbursing or expending any money appropriated by the state, shall expend, or agree to contract to expend in connection therewith any amount in excess of the sum appropriated therefor" without the approval of the emergency commission under the provisions of chapter 54-16.

Because of this provision we do not believe the Board may make awards from funds that have been previously committed. We believe that the board may continue to process claims but the claimants must be notified that any award is necessarily predicated on future appropriations by the Legislature if it is determined there are no presently uncommitted funds available from which such awards may be paid.

Section 65-13-05 of the N.D.C.C. specifies the duties of the Board in administering the act. It includes the power and duty to appoint employees and agents as necessary and to prescribe their duties and compensation. Therefore we believe it is proper the Board use the

moneys appropriated by section 22 of Chapter 587 of the 1975 Session Laws for that purpose. Because the appropriation is a "lump sum" appropriation (which is not uncommon for the first appropriation for a new act) it becomes a matter for the discretion of the Board as to the amount to be used for administration and the amount to be used to pay claims. Only if the Board had abused that discretion would there be any question as to its authority to allot a certain amount of the appropriation to administrative purposes. We assume that any future appropriations for the purposes of carrying out the Act will be in the normal form, i.e., so much for salaries and wages, so much for fees and services, etc.

It appears obvious that the processing of claims requires administration and administrative expense. To conclude that the Board could continue to process claims without incurring administrative expense would be illogical. To pay for the administration of the Act from a source other than the appropriation would not be proper. Therefore we believe the Board must set aside funds for administration, the sum to be established within reasonable limitations by exercise of the sound discretion of the Board.

In summary, we would conclude that the Board may not commit funds beyond that amount appropriated by the Legislature. We further conclude that if the entire appropriation has been committed and the board has provided for the continued administration of the Act the Board should continue to investigate claims and may make awards qualified by the provision that no such awards can be paid until and unless the Legislature appropriates additional moneys therefore. In this latter matter the Board may wish to consider requesting the forthcoming Legislative Assembly for a deficiency appropriation, an emergency appropriation to take effect immediately, or both.

I trust this will adequately set forth our position on the questions presented.

Sincerely,

GERALD W. VANDEWALLE

Chief Deputy

Attorney General