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December 13, 1988

Ms. Patricia V. Gilbert, Chairman
Arizona Board of Pardons and Paroles
1645 West Jefferson, Suite 326
Phoenix, Arizona 85007

Re: 188-128 (R86-022)

Dear Ms. Gilbert:

Your predecessor asked two questions concerning the obligation of a paroled inmate to pay (1) restitution to the victim of his crime and (2) parole supervision fees to the Arizona criminal justice commission. First, may those obligations be enforced in a civil suit as debts of the parolee? Second, if they can be civilly enforced, is the Arizona Board of Pardons and Paroles (the "Board") or another state agency the proper party to bring the suit? We believe that these obligations may be enforced in a civil suit but only after the parolee has completed his period of parole; before that time, the only penalties for nonpayment are parole revocation or citation for contempt. We also believe that the Board is not the proper party to seek enforcement of these obligations. The restitution obligation may be enforced only by the crime victim, including the state, and the supervision fees may be enforced only by the attorney for the state, i.e., the prosecutor of the criminal trial, or the Attorney General pursuant to his authority to collect debts owed to the state.

The relevant statutory provisions are A.R.S. §§ 13-805, 13-806, and 13-810. A.R.S. § 13-805 states:

A. The trial court shall retain jurisdiction of the case for purposes of modifying the manner in which court-ordered payments are made until paid in full, or until the defendant's sentence expires. At the time the defendant completes his period of probation or his sentence, the court shall enter both:

1. Judgment in favor of the state for the unpaid balance, if any, of any fines, costs, fees, surcharges or assessments imposed.

2. Judgment in favor of each person entitled to restitution for the unpaid balance of any restitution ordered.

B. The judgment may be enforced and renewed as any civil judgment.

(Emphasis added.) The pertinent parts of A.R.S. § 13-806 provide:

A. The state or any person entitled to restitution pursuant to a court order may file in accordance with this section a restitution lien

. . . .

C. A restitution lien may be filed by:

1. A prosecutor in a criminal proceeding in which there was an economic loss after the filing of an information or indictment

2. A victim in a criminal proceeding after restitution is determined and ordered by the trial court following pronouncement of the judgment and sentence.

. . . .

G. This section does not limit the right of the state or any other person entitled to restitution to obtain any order or injunction, receivership, writ, attachment, garnishment or other remedy authorized by law.

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The apposite portions of A.R.S. § 13-810 state:

A. If a defendant sentenced to pay . . . restitution defaults in the payment of . . . restitution or any installment, the clerk of the court imposing the . . . restitution shall notify the prosecutor, the sentencing court and any person entitled to restitution pursuant to a court order. The court on motion of the prosecuting attorney, petition of any person entitled to restitution pursuant to a court order or on its own motion may require the defendant to show cause why the defendant's default should not be treated as contempt

. . . .

B. Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or an intentional refusal on his part to make a good faith effort to obtain monies required for the payment, the court shall find that the default constitutes contempt and may order the defendant incarcerated in the county jail until the . . . restitution, or a specified part of the . . . restitution, is paid or revoke the defendant's probation or parole

(Emphasis added.)

The answer to your first question, whether restitution and parole supervision fee obligations may be civilly enforced, depends on when the obligations are sought to be enforced. Before the parolee completes the period of his parole, the obligations may not be enforced civilly. The remedy for failure to pay restitution, including the restitution ordered as a part of the work-furlough program pursuant to A.R.S. § 31-233(D), is for the court to revoke the parolee's parole or to cite him for contempt of court. A.R.S. § 13-810(B). The prosecutor at the defendant's criminal trial, the crime victim, or the court on its own motion may begin proceedings to do so. A.R.S. § 13-810(A). For failure to pay parole supervision fees, the sole remedy of the Board is to revoke the parolee's parole, because payment of the fees is only a condition of parole and not part of a court judgment. See A.R.S. §§ 31-411(D), 31-415.

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However, after the parolee has completed his period of probation or sentence, both obligations may be enforced civilly pursuant to A.R.S. § 13-805(A). That section provides that at the end of an inmate's period of probation or sentence the court shall enter a judgment (1) for the state in the amount of any unpaid fees or costs and (2) for the crime victim in the amount of any unpaid restitution ordered by the court. These judgments may be enforced like any other civil judgment. A.R.S. § 13-805(B).

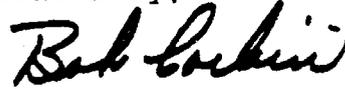
The fact that these judgments are civilly enforceable after the inmate's parole ends leads to your second question: Is the Board, or another state agency, the proper party to seek their enforcement? The Board is an administrative agency created by statute. A.R.S. § 13-401. As such its powers are limited to those granted in the statute. Corella v. Superior Court, 144 Ariz. 418, 420, 698 P.2d 213 (App. 1985). The Board's only statutory authority is to make the payment of restitution a condition of parole. A.R.S. § 13-412(C), and to revoke parole if the condition is not fulfilled. A.R.S. § 31-415; Thomas v. Arizona State Board of Pardons and Paroles, 115 Ariz. 128, 130, 564 P.2d 79, 81 (1977). Even this limited authority ends when the parolee has completed the term of his parole. Ariz. Atty. Gen. Op. 184-021. As for the Board's authority to enforce the parole supervision fees, the statute is silent, except to permit it to revoke an parolee's parole for nonpayment. See A.R.S. § 31-415. We therefore believe the Board has no authority to enforce either of these judgments in a civil proceeding.

However, we also believe that other parties may enforce them. The restitution judgment, for the unpaid balance of the judgment, may be enforced by the crime victim because the judgment is in his favor. A.R.S. § 12-1551(A). He may execute that judgment by filing a "restitution lien" against the parolee's property. A.R.S. § 13-806(C)(1). The lien may also be filed by the prosecutor. A.R.S. § 13-806(C)(2). The judgment for the unpaid parole supervision fees may be enforced by the state because the judgment is in its favor. A.R.S. § 12-1551(A). The Attorney General is authorized to initiate proceedings to collect debts owed to the State. A.R.S. § 41-191.04. Both these judgments may only be enforced after the parolee has completed his probation period or his sentence. A.R.S. § 13-805(A).

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We have concluded that the obligations of the parolee to pay restitution and the parole supervision fees are enforceable in a civil proceeding, but only after the parolee has completed his period of probation or sentence. Before his probation period ends, the only remedies are to revoke the parolee's parole or to cite him for contempt if he fails to pay the restitution obligation, and to revoke his parole if he fails to pay the supervision fee obligation. We have also concluded that the Board has no statutory authority to civilly enforce the obligations; only the victim including the state, in the case of the restitution obligation, and the state in the case of the supervision fee obligation, may enforce them.

Sincerely,



BOB CORBIN
Attorney General

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