

District Attorney of Kenosha County



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September 28, 2011

Hon. J.B. Van Hollen
Attorney General
Post Office Box 7857
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Dear Attorney General Van Hollen:

This is a request for your formal opinion concerning the authority of circuit courts to order restitution upon a conviction for issuing a worthless check in violation of a county ordinance in conformity with Wis. Stat. §943.24.

Generally, counties have broad authority to punish by forfeiture conduct which parallels many criminal statutes, including issuance of a worthless check, so long as the ordinance parallels the applicable state statute. See Wis. Stat. §59.54(22). Kenosha County has an ordinance adopting Wis. Stat. §943.24 prohibiting the issuance of a worthless check under \$500.¹

Wis. Stat. §943.24(5)(b) provides: "In actions concerning violations of ordinances in conformity with this section, a judge may order a violator to make restitution under s. 800.093." This presents issues in the situation where the issuance of the worthless check was prosecuted under a county ordinance.

The first problem is that Wis. Stat. §800.093 is within the chapter pertaining to municipal court procedure. As such would it apply to a county ordinance adjudicated in a circuit court? Wis. Stat. §943.24(5)(b) appears to authorize restitution for a county ordinance bad check violation "under s. 800.093." But, as noted, Wis. Stat. §800.093 is in the chapter pertaining to municipal court procedure, not circuit court procedure.

Further, the language of Wis. Stat. §800.093 itself raises questions concerning its applicability to issuance of a worthless check. In pertinent part:

¹ §943.24 ISSUANCE OF WORTHLESS CHECK

The provisions of Wisconsin Statutes Section 943.24 and any subsequent amendments are adopted except that the penalty upon conviction is a forfeiture not less than \$100 and not to exceed \$2,000 and this section does not apply if the amount of the check or checks exceeds \$500.

800.093 Restitution.

(1) The court, in addition to ordering any payment authorized by law, may order a defendant to make full or partial restitution under this section to any victim or, if the victim is deceased, to his or her estate if the court finds all of the following:

(a) The defendant is guilty of violating a nontraffic ordinance or an ordinance authorizing restitution under s. 346.65(2r).

(b) The violation resulted in damage to the property of or physical injury to a person other than the defendant.

(2) Restitution ordered under this section is enforceable in a civil action by the victim named in the order to receive restitution. A court may not order a defendant to pay more than the amount specified in s. 799.01(1)(d) in restitution under this section.

According to the above, the statutory authorization for restitution in an ordinance bad check case points to a municipal court procedure that requires as a predicate to a restitution order that the defendant both be convicted of violating the ordinance and that the violation "resulted in damage to the property" of another. In the case of a worthless check there has been an economic loss, to be sure, but not as a result of damage to property.

We are looking toward expanding the use of diversion of bad check cases from the criminal justice system but the confusion over the authority of a circuit court to order restitution following a conviction for violating the county's bad check ordinance inhibits our ability to do so. If, in fact, the conflict suggested above exists and cannot be reconciled, then we may need to seek corrective legislation to carry out the apparent intent of the legislature. I await your opinion and direction.

Sincerely,



Robert D. Zapf
District Attorney

cc: Richard Alan Ginkowski. Assistant District Attorney