



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

**J.B. VAN HOLLEN
ATTORNEY GENERAL**

**Kevin M. St. John
Deputy Attorney General**

**Steven P. Means
Executive Assistant**

**114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857
608/266-1221
TTY 1-800-947-3529**

October 11, 2012

OAG-03-12

Mr. Robert D. Zapf
District Attorney
Kenosha County
912 56th Street
Kenosha, WI 53140

Dear Mr. Zapf:

¶ 1. You indicate that your office would like to prosecute certain worthless check offenses as civil county ordinance violations rather than as criminal cases if restitution can be obtained. Wisconsin Stat. § 59.54(22) authorizes county boards to enact ordinances imposing civil forfeitures for conduct that is the same or similar to that prohibited by Wis. Stat. chs. 941 to 948. Pursuant to Wis. Stat. § 59.54(22), your county has enacted an ordinance that is in conformity with Wis. Stat. § 943.24(5)(b), the criminal statute prohibiting the issuance of worthless checks. Wisconsin Stat. § 59.54(22) is silent on whether circuit courts may award restitution for violations of county ordinances enacted under that statute.

QUESTION PRESENTED AND BRIEF ANSWER

¶ 2. You ask whether a circuit court can award restitution in a civil forfeiture proceeding if the court determines that the defendant violated a county ordinance that is in conformity with Wis. Stat. § 943.24(5)(b).

¶ 3. In my opinion, a circuit court can award restitution of up to \$10,000 in such a proceeding.

ANALYSIS

¶ 4. Wisconsin Stat. § 943.24(5)(b) provides in part: “In actions concerning violations of ordinances in conformity with this section, a judge may order a violator to make restitution under s. 800.093.” You express two concerns about the applicability of Wis. Stat. § 943.24(5)(b) to civil prosecutions for violation of your county’s worthless check ordinance. First, you note that Wis. Stat. § 800.93(1) refers only to municipal court, while county ordinance violation cases are heard in circuit court. Second, you are concerned that the victim in a worthless check case may not incur “damage to the property” within the meaning of Wis. Stat. § 800.093(1)(b).

¶ 5. Your first concern is that a circuit court is not a “municipal court” within the meaning of Wis. Stat. § 800.093(1). Wisconsin Stat. § 943.24 provides the statutory authority for a circuit court judge to order restitution in cases concerning violations of ordinances in conformity with that provision. That statute authorizes any “judge” to award restitution, using the *procedure* set forth in Wis. Stat. § 800.093. The statute does not define “judge,” but the general statutory definition of “judge” includes a circuit judge. Wis. Stat. § 990.01(17m). Thus, although Wis. Stat. § 943.24 references the procedures spelled out in Wis. Stat. § 800.093, which discusses municipal courts, the authority it confers on any “judge” continues to apply. A circuit court judge may impose restitution under Wis. Stat. § 943.24, utilizing the procedures provided for by Wis. Stat. § 800.093.

¶ 6. Wisconsin Stat. § 66.0114(1)(c) supports this conclusion. Wisconsin Stat. § 66.0114(1) authorizes a court to impose restitution under Wis. Stat. § 800.093 in a forfeiture action based on a violation of an ordinance. While the provision does not explicitly state that it includes actions based on a violation of a county ordinance, Wis. Stat. § 799.01(1)(b) provides that any “different procedure” prescribed in Wis. Stat. ch. 66 “shall apply equally to the state, a county or a municipality regardless of any limitation contained therein.” The restitution procedures set forth in Wis. Stat. ch. 66 therefore apply to forfeiture actions based on a violation of a county ordinance. *See* 77 Op. Att’y Gen. 270, 271 (1988).

¶ 7. Your second concern is that Wis. Stat. § 800.093(1)(b) uses the phrase “damage to the property of . . . a person other than the defendant,” which might not include loss of property like that incurred by the victim of a worthless check. While Wis. Stat. § 800.093(1)(b) does not use the term “loss,” subsections (3) and (5) of Wis. Stat. § 800.093 do. Wisconsin Stat. § 800.093(3) provides for specific forms of restitution “[i]f the violation resulted in damage to or loss . . . of property[.]” Wisconsin Stat. § 800.093(3)(a) permits the court to require the defendant to “[r]eturn the property to the owner or the owner’s designee.” Wisconsin Stat. § 800.093(5)(a) permits the court to award special damages, including “the money equivalent of loss resulting from property taken[.]” These provisions spell out the calculation of the restitution and nature of the remedy for property loss. If property loss were not among the types of damage compensable through restitution under Wis. Stat. § 800.093, there would be no need for these specific provisions. By providing criteria and procedures for compensating property loss, subsections (3) and (5) give meaning to “damage to property” in Wis. Stat. § 800.093(1)(b).

¶ 8. In addition, much of the language in Wis. Stat. § 800.093 mirrors language in Wis. Stat. § 973.20, the criminal restitution statute. The criminal restitution statute allows compensation for property loss. Wisconsin Stat. § 973.20(2), which provides that restitution is available “[i]f a crime considered at sentencing resulted in damage to or loss or destruction of property . . .,” is identical to language in Wis. Stat. § 800.093(3). Both Wis. Stat. § 800.093(5)(a) and Wis. Stat. § 973.20(5)(a) permit a court to award restitution in the form of “special damages.” The scope of restitution available under Wis. Stat. § 800.093 thus is the

same as the scope of restitution available under parallel restitution provisions for criminal cases under Wis. Stat. § 973.20.

¶ 9. Under the criminal restitution statute, “special damages” represent the victim’s readily ascertainable pecuniary losses that could be recovered in a civil action against the person that committed the crime. *See State v. Johnson*, 2005 WI App 201, ¶ 12, 287 Wis. 2d 381, 704 N.W.2d 625. The purpose of the criminal restitution statute is to return the crime victim to the position that he was in before the defendant caused the injury. *Johnson*, 287 Wis. 2d 381, ¶ 14. The phrase “special damages” in the criminal restitution statute is broadly and liberally construed to allow the victim to recover the losses caused by the criminal conduct. *Johnson*, 287 Wis. 2d 381, ¶ 14. The phrase “special damages” in Wis. Stat. § 800.093(5)(a) must similarly be liberally construed to permit the court to return the victim to the position that he was in before the ordinance violation occurred.

¶ 10. Wisconsin Stat. § 800.093 provides for restitution for the loss of property. A circuit court therefore can award restitution for the loss of property in a worthless check case in civil forfeiture cases in which the defendant violated a county ordinance in conformity with Wis. Stat. § 943.24(5)(b).

¶ 11. Finally, the Legislature has capped the amount of restitution that can be awarded in municipal ordinance forfeiture proceedings. Wisconsin Stat. § 800.093(2) provides in part: “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.” *See also* Wis. Stat. § 800.093(4)(intro.) and (5)(intro.). The dollar limit contained in Wis. Stat. § 799.01(1)(d), as amended by 2011 Wisconsin Act 32, sec. 3484n, is \$10,000. A circuit court therefore can award restitution of up to \$10,000 in a civil forfeiture action.

CONCLUSION

¶ 12. I conclude that a circuit court can award restitution of up to \$10,000 in a civil forfeiture proceeding if the court determines that the defendant violated a county ordinance that is in conformity with Wis. Stat. § 943.24(5)(b).

Sincerely,

J.B. VAN HOLLEN
Attorney General