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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

June 15, 2004

The Honorable Debora A. Faulkner
Probate Judge, Greenville County
1200 Greenville County Square
301 University Ridge
Greenville, South Carolina 29601-3659

Dear Judge Faulkner:

You have requested an opinion concerning "whether or not a person's Social Security number or alien identification number is a prerequisite to the issuance of a marriage license under § 20-1-220, Code of Laws of South Carolina, 1976, as amended." By way of background, you state the following:

> [t]he second sentence of ... [§ 20-1-220] reads as follows:
>
> > The application must be signed by both of the contracting parties and shall contain the same information as required for the issuing of the license including the social security numbers or the alien identification numbers assigned to resident aliens who do not have social security numbers, of the contracting parties. (Emphasis added).

We are aware of at least two different interpretations of the requirement for a Social Security number or alien identification number. One interpretation is that those numbers are required only if a party has already been assigned those numbers. This is more of a requirement to report these on the application. The other interpretation is that no license may be issued unless each of the parties has either a Social Security number or an alien identification number. If they do not have this number and cannot obtain them, then no marriage license can be issued under this statute.

We believe that the first interpretation is more consistent with the state's interest in promoting marriage. It is the second interpretation, which is creating tremendous difficulties for us. We have a number of requests for marriage licenses from individuals who are legally in this country but are not able to obtain either a Social Security number or an alien identification number because of their immigration status. For example, an alien entering the United States with a

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"marriage visa" (which we understand is designed to permit him or her to come to this country for the purpose of getting married to a resident) is not eligible to obtain either a Social Security number or an alien identification number until after the marriage has been performed. Additionally, we have tourists who have come to this country for short visits who wish to be married here.

As to the question of undocumented individuals, I.N.S. tells us that the only way for them to adjust their status, i.e. to become legal, is to marry a U.S. citizen. When they attempt to marry, they cannot obtain a license because of the above state law under the second interpretation of the state statute. Undocumented or "illegal" residents are not entitled to a SSN, and they can't get a resident alien number unless they are married. So they are caught between I.N.S. rules and state law.

It is our understanding that the provisions for including the social security numbers (1997 Act No. 71, § 4, eff. June 10, 1997) and for including the alien identification numbers (1999 Act No. 100, Part II, § 105, eff. June 30, 1999) of the contracting parties were enacted as part of an effort to track "dead beat dads" and were not intended to bar aliens from being married in this country.

Law / Analysis

S.C. Code Ann. Section 20-1-220 provides as follows:

[n]o marriage license may be issued unless a written application has been filed with the probate judge ... at least twenty-four hours before the issuance of the license. The application must be signed by both the contracting parties and shall contain the same information as required for the issuing of the license including the social security numbers, or the alien identification numbers assigned to resident aliens who do not have social security numbers, of the contracting parties. The license issued, in addition to other things required, must show the hour and date of the filing of the application and the hour and date of the issuance of the license. The application must be kept by the probate judge or clerk of court as a permanent record in the office. A probate judge or clerk of court issuing a license contrary to the provisions, upon conviction must be fined not more than one hundred dollars or not less than twenty-five dollars, or imprisoned for not more than thirty days or not less than ten days.

(emphasis added).

A number of principles of statutory construction are relevant to your inquiry. First and foremost, it is a cardinal rule of statutory construction that the primary purpose in interpreting statutes is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statute must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers. Caughman v. Columbia Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). Words must be given their plain and ordinary meaning without resort to subtle

or forced construction to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1990).

Moreover, our Supreme Court has cautioned against an overly literal interpretation of a statute which may not be consistent with legislative intent. In Greenville Baseball, Inc. v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942), the Court recognized that

> [i]t is a familiar canon of construction that a thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter. It is an old and well established rule that the words ought to be subservient to the intent and not the intent to the words. Id. at 368-369.

In addition, a statute will be construed to avoid an absurd result. Any statute must be interpreted with common sense to avoid unreasonable consequences. United States v. Rippetoe, 178 S.C. 735 (4th Cir. 1949). A sensible construction, rather than one which leads to irrational results, is always warranted. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964).

Finally, our Supreme Court has consistently concluded that statutes must be interpreted to avoid potential constitutional problems. See e.g., State v. Peake, 353 S.C. 499, 579 S.E.2d 297 (2002) [statute purporting to give DHEC the authority to determine whether to pursue prosecution "would cause it to run afoul of S.C. Const. art. V, § 24 [which] ... vests sole discretion to prosecute matters in the hands of the Attorney General ..."; therefore, the Court construed the statute "to give DHEC authority over civil prosecutions"]. 579 S.E.2d at 300. As the Court stated in Davis v. Co. of Grvlle., 322 S.C. 73, 77, 470 S.E.2d 94, 96 (1996), "[a]ll statutes are presumed constitutional and will, if possible be construed so as to render them valid." In Thompson v. Hofmann, 263 S.C. 314, 319, 210 S.E.2d 461, 463 (1974), the Court observed that "[i]t is ... axiomatic that a statute will, if possible, be construed in a manner conforming to constitutional limitations."

A number of authorities elsewhere have construed a controlling statute as not precluding the issuance of a marriage license to an alien who does not have and cannot obtain a Social Security number. For example, in Vasquez v. Kutscher, 93 Ohio St.3d 1462, 756 N.E.2d 1237 (2001), the Ohio Supreme Court answered the question certified to it by the United States District Court for the Northern District of Ohio, Western Division – i.e. whether the pertinent Ohio statutes require Social Security numbers from marriage license applicants who do not have a Social Security number – in the negative. This answer by the Court avoided the question of whether the statute as written or as applied violated the Ohio Constitution's Equal Protection or Due Process Clauses.

Similarly, the Ohio Court of Appeals reached a similar conclusion in a separate case. In State ex rel. Ten Residents v. Belskis, 755 N.E.2d 443 (Ohio 2001), the Court reasoned that the Ohio Legislature did not intend to deny the right to marry if the person possessed no Social Security number. In the Court's view,

> [u]nder the circumstances, we do not believe that the Ohio legislature intended to make the information requested in R.C. 3101-05 for the license

> application into legal requirements for a marriage license being issued. If the information requested in RC 3101-05 were all legal requirements for the issuing of a marriage license, then no Ohio citizen could marry a citizen of another country and have the marriage performed in Ohio because the foreign citizen would have no SSN. No homeless person could be married because that person had no residence. No person without an occupation could be married. No person who did not know his or her own age could be married. No one who did not know her or his father's name could be married. No person who was unaware of the place of his or her birth could be married.

755 N.E.2d at 445. In the Court's view, "... the recent change in R.C. 3101-05 [marriage license application requiring Social Security number] places SSN's on the same plane as residence, occupation, parental name and other similar information." Id. at 446.

In addition, several opinions of various Attorneys General have reached the same conclusion. See, Fla. AGO 99-71 (November 9, 1999); Tenn. Op. Atty. Gen., Op. No. 98-005 (January 9, 1998); N.D. Atty. Gen., Op. No. F-10 (September 27, 2002); Op. N.C. Atty. Gen., August 14, 1998; Op. Va. Atty. Gen., February 26, 1999.

The North Carolina Attorney General's opinion recognized that aliens could obtain a Social Security number only in certain limited circumstances. In the view of that Office,

> [t]he General Assembly amended § 51-8 to comply with federal law requiring stricter and more efficient means of enforcement of child support laws. See, 42 U.S.C. § 666(a)(13) A, which requires that the social security number of "any applicant for a professional license, driver's license, occupational license, recreational license, or marriage license be recorded on the application." Obviously, where a citizen or national of the United States marries, has children, and fails to lawfully provide support, if the defaulting parent is a wage earner, he or she is required to have a social security number and can be more readily located through access to the social security number.
>
> As earlier noted, aliens may not lawfully receive a social security number unless admitted "for permanent residence or under other authority of law permitting them to engage in employment in the United States ...." 42 U.S.C. § 405(c)(2)(B)(i)(I) and 20 C.F.R. § 422.104 and 422.107 To reach § 51-8 in such a way that would deny an alien a marriage license because he cannot provide a social security number which he may not legally obtain would make a mockery of the law. Certainly, this was not the intent of Congress or the General Assembly.

The North Dakota Attorney General found that the "purpose of requiring social security numbers on marriage license applications was to give the state the ability to track absent parents and to insure that enforcement activities are focused on the right person. In addition, the Attorney General of North Dakota referenced decisions of the United States Supreme Court which concluded

that the right to marry is one "'of fundamental importance for all individuals.'" [Quoting Zablocki v. Redhail, 434 U.S. 374, 384 (1978)]. Thus, that legal officer concluded:

> [s]tatutes are construed to avoid constitutional conflicts. McCabe v. N.D. Workers Corp. Bureau, 567 N.W.2d 201, 204 (N.D. 1997). "If a statute may be construed in two ways, one that renders it of doubtful constitutionality and one that does not, we adopt the construction that avoids constitutional conflict." Ash v. Traynor, 579 N.W.2d 180, 182 (N.D. 1998). Interpreting N.D.C.C. § 14-03-17(4) as requiring an applicant for a marriage license to first obtain a social security number before being issued that license would risk imposing an unconstitutional barrier on the fundamental right of marriage. That interpretation would also be inconsistent with the legislative purpose of the enactment and contrary to its administrative construction. Therefore, it is my opinion that the requirement in N.D.C.C. § 14-03-17(4) that an applicant for a marriage license provide his or her social security number does not apply to applicants who do not have a social security number.

Likewise, the Tennessee Attorney General concluded that any construction of the Tennessee law making the inclusion of a Social Security number a condition precedent for the issuance of a marriage license is constitutionally suspect. Not only did the Tennessee Attorney General believe that such an interpretation infringed upon the fundamental right to marriage, but that officer referenced a decision of the United States Supreme Court which had concluded that the Religion Clauses of the First Amendment precluded the government's requiring Amish employers to participate in the Social Security system. See, United States v. Lee, 455 U.S. 252 (1982). Thus, the Tennessee Attorney General concluded:

> [w]hile, on its face, Tenn. Code Ann. § 36-3-104(a) (1997) applies to all applicants, it is likely that a reviewing court would apply narrow exceptions to prevent unconstitutional interference with the fundamental right to marry of persons legitimately unable to obtain a social security number and members of religious groups exempted from participation in the social security program. Administrative interpretations of the Federal law requiring the use of social security numbers on license applications, Pub. L. No. 105-33, § 5536, 111 Stat. 629, amending 42 U.S.C. § 666(a) (13) (Supp. 1997), are expected to recognize similar exceptions. In all other circumstances, however, all applicants for marriage licenses must provide a social security number to obtain a marriage license.

Moreover, the Virginia Attorney General similarly reasoned:

> If an applicant refuses to provide a social security or control number, the clerk shall not issue a marriage license, because the applicant has not complied with the requirements of § 32-1-267(B).
>
> This does not mean, however, that an applicant who does not have either a social security number or a Department of Motor Vehicles control number may not

> be issued a marriage license. In my opinion, the requirement in § 32.1-267(B) that applicants for marriage licenses "include their social security numbers or other control numbers issued by the Department" means that they are to furnish such numbers as they may have. The apparent purpose of the statute is to bring Virginia law into compliance with the federal mandate that states enact laws requiring recordation of applicants' social security numbers on marriage license applications. ... Section 32.1-267(B) does not deny the right of marriage to those who have no such numbers, nor does the statute contemplate that applicants must obtain such a number before applying for a marriage license.

We have previously concluded that in certain instances a marriage license may not be denied based upon criteria which would interfere with an individual's constitutional rights. For example, in an opinion dated June 16, 1980, we clarified a previous opinion (Op. No. 80-43, April 25, 1980) regarding the issue of whether adoptive siblings who did not grow up together in the same household, and who never lived together in the same household, could be issued a marriage license. The statute at issue in the 1980 opinion, Section 20-1-10, prohibits a marriage between an adoptive brother and his sister. Citing Zablocki v. Redhail, supra, as well as other cases dealing with the federal right to privacy, we noted in that earlier opinion that "the constitutional application of § 20-1-10 probably depends upon whether in a particular situation the adoptive sibling has been part of the family household for any period of time or whether instead he or she was adopted after other siblings left the household." Upon subsequently learning that the siblings were not reared in the same household, we concluded that "... application of § 20-1-10 ... to prohibit a marriage under the stated facts would controvert the Constitution. Accordingly, if the Probate Court is satisfied that the facts are as above stated, ... § 20-1-10 should not prevent the issuance of a marriage license."

Moreover, in an opinion dated May 3, 1972, former Attorney General Daniel R. McLeod advised that "... any statutes or constitutional provisions of South Carolina prohibiting intermarriage between races are violative of the Constitution of the United States and should not be enforced." Thus, Mr. McLeod concluded that "[m]arriage licenses may, therefore, be issued without regard to the race of the applicants." He further noted that "... aliens who are applicants for marriage in South Carolina may be issued marriage licenses upon the same basis as applicants therefore who are citizens of this State or of the United States." See also, Op. S.C. Atty. Gen., July 28, 1971.

The United States Supreme Court has emphasized that even undocumented aliens are "persons" for purposes of the federal Constitution. See, Plyler v. Doe, 457 U.S. 202 (1982). As the Court emphasized in Plyler,

> [w]hatever his status under the immigration laws, an alien is surely a "person" in any ordinary sense of that term. Aliens, even aliens whose presence in this country is unlawful, have long been recognized as "persons" guaranteed due process of law by the Fifth and Fourteenth Amendments. Shaughnessy v. Mezei, 345 U.S. 206, 212, 73 S.Ct. 625, 629, 97 L.Ed.2d 956 (1953); Wong Wing v. United States, 163 U.S. 228, 238, 16 S.Ct. 977, 981, 41 L.Ed. 140 (1896); Yick Wo v. Hopkins, 118 U.S. 356, 369, 6 S.Ct. 1064, 1074, 30 L.Ed. 220 (1886). Indeed we have clearly held the

> Fifth Amendment protects aliens whose presence in this country is unlawful from invidious discrimination by the Federal Government. Matthews v. Diaz, 426 U.S. 67, 77, 96 S.Ct. 1883, 1890, 48 L.Ed.2d 478 (1976) ... .

457 U.S. at 210.

You have advised that you have received "a number of requests for marriage licenses from individuals who are legally in this country but are not able to obtain either a Social Security number or an alien identification number because of their immigration status." You provide as examples persons who are provided a "marriage" visa "to come to this country for the purpose of marrying a resident. You also note that "we have tourists who have come to this country for short visits who wish to be married here." In addition, you indicate that undocumented aliens who wish to change their status through marriage, cannot obtain a resident alien number unless they are married. Yet they cannot be married because they have no alien identification number ("green card").

The foregoing authorities, discussed above, agree that the marriage license should be issued in instances in which the individual cannot obtain a Social Security number. These authorities base this conclusion in large part upon the fact that the right to marry is a fundamental right under the federal Constitution. In addition, these authorities have concluded that the requirement of a Social Security number was intended as a tool for child support enforcement, not a condition precedent for obtaining a marriage license.

It is true that in none of the published decisions and Attorney General opinions, cited above, did the particular law relating to marriage licenses provide the alternative of use of the alien identification number to obtain a marriage license. As we understand it, the alien identification number is the number assigned to the resident alien identification card (green card). See U.S.C.A. § 1304.

However, the same reasoning provided in the above-referenced cases and opinions of various Attorneys General relating to situations in which aliens cannot obtain a Social Security number would, in our opinion, be equally applicable in circumstances in which the alien cannot obtain an alien identification number. As noted above, the United States Supreme Court has held that the Fourteenth Amendment of the Constitution applies for the "protection to all within the boundaries of a State ... ." Plyler v. Doe, supra, 457 U.S. at 212. Such includes even "... aliens unlawfully present ...." Id.

The North Carolina Attorney General provided the following advice in a similar situation:

> [i]n conclusion, where the register of deeds is satisfied that the applicant is an alien who has not come to the United States for the purpose of establishing a permanent residence or for the purpose of engaging in employment, and who otherwise meets the lawful requirements for a marriage license, the register of deeds should issue the licence. We suggest that the applicant provide the register of deeds with proof of citizenship of a foreign country and a sworn affidavit setting forth the necessary facts

whereby the Register is satisfied that the individual would be ineligible to receive a social security number, i.e., that the applicant is a citizen of a foreign country, is not a citizen or national of the United States, and that the purpose for being in the United States is neither to establish a permanent residence nor to engage in employment, but to get married.

Conclusion

Based upon the foregoing authorities, it is our opinion that a court would likely attempt to construe § 20-1-220 in a constitutional manner, and thus would choose the interpretation which does not deny a marriage license on the basis of an alien's inability to obtain either a Social Security number or an alien identification number. The requirements of a Social Security number and alien identification number were included in the statute as part of the state and federal government's ongoing efforts relating to child support enforcement. In our opinion, the General Assembly did not intend that these requirements would serve as a basis for denial of a marriage license in these instances in which an alien is unable to obtain either an SSN or an alien identification number. Further, it is the policy of the State of South Carolina to preserve and protect the institution of marriage in its traditional sense. Accordingly, it is our advice that in those situations in which all other requirements for a marriage license are met, and the Probate Judge is satisfied that the alien applicant is unable to obtain a Social Security number or alien identification number, the marriage license should be granted.[1]

Of course, our opinion herein is advisory only. Either a court ruling or legislative amendment would be necessary to assure the conclusions expressed herein. Accordingly, we suggest a declaratory judgment or legislative clarification in order to provide certainty with respect to your question. In lieu of such clarification, however, and in view of the sanctity of marriage, the fact that marriage is a fundamental, constitutionally protected right, as well as the legislative purpose underlying § 20-1-220's requirement of a Social Security number or an alien identification number, it is our opinion that the General Assembly did not intend that in those cases in which the alien is unable to obtain either number, such individual could be denied a marriage license as a result thereof.

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

RDC/an

[1] Certainly, in all other circumstances – other than in those instances where the alien is ineligible for a Social Security number or alien identification number – the requirements of § 20-1-220 should be followed.