

March 27, 2008

The Honorable Bill Sandifer
Member, South Carolina House of Representatives
District #2 – Oconee and Pickens Counties
522-B Blatt Building
Columbia, South Carolina 29201

Dear Representative Sandifer:

In your letter of March 27th to this office, you referenced the provisions of S. C. Code annotated Section 56-1-85 which provides that “[t]he State shall not participate in the implementation of the federal REAL ID Act.” In our opinion dated March 24, 2008, we addressed the question of whether this statute would prohibit the state government from seeking an extension of the deadline for implementation of the REAL ID Act. You have asked whether this statute would prohibit private industry from requesting an exemption from implementation of the REAL ID Act as it relates to their security clearance practices.

In the opinion of this office, Section 56-1-85 speaks only to the State of South Carolina as a corporate State and does not apply to or cover private industry. Therefore, a private industry would not be prohibited from seeking an exemption from implementation of the REAL ID Act as it relates to their security clearance practices, including the use of their own identification documents. Of course, the Department of Homeland Security has broad discretion to administer the federal REAL ID Act, and it would be a matter for their discretion as to the granting of any exemption or exception.

Yours very truly,

Henry McMaster

HMCM/cr