



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

November 24, 1997

Janet T. Butcher, General Counsel
South Carolina Department of Social Services
P. O. Box 1520
Columbia, South Carolina 29202-1520

Re: Informal Opinion

Dear Ms. Butcher:

You have asked that I review my Informal Opinion dated October 10, 1997 in light of a recent amendment to 42 U.S.C. § 666(a)(13) this year. In my judgment, the recent amendment provides the Congressional authority necessary to require that Social Security numbers be provided in order to receive a recreational license (including hunting or fishing) in South Carolina.

Law / Analysis

The October 10, 1997 opinion dealt with impact of the federal Welfare Reform Act of 1996 upon the federal Privacy Act (5 U.S.C. § 552a) in the context of whether SSN's must be provided in order to receive a hunting or fishing license in South Carolina. In that opinion, I noted that the Federal Privacy law makes it "unlawful for any federal, state or local government agency to deny any individual any right, benefit or privilege provided by law because of such individual's refusal to disclose his social security number." An exception to this mandate is "any disclosure which is required by federal statute" Specifically, the question raised was whether the 1996 Welfare Reform Act of 1996 (42 U.S.C. § 666(a) (13 and (16)) provided sufficient authority under federal law to constitute an exemption to the federal Privacy Act in the context of applications for hunting and fishing licenses. Such 1996 Act dealt extensively with child support matters including requirements that applications for certain licenses must include an individual's social security number (for child support enforcement purposes) as well as mandating that a state have in place procedures for revocation of certain licenses for past due child support. I

Ms. Butcher

Page 2

November 24, 1997

concluded that the federal Act did not authorize an exemption to the Privacy Act with respect to the denial of a hunting or fishing license because of refusal to supply one's social security number as part of the application therefor; 42 U.S.C. § 666(a)(13) expressly required a state to provide procedures "requiring that the social security number of -(A) any applicant for a professional license, commercial driver's license, occupational license or marriage license be recorded in the application" Recreational licenses were conspicuously absent from mention in that Section, however. I noted also that no comfort could be taken from 42 U.S.C. § 666(a)(16) because, while that Section did specifically reference recreational licenses, it was only in the context of withholding or suspending such licenses for individuals who owed overdue child support. In addition, in response to the federal Welfare statute, "the General Assembly enacted § 20-7-949 which provides that '[a]n applicant for a license or for renewal of a license shall submit the applicant's social security number to the licensing agency.'" Id.

Thus applying basic principles of statutory construction, I opined earlier that, in the absence of any express mention in 42 U.S.C. § 666(a)(13) of recreational licenses, the federal Privacy statute did not allow the State to require SSN's in order for an individual to receive such licenses. The Informal Opinion stated in this regard:

[b]ased upon the foregoing, I am not convinced that the Welfare Reform Act of 1996 went so far as to require an applicant for a hunting or fishing or other recreational license to provide his or her social security number in order to qualify for such license. Congress had the opportunity to include recreational licenses in § 699(a)(13), yet it did not. While it is true that Congress clearly gave states the authority to revoke or suspend recreational licenses for non-payment of child support, it is a large leap to infer from that fact alone the requirement that a social security number had to be provided before that license could be issued. Such would require us to infer what Congress could easily have said explicitly if it had so desired. In view of the importance of the Privacy Act, I am thus very reluctant to so boldly infer such a requirement. Thus, I would interpret S.C. Code Ann. § 20-7-949 as not including recreational licenses within its scope. Such an interpretation that recreational licenses are not included within § 20-7-949 would thus be consistent with my interpretation of the Privacy Act when read together with the Welfare Reform Act as well as consistent with the fact that, to my knowledge, no South Carolina statute or agency regulation has to date explicitly required the provision of one's social security

Ms. Butcher
Page 3
November 24, 1997

number in order to receive a recreational license. ... Absent any controlling law to the contrary, it is my view that one's social security number cannot be required in order to receive a hunting or fishing license.

That earlier conclusion is now superseded by new legislation. Congress apparently held the same view -- that the authority to require Social Security numbers for recreational licenses was lacking or uncertain, because you have advised that in the recent Balanced Budget Act of 1997 (P.L. 105-33) which went into effect on October 1, 1997, 42 U.S.C. § 666(a)(13) was amended to include recreational licenses expressly within its scope. Subsection (a)(13) now reads:

Procedures requiring that the social security number of

(A) any applicant for a professional license, driver's license, occupational license, recreational license, or marriage license be recorded in the application;

(B) any individual who is subject to a divorce decree, support order, or paternity determination or acknowledgement be placed in the records relating to the matter; and

(C) any individual who has died be placed in the records relating to the death and be recorded on the death certificate.

For purposes of subparagraph (A) if a state allows the use of a number other than the social security number to be used on the face of the document while the social security number is kept on file at the agency, the State shall so advise any applicants. (emphasis added).

Thus, the law has now been changed to include a "recreational license" as one of the licenses for which a social security number is required upon application therefor. Presumably, the term "recreational license" would be broadly construed consistent with § 20-7-949, but most certainly issuance of hunting and fishing licenses would now require giving one's social security number as part of the application.

Even so, federal law makes it clear, however, that while where there now is a requirement of providing a social security number with respect to applications for hunting

Ms. Butcher
Page 4
November 24, 1997

and fishing (and other recreational) licenses, such social security number must still be kept confidential. 42 U.S.C. § 405(c)(2)(C)(ii) provides that "social security account numbers or related records that are obtained or maintained by authorized persons pursuant to any provision of law enacted on or after October 1, 1990 shall be confidential, and no authorized person shall disclose any such social security account number or related record." Such provision also makes any willful unauthorized disclosure by authorized personnel of confidential social security account numbers and related records a felony. See also, 1996 Nev. Op. Atty. Gen. 140. Federal law also defines an "authorized person" for purposes of this statute as

... an officer or employee of the United States, an officer or employee of any State, political subdivision of a State, or agency of a State or political subdivision of a State, and any other person (or officer or employee thereof) who has or had access to social security account numbers or related records pursuant to any provision of law enacted on or after October 1, 1990. For purposes of this subclause, the term "officer or employee" includes a former officer or employee.

Accordingly, any other person who has or had access to social security numbers or related records by virtue of any provisions of law enacted after October 1, 1990 (including new 42 U.S.C. § 666(a)(13)) must keep such records confidential. Therefore, while Congress has now required for child support enforcement purposes that the social security number be provided in order to receive a recreational license (including a hunting or fishing license), federal law also imposes very strict limitations upon any unauthorized disclosure by authorized persons of that social security number.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an