

The State of South Carolina

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March 14, 1990

The Honorable John E. Courson  
Senator, District No. 20  
P. O. Box 142  
Columbia, South Carolina 29202

Dear Senator Courson:

You have asked if the amendment to South Carolina Code Ann. § 14-7-130 is a violation of Section 7 of the Federal Privacy Act. 1/

BACKGROUND AND HISTORY

By 1988 Act No. 689, the South Carolina General Assembly proposed an amendment to Article V § 22 of the South Carolina Constitution relating to grand and petit juries so as provide that jurors be residents of this State and have such qualifications as the General Assembly may prescribe. By 1988 Act No. 453, which amended South Carolina Code Ann. § 14-7-130, the General Assembly made provisions for preparation of a jury list from the official list of registered voters until such time as the proposed amendment to South Carolina Constitution Article V §22 was effectuated. After passage of the constitutional amendment, § 14-7-130, provided for preparation of a jury roll from qualified voters who hold valid South Carolina driver's licenses or identification cards and from registered voters. The provision also required that the South Carolina Department of Highways and Public Transportation (hereinafter Department.), provide to the Election Commission pertinent information, including social security numbers, concerning certain individuals who have valid driver's licenses or identification cards.

Prior to the amendment to § 14-7-130, the jury roll was prepared from the list of qualified and registered voters of each county.

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1/ This opinion is limited to a review and resolution of the application of the Privacy Act to § 14-7-130.

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The citizens of South Carolina voted approval of the constitutional amendment and the General Assembly ratified the amendment on February 8, 1989. See 1989 Act No. 7. The enactment and ratification of the constitutional amendment effectuated the amendment to § 14-7-130.

PERTINENT STATUTES

Section 14-7-130 now provides as follows:

In November of every year, the South Carolina Department of Highways and Public Transportation shall furnish the State Election Commission a computer tape of the name, address, date of birth, social security number, sex, and race of persons who are over the age of eighteen years and citizens of the United States residing in each county who hold a valid South Carolina driver's license or an identification card issued pursuant to Section 57-3-910. In December of every year, the State Election Commission shall furnish a jury list to county jury commissioners consisting of a tape or list derived by merging the list of registered voters in the county with county residents appearing on the tape furnished by the department, but only those licensed drivers and identification cardholders who are eligible to register to vote may be included in the list. Prior to furnishing the list, the commission shall make every effort to eliminate duplicate names and names of persons disqualified from registering to vote or voting pursuant to the laws and Constitution of this State. As furnished to the jury commissioners by the State Election Commission, the list or tape constitutes the roll of eligible jurors in the county. Expenses of the South Carolina Department of Highways and Public Transportation and State Election Commission in implementing this section must be borne by these agencies.

Section 7 of the Federal Privacy Act of 1974, as amended, 5 U.S.C. § 522a note, which pertains to disclosure of social security numbers provides:

"(a)(1) It shall be unlawful for any Federal, State or local government agency to deny to

any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

(2) the provisions of paragraph (1) of this subsection shall not apply with respect to--

"(A) any disclosure which is required by Federal statute, or

"(B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

"(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it."

(Emphasis added). Section 7 of the Privacy Act is the only provision of the Act which pertains to state or local agencies as all other provisions regulate the dissemination of information by federal agencies only.

Also pertinent to this discussion is 42 U.S.C. § 405(c)2(C), of the Social Security Act. This provision, as amended, provides that:

(C)(i) It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Secretary for the purpose of establishing the identification of individuals affected by such law, and may require any individual who is or appears to be so affected to furnish to such State (or political subdivision thereof)

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or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if he has more than one such number) issued to him by the Secretary.

(ii) If and to the extent that any provision of Federal law heretofore enacted is inconsistent with the policy set forth in clause (i) of this subparagraph, such provision shall, on and after the date of the enactment of this subparagraph [enacted Oct. 4, 1976], be null, void, and of no effect.

(iii) For purposes of clause (i) of this subparagraph, an agency of a State (or political subdivision thereof) charged with the administration of any general public assistance, driver's license, or motor vehicle registration law which did not use the social security account number for identification under a law or regulation adopted before January 1, 1975, may require an individual to disclose his or her social security number to such agency solely for the purpose of administering the laws referred to in clause (i) above and for the purpose of responding to requests for information from an agency operating pursuant to the provisions of part A or D of title IV of this Act [42 USCS §§ 601 et seq., 651 et seq.].

(Emphasis Added).

Further, South Carolina Code Ann. § 7-5-170 (1976, as amended), provides that an applicant for voter registration must report the social security number, if one is assigned. The social security number has been utilized for voter registration in South Carolina since at least 1974.

Additionally, a 1989 amendment which created South Carolina Code § 56-1-2090 requires that an applicant for a commercial driver's license or instruction permit provide to the Department the applicant's social security number. This provision implements a requirement in Federal law that the social security number be used to identify commercial drivers. See 49 U.S.C. 2705(3)(B). There is no state statute which directly requires the Department to collect the social security numbers of applicants for individual licenses, permits, or identification cards, See South Carolina Code §§

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56-1-80 and 57-3-910, except the implication created by the amendment to § 14-7-130.

#### DISCUSSION

The resolution of the question you pose requires reconciliation of the statutes involved. Section 7(a) of the Privacy Act proscribes the denial of any right, benefit, or privilege upon an individual's refusal to disclose his social security number unless the disclosure is required by Federal statute or unless the agency to which the number is disclosed has maintained a system of records in existence and operating before January 1, 1975 and if disclosure was required under statute or regulation for identification. The Department did not have a system of records operating before January 1, 1975 which required disclosure of the numbers for purposes of identification, therefore, that exemption is not applicable. The mandatory disclosure of social security numbers for commercial drivers and instructors is required by Federal statute and does not violate the Privacy Act. See South Carolina Code § 56-1-2090; 49 U.S.C. 2705(3)(B). The mandatory disclosure of social security numbers for non-commercial driver's licenses and identification cards is not required by Federal statute and may violate the Privacy Act unless other authority exists for the Department to mandate disclosure of the numbers.

A review of pertinent Federal statutes reveals that, even if § 14-7-130 fails to comply with the mandates of the Privacy Act, the State may still properly require disclosure of social security numbers for individuals holding non-commercial driver's licenses and identification cards under a specific exemption found in 42 U.S.C. (c)2(C) of the Social Security Act.

The 1976 amendment to the Social Security Act permits the state of South Carolina, in the administration of driver's license law, to require disclosure of an individual's social security number and to utilize said number for the purpose of establishing the identification of those affected by the driver's license law, regardless of whether the agency used social security numbers for identification under a law or regulation adopted before January 1, 1975 or whether it is required by Federal statute. (The provisions found in the Privacy Act). The Social Security Act also provides that any inconsistent provision of Federal law established prior to the October 4, 1976 amendment to the Social Security Act and which includes the Privacy Act, shall be "null, void, and of no effect". 42 U.S.C. 405 c(ii).

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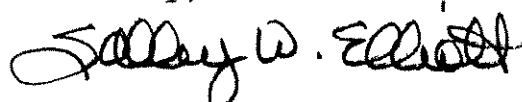
Therefore, the issue for resolution is the purpose for which the social security numbers of non-commercial driver's license and identification card holders are collected. If the Department requires disclosure of the numbers in the administration of the driver's license law and for the purpose of establishing the identification of those affected by the driver's license law, then it is properly doing so under the 1976 amendment to the Social Security Act. Section 7 of the Privacy Act is pre-empted and is inapplicable if the Department complies with the requirements of the amendment to the Social Security Act.

However, if the Department does not collect the social security numbers in the administration of the law relating to driver's licenses and identification cards and for the purpose of identifying those affected by the law, then the Privacy Act is applicable and, for other than commercial licenses or instruction permits, a problem may exist because the Department cannot comply with the two exceptions of the Privacy Act discussed in preceding paragraphs.

As the purpose for which the Department collects social security numbers would require a factual determination, it is an issue which cannot be resolved by an opinion of this Office. See S.C. Code §1-7-110 (1976, as amended). Based upon the uncertainty of the collection purpose, legislative clarification is needed to address any ambiguity.

Please contact me if you would like to discuss this matter or if you have additional questions regarding your inquiry.

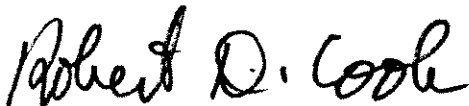
Sincerely,



Salley W. Elliott  
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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