

The State of South Carolina

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December 4, 1992

Michael B. Cone
Executive Director
S. C. Association of Counties
Post Office Box 8207
Columbia, South Carolina 29202-8207

Dear Mr. Cone:

You wrote our Office for an opinion concerning a provision contained in 1992 Act Number 361 which in pertinent part amends the Set-Off Debt Collection Act. You state that Act 361 now permits political subdivisions to set off an individual's debts to the political subdivision against the individual's income tax refund but that in order to do so the individual's social security number must be obtained and provided to the South Carolina Tax Commission so that the Commission can then use the number to access the individual's tax account. You also state that the debt you envision being collected includes real and personal property taxes, ordinance violation fines, user fees such as for garbage collection and EMS charges, library fines, license fees, and utility charges. You ask what procedure should be followed when requesting social security numbers from individuals for the purpose of debt collection under Act 361. You specifically ask about the application of provisions of the federal Privacy and Social Security Acts. While it would be inappropriate in this instance in a legal opinion to attempt to establish a uniform procedure to be followed by all political subdivisions of the state, it is possible to comment upon the law applicable to obtaining social security numbers from individuals.

PERTINENT STATUTES

The Set-off Debt Collection Act found at S. C. Code Ann. § 12-54-410 et seq. and which became effective in 1988 allows designated "claimant agencies" to request that the South Carolina Tax

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Commission assist in the collection of delinquent accounts or debts due to the agency by setting off refunds due the debtor from the South Carolina Tax Commission. S. C. Code Ann. § 12-54-450 (1991 Cum. Supp.) In order to receive a set-off of a tax refund, a claimant must "supply information the commission determines necessary to identify the debtor whose refund is sought to be set off." S. C. Code Ann. § 12-54-460. The amendment provided by Act Number 361 adds political subdivisions to the definition of "claimant agency" allowing political subdivisions the opportunity to now utilize the tax set-off procedure. The Set-Off Debt Collection Act also provides:

All claimant agencies, whenever possible, shall obtain the full name, social security number, address, and any other identifying information, required by regulations promulgated by the commission for implementation of this article, from any person for whom the agencies provide any service or transact any business and who the claimant agencies can foresee may become a debtor under the terms of this article.

The Set-Off Debt Collection Act also defines delinquent debt as:

any liquidated sum due and owing any claimant agency, including court costs, fines, penalties, and interest which have accrued through contract, subrogation, tort, operation of law, or any other legal theory...
S. C. Code Ann. § 12-54-420(4).

With regard to disclosure of social security numbers, Section 7 of the Federal Privacy Act of 1974, as amended, 5 U.S.C. § 552a note provides:

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

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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) 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.

(iv) If and to the extent that any provision of Federal law heretofore enacted is inconsistent with the policy set forth in clause (i) 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...

(v) For purposes of clause (i) of this subparagraph, an agency of a State (or political

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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.].

DISCUSSION

The purpose of the federal Privacy Act is to curtail the growing use of social security numbers as a universal identifier, to discourage improper use of the number, to eliminate the encroachment on privacy, provide individuals with the opportunity to make an intelligent decision whether to disclose the number, and, with some exceptions, allow the individual the option to refuse disclosure without repercussions, Yeager v. Hackensack Water, 615 F. Supp. 1087 (D.C.N.J. 1985); Doyle v. Wilson, 529 F. Supp. 1343 (D.Del. 1982). It appears that disclosure of social security numbers can be made mandatory in certain circumstances under the Privacy Act and/or under the Social Security Act. Section 7(a) of the Federal Privacy Act makes disclosure by an individual of his or her social security number to a local governmental agency mandatory only if the agency required disclosure of the number before January 1, 1975 pursuant to a statute or regulation in order to verify the individual's identity or if disclosure is required by Federal statute. In either circumstance or when the request is made voluntary, rather than mandatory, the local agency must advise the individual from whom the number is being requested and at the time the request is made whether disclosure of the number is mandatory or voluntary, under what authority the number is requested and what uses the agency will make of the number.

In the event that disclosure of social security number may not be made mandatory under the Privacy Act and is not voluntarily disclosed, pertinent provisions of the Social Security Act cited above which were adopted after the Privacy Act may permit a political subdivision of a state to require disclosure of an individual's social security number if the number is utilized for the purpose of establishing the identification of those affected by and to be used solely in the administration of any tax, general

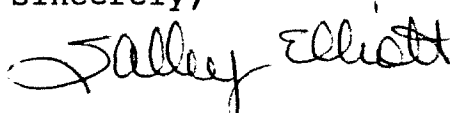
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public assistance, driver's license or motor vehicle law without jurisdiction of the political subdivision.

Whether particular county agencies may require disclosure by an individual of a social security number, then, will depend upon whether the entity involved required disclosure of social security numbers before January 1, 1975, whether the numbers were used for identification verification, the statutory or other authority the entity relies upon to require disclosure, whether the disclosure is required by Federal statute, and whether the entity is administering a tax, general public assistance, driver's license or motor vehicle law and, if so, then it may be used solely in the administration of that law. Because of the many and varying factors which could apply in any given instance depending upon the particular county agency or political subdivision involved and the law being administered, it is impossible to suggest one uniform procedure. It will be necessary for each entity to make a determination as to whether it may make mandatory the disclosure of social security numbers by applying the guidelines set forth herein.

We caution, however, that pursuant to the Privacy Act requirements, the local governmental entity which requests disclosure of a social security number would be well advised to inform the individual from whom the number is being requested whether the disclosure is voluntary or mandatory, the statutory or other authority upon which the entity relies in making the request, and what use the entity will make of the number. Of course, there may be restrictions of the use of the number depending upon the particular entity, method of requesting, and authority for obtaining the numbers.¹

Sincerely,



Salley W. Elliott
Deputy Attorney General

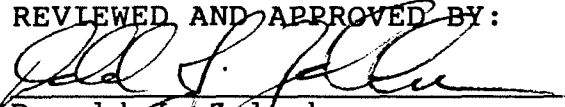
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¹This opinion is limited to a review and resolution of procedures for requesting social security numbers from individuals. We do not address what use may be made of the numbers once obtained or whether they may be obtained from secondary sources.

Michael B. Cone
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