



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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September 4, 2002

FILE NO. 02-010

MOTOR VEHICLES:

Issuance of a Driver's License
to a Foreign Citizen Ineligible
for a Social Security Number

The Honorable Jesse White
Secretary of State
100 West Randolph, Suite 5-400
Chicago, Illinois 60601

Dear Secretary White:

I have your letter wherein you inquire whether the Secretary of State may issue a driver's license to a foreign citizen, if the applicant is not eligible for issuance of a social security number under Federal law. For the reasons hereinafter stated, it is my opinion that the Secretary of State may issue a driver's license to a foreign citizen who is not eligible to obtain a social security number, and may, in limited circumstances, substitute a Federal tax number or assign another distinctive number in lieu of a social security number.

It is my understanding that this issue often arises with respect to the spouses or dependents of foreign citizens who

are temporarily residing in the State of Illinois while working for international corporations with branch offices or manufacturing facilities located in the State. Section 6-106 of the Illinois Vehicle Code (625 ILCS 5/6-106 (West 2000), as amended by Public Act 92-117, effective January 1, 2002) generally requires that an applicant for a driver's license provide the Secretary of State's office with his or her social security number in order to be issued a license. Spouses of foreign citizens who are temporarily residing in Illinois on work visas, however, frequently do not qualify for the issuance of a "regular" social security number. In the past, the Secretary of State's office and the Federal Social Security Administration cooperated in a procedure pursuant to which foreign citizens who did not qualify for the issuance of "regular" social security numbers could nonetheless be issued a "non-work" social security number in order to obtain Illinois driver's licenses.

Based upon conversations with representatives of your office and the Social Security Administration, it appears that, historically, foreign citizens who did not qualify for "regular" social security numbers were nonetheless permitted to apply for a driver's license from the Illinois Secretary of State's office. Upon the applicant's successful completion of the required

examinations, documentation indicating the applicant's qualification for issuance of a driver's license was prepared by the Secretary of State's office and given to the applicant for submission to the Social Security Administration. Upon receipt of this documentation, the Social Security Administration would issue a social security number for "non-work" purposes. Upon presentation of the social security number to the Secretary of State, an Illinois driver's license would be issued to the applicant.

Effective March 1, 2002, however, the Social Security Administration determined that it would no longer issue social security numbers if the sole reason for applying therefor is to satisfy a State statute that requires a social security number in order to obtain a driver's license or to register a motor vehicle. Because of this change in policy, you have inquired whether the Secretary of State's office may issue a driver's license to a foreign citizen who is unable to obtain a social security number under current Federal law.

Section 6-106 of the Illinois Vehicle Code provides, in pertinent part:

" * * *

(b) Every application [for a driver's license] shall state the name, social

security number, zip code, date of birth, sex, and residence address of the applicant; briefly describe the applicant; state whether the applicant has theretofore been licensed as a driver, and, if so, when and by what state or country, and whether any such license has ever been cancelled, suspended, revoked or refused, and, if so, the date and reason for such cancellation, suspension, revocation or refusal; shall include an affirmation by the applicant that all information set forth is true and correct; and shall bear the applicant's signature. The application form may also require the statement of such additional relevant information as the Secretary of State shall deem necessary to determine the applicant's competency and eligibility. The Secretary of State may in his discretion substitute a federal tax number in lieu of a social security number, or he may instead assign an additional distinctive number in lieu thereof, where an applicant is prohibited by bona fide religious convictions from applying or is exempt from applying for a social security number. The Secretary of State shall, however, determine which religious orders or sects have such bona fide religious convictions. The Secretary of State may, in his discretion, by rule or regulation, provide that an application for a drivers license or permit may include a suitable photograph of the applicant in the form prescribed by the Secretary, and he may further provide that each drivers license shall include a photograph of the driver. The Secretary of State may utilize a photograph process or system most suitable to deter alteration or improper reproduction of a drivers license and to prevent substitution of another photo thereon.

* * *

"

(Emphasis added.)

The primary purpose of statutory construction is to ascertain and give effect to the intent of the General Assembly.

(In re Marriage of Kates (2001), 198 Ill. 2d 156, 163.)

Legislative intent is best evidenced by the language used in the statute. (Yang v. City of Chicago (2001), 195 Ill. 2d 96, 103.)

Where statutory language is clear and unambiguous, it must be given effect as written. In re Consolidated Objections to Tax Levies of School District No. 205 (2000), 193 Ill. 2d 490, 496.

Under subsection 6-106(b) of the Code, the provision of a social security number is ordinarily required as part of the driver's license application process. The plain language of subsection 6-106(b), however, authorizes the Secretary of State's office to accept "* * * a federal tax number in lieu of a social security number * * *" or to assign another distinctive number in certain, limited circumstances. Thus, an applicant for a driver's license is not required to provide a social security number "* * * where * * * [the] applicant is prohibited by bona fide religious convictions from applying or is exempt from applying for a social security number. * * *"

92 Ill. Adm. Code 1030.63 (April 1, 2001) sets out a process to be followed by applicants seeking a driver's license on the basis that their religious convictions will not permit

them to obtain social security numbers. You have indicated, however, that there is disagreement concerning whether the phrase "* * * or is exempt from applying for a social security number * * *" refers back to the earlier provisions in the sentence regarding the granting of a driver's license without a social security number where prohibited by religious beliefs or is intended as a separate exception to the general requirement. Both clauses were added by Public Act 77-105, effective January 1, 1972. The General Assembly approved House Bill 611, which, as Public Act 77-105, enacted the provisions in question, on June 21, 1971. Transcripts of the legislative debates of the Illinois General Assembly, however, were not kept prior to October, 1971. Thus, there are no debates available to assist in determining the legislative intent of the amendments made by Public Act 77-105.

It has long been recognized, however, that when used in its ordinary sense, the word "or" marks an alternative indicating the various members of the sentence that it connects are to be taken separately. (People v. Frieberg (1992), 147 Ill. 2d 326, appeal denied, 185 Ill. 2d 642 (1999); People v. Vraniak (1955), 5 Ill. 2d 384, cert. denied, 75 S. Ct. 895, 349 U.S. 963 (1955).) Giving this meaning to the word "or", subsection 6-106(b) sets out two instances in which the use of a Federal tax number or

other distinctive number is appropriate: (1) "where an applicant is prohibited by bona fide religious convictions from applying * * * for a social security number"; and (2) "where an applicant * * * is exempt from applying for a social security number." Under this construction of the provisions of subsection 6-106(b) of the Code, the Secretary of State's office has the authority to issue a driver's license to an applicant who does not have a social security number, if the applicant is "exempt" from applying for a social security number.

The provisions of the Social Security Act (42 U.S.C. § 301 et seq.) do not contain a general exemption from applying for social security numbers for foreign citizens. Rather, section 205 of the Social Security Act (42 U.S.C. § 405) provides, in pertinent part:

" * * *

(a) Rules and regulations; procedures

The Commissioner of Social Security shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this subchapter, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

* * *

(c) Wage records

* * *

(2) (A) On the basis of information obtained by or submitted to the Commissioner of Social Security, and after such verification thereof as the Commissioner deems necessary, the Commissioner of Social Security shall establish and maintain records of the amounts of wages paid to, and the amounts of self-employment income derived by, each individual and of the periods in which such wages were paid and such income was derived * * *.

(B) (i) In carrying out the Commissioner's duties under subparagraph (A) and sight subparagraph (F), the Commissioner of Social Security shall take affirmative measures to assure that social security account numbers will, to the maximum extent practicable, be assigned to all members of appropriate groups or categories of individuals by assigning such numbers (or ascertaining that such numbers have already been assigned):

(I) to aliens at the time of their lawful admission to the United States either for permanent residence or under other authority of law permitting them to engage in employment in the United States and to other aliens at such time as their status is so changed as to make it lawful for them to engage in such employment;

(II) to any individual who is an applicant for or recipient of benefits under any program financed in whole or in part from Federal funds including any child on whose

behalf such benefits are claimed by another person; and

(III) to any other individual when it appears that he could have been but was not assigned an account number under the provisions of subclauses (I) or (II) but only after such investigation as is necessary to establish to the satisfaction of the Commissioner of Social Security, the identity of such individual, the fact that an account number has not already been assigned to such individual, and the fact that such individual is a citizen or a noncitizen who is not, because of his alien status, prohibited from engaging in employment; and, in carrying out such duties, the Commissioner of Social Security is authorized to take affirmative measures to assure the issuance of social security numbers:

(IV) to or on behalf of children who are below school age at the request of their parents or guardians; and

(V) to children of school age at the time of their first enrollment in school.

* * *

(iii) In carrying out the requirements of this subparagraph, the Commissioner of Social Security shall enter into such agreements as may be necessary with the Attorney General and other officials and with State and local welfare agencies and school authorities (including nonpublic school authorities).

(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 Commissioner of Social Security 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 Commissioner of Social Security.

* * *

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(Emphasis added.)

The administrative rules implementing the provisions of section 205 of the Social Security Act are found at 20 C.F.R. § 422.1 et seq. (2001).

Under the language of section 205 of the Social Security Act, Congress has authorized, but does not require, the several States to use social security numbers for verification of identity when issuing driver's licenses. Pursuant to Federal law, the Commissioner of Social Security is authorized to assign social security numbers: (1) to aliens who are lawfully admitted to the United States and who are authorized to work in the United States; (2) to individuals for whom a social security number is required by law as a condition of the receipt of a federally-funded benefit to which the person has established entitlement;

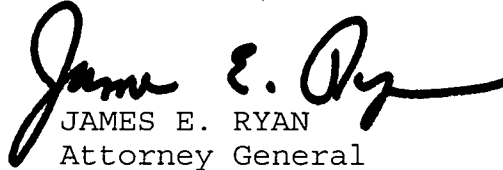
and (3) to citizens or foreign citizens who are legally in the United States but not authorized to work in the United States, but only for a valid non-work purpose. Representatives of the Social Security Administration have confirmed that the Social Security Act does not "exempt" any class of foreign citizens from applying for or obtaining social security numbers. Thus, in a letter dated August 13, 2002, Mr. Etzion Brand, Supervisory Attorney, Retirement, Survivors and Supplemental Assistance Litigation Branch of the Chief Counsel's Office, has stated:

"* * * we note that the Social Security Act does not recognize a class of individuals as being 'exempt' from application for an SSN. We believe that the * * * language [of section 6-106 of the Illinois Vehicle Code], however, may logically be construed as describing a class of persons which we would consider 'ineligible' for an SSN - i.e., those who are lawfully admitted to the U.S. but whose alien classifications do not permit them to work. Such an interpretation of Illinois law would be consistent with the provisions of the Act and the pertinent regulations. Consequently, presentation of SSA's ineligibility letter (the letter provided to an applicant explaining why an SSN cannot be assigned) would provide a basis upon which the Secretary of State could assign an alternative identifying number to persons otherwise satisfying State requirements for the issuance of a driver's license. This would allow these individuals to obtain a driver's license without compromising SSA's efforts to enhance the nation's security."

It is well established that when necessary to effectuate the intent of the General Assembly, words in a statute may be altered, supplied or modified to correct an obvious mistake. (Collins v. Board of Trustees of the Firemen's Annuity & Benefit Fund (1993), 155 Ill. 2d 103, 112; Continental Illinois National Bank & Trust Co. v. Illinois State Toll Highway Comm'n (1969), 42 Ill. 2d 385, 395.) It appears that the General Assembly, in providing the Secretary of State with the authority to implement an alternative numbering system as part of the State's driver's licensing program, used the term "exempt" when it actually intended those provisions to apply to applicants who are "ineligible" to receive a social security number. Therefore, in accordance with the apparent intent of the General Assembly, it is my opinion that subsection 6-106(b) of the Illinois Vehicle Code should be construed to authorize the Secretary of State to issue a driver's license to a foreign citizen who is ineligible to receive a social security number under Federal law and who presents an "ineligibility letter" from the Social Security Administration confirming this status, and to assign another distinctive number in lieu of a social security number in those limited circumstances.

In so concluding, I recognize that there are significant security implications that must be considered with respect to the issuance of driver's licenses to foreign nationals, especially at this time. I am satisfied that you understand the heightened responsibilities placed upon your office to ensure the integrity of the process for issuing documents that may be used for personal identification, and I have been assured that the procedures that you ultimately adopt for issuing driver's licenses to foreign citizens without social security numbers will be structured to include adequate safeguards against the misuse of such documents.

Sincerely,


JAMES E. RYAN
Attorney General