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OPINION COMMITTEE

RQ-0247-GA

July 8, 2004

The Honorable Greg Abbott  
Attorney General of Texas  
Office of the Attorney General  
209 West 14th  
Austin, Texas 78701

FILE # Mh-43814-04  
I.D. # 43814

RE: Authority to require social security number or proof of lack of social security number

Dear General Abbott:

The Texas Department of Agriculture (TDA) requests an opinion from your office regarding our agency's responsibilities and authority with respect to certain state and federal requirements concerning social security numbers and child support enforcement. More specifically, we are requesting an interpretation of the federal requirements implemented in state law through Section 231.302 of the Texas Family Code. This request is made in response to threatened litigation by a person applying for a commercial pesticide applicator license with our agency.

The initial question for which an opinion is requested:

Is a commercial pesticide applicator license an occupational license for which submission of a social security number (*or suitable affidavit in lieu thereof - see below*) is required under state and federal laws for purposes of child support enforcement?

If the answer to the preceding question is affirmative and an applicant for such a license claims to have no social security number, an opinion on the following specific questions is requested:

May the department require an applicant to obtain, not merely provide, a social security number?

May TDA require or allow an applicant to submit a sworn affidavit stating that the applicant has never been issued a social security number, in lieu of the applicant obtaining and/or providing a social security number?

May TDA require the applicant to submit information (e.g., birth date)

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extraordinary service.*

necessary to confirm the applicant's claim that the applicant has never been issued a social security number?

May TDA require the applicant to provide within said affidavit or separately a release authorizing TDA to query the federal Social Security Administration in order to confirm the applicant's claim that the applicant has never been issued a social security number?

May TDA require the applicant to submit a sworn affidavit in or on a form prescribed by the department, specifically the form attached as Exhibit A?

May TDA incorporate into the affidavit that it is submitted "under penalty of perjury?"

May TDA continue to require an affidavit, from persons claiming to have no social security number, during each subsequent renewal of the person's license to ensure that a social security number has not been issued since the original license was issued?

May an applicant refuse to provide a social security number, or an affidavit of no social security number in lieu thereof if such an affidavit is permissible or required, on the basis of religious objections?

Finally, we have some general questions regarding the scope of Section 231.302 of the Texas Family Code.

Apart from professional, recreational, driver's or marriage licenses, does Section 231.302 apply to all licenses issued by Texas agencies or only to "occupational" licenses?

If Section 231.302 applies only to "occupational" licenses (apart from professional, recreational, driver's or marriage licenses), what constitutes an "occupational" license for purposes of Section 231.302 and should the department seek an opinion from your office for each type of license we issue?

Must the department obtain SSNs from applicants that are artificial persons, that is applicants other than sole proprietorships, such as corporations, partnerships, limited liability companies, and cooperatives?

If the answer to the preceding question is affirmative, from whom must the department obtain SSNs when the applicant is a corporation, partnership, limited liability company, or other artificial person?

#### Analysis – Must a Social Security Number Be Provided

Under federal law, 42 U.S.C. § 666(a)(13), states must adopt "[p]rocedures requiring that the social security number of . . . any applicant for a *professional license, driver's license, occupational license, recreational license, or marriage license* be recorded on the application [for the license]." [Emphasis added] According to the opening paragraph of Section 666(a), the purpose for requesting social security numbers, in this instance, is to enhance the effectiveness of

efforts to collect child support. Consequently, the State of Texas has statutorily adopted procedures to ensure state licensing authorities collect social security numbers for purposes of identifying those applicants for a license who are delinquent in payment of child support. *See* TEX. FAM. CODE § 231.302 (providing that each Texas licensing authority shall request and each applicant provide the applicant's social security number). A person identified through the aforementioned procedures is subject to certain restrictions when applying for a license from a state licensing authority.

Pursuant to Section 231.302 of the Texas Family Code, TDA has adopted administrative procedures and policies to collect, and share with your office, the social security numbers of persons applying for licenses issued by our agency. In accordance with Policy Interpretation Question PIQ-99-05 (July 14, 1999) from the U.S. Department of Health and Human Services (HHS), Office of Child Support Enforcement, and considering the analysis from Attorney General Opinion No. JC-0409 (September 14, 2001), TDA has currently implemented alternative procedures for those applicants who claim to have no social security number. These alternative procedures require the applicant to submit a form affidavit, *see* Exhibit A, affirming among other things that the applicant has never been issued a social security number. The affidavit form used by TDA is based on an affidavit used by the Texas Department of Public Safety for similar purposes.<sup>1</sup>

We assume, at this juncture, that an applicant for a commercial applicator license is subject to the requirements of state and federal laws regarding collection of social security numbers for purposes of child support enforcement. According to the U.S. Department of Health and Human Services PIQ-99-05, 42 U.S.C. § 666(a)(13) should not be interpreted to mean that a person must obtain a social security number in order to obtain an occupational license. It is not entirely clear, however, that this interpretation is accurate. Although due deference should be accorded to the implementing federal agency's interpretation of a federal statute, we note:

the applicable federal law, 42 U.S.C. § 666(a)(13), contains no exceptions to the requirement to submit a social security number;

the applicable state law, Texas Family Code § 231.302, contains no exceptions to the requirement to submit a social security number;

legislation addressed in Attorney General Opinion No. JC-0409 appears to assume, and we understand the opinion to imply, that a state or state agency is not prohibited by federal law from requiring an applicant to obtain a social security number;

in PIQ-97-04, a previous interpretation regarding providing social security numbers, in connection with voluntary acknowledgement of paternity, with which the opinion in PIQ-99-05 was cited as being consistent, HHS stated that it was up to each state to determine what constituted the minimum data elements necessary for a paternity acknowledgement (affidavit), including whether to seek the social security number(s) of one or both parents;

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<sup>1</sup> See [http://www.txdps.state.tx.us/administration/driver\\_licensing\\_control/pages/socialsecuritynumber.htm](http://www.txdps.state.tx.us/administration/driver_licensing_control/pages/socialsecuritynumber.htm).

the considerations informing PIQ-97-04 would seem to indicate that each state is authorized to determine the minimum requirements for confirming information related to identity, such as establishment of paternity, that is to apply its own standards as to what constitutes confirmation of identity, paternity, and similar information;

documents from the HHS website addressing social security numbers in similar contexts suggest that HHS may have chosen, in some instances, to adopt a less rigorous interpretation of social security number statutory requirements in order to avoid discouraging immigration parents from seeking governmental assistance for their children, rather than in recognition of a prohibition against requiring a social security number;<sup>2</sup>

PIQ-99-05 does not contain an in-depth legal analysis, complete with citation to relevant legal opinions or statutes, in support of the interpretation and we are unaware of any HHS rule prohibiting states from requiring license applicants to obtain a social security number; and

PIQ-99-05's finding that an affidavit could be substituted when the applicant does not have a social security number could be narrowly interpreted to apply to persons who do not have a social security number due to ineligibility, but not those who are eligible but do not have one; this would appear to be consistent with the DPS rules analyzed in Attorney General Opinion No. JC-0409.

Requiring an applicant to obtain a social security number when applying for a state license would not appear to create a situation discouraging parents, including immigrant parents, from obtaining necessary governmental assistance for their children. Indeed, to the contrary, a policy requiring a social security number during the license application process would appear to further the government's interest in ensuring that children receive child support payments from gainfully employed parents. Consequently, allowing license applicants an alternative would appear to serve no governmental interest.

We also note that although Section 7 of the federal Privacy Act of 1974, Public Law 93-579, provides that it is unlawful for any state agency to deny an individual a right, benefit, or privilege for refusing to disclose the individual's social security number, that law also contains an exception, in paragraph (a)(2), for disclosures required by federal statute. In this case, TDA is required to collect social security numbers by federal statute, 42 U.S.C. § 666(a)(13), and therefore may deny a license to a person who refuses to provide the person's social security number. Moreover, the Privacy Act contains no prohibition against a state requiring submission of social security numbers for any purpose, but merely provides that the state must make certain notifications if it chooses to require social security number submission. Thus, a requirement that

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<sup>2</sup> See, e.g., Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program, Temporary Assistance for Needy Families, and Food Stamp Benefits (HHS) (undated). Located at <http://www.hhs.gov/ocr/immigration/triagency.pdf>.

a license applicant obtain and submit a social security number is not in conflict with the Privacy Act and would not appear to infringe on any cognizable individual right.

Considering the above factors, particularly the lack of any significant legal analysis in PIQ-99-05, we believe that the interpretation by HHS is insufficiently rigorous for full legal deference and should not be relied upon in evaluating the instant matter. Thus, absent an express prohibition against requiring license applicants to obtain a social security number and considering the lack of any exception to the requirement to obtain a social security number in either state or federal law, it would appear that applicants for licenses from state licensing authorities must obtain and submit a social security number.<sup>3</sup> If such is the case, TDA will discontinue its practice of allowing an affidavit in lieu of obtaining and submitting a social security number.

#### Analysis – May or Must an Affidavit In-Lieu of a Social Security Number Be Provided

If a social security number must be provided, then the questions related to an affidavit in lieu thereof are moot. Because that issue is undecided at this time, we shall summarize the department's position on such affidavits. Thus, for the purpose of analyzing this issue, we shall assume that TDA may not require an applicant for a license to *obtain* a social security number.

According to PIQ-99-05 issued by the U.S. Department of Health and Human Services, the various states should "require persons who wish to apply for a license [but who claim to] not have social security numbers to submit a sworn affidavit, under penalty of perjury, along with their application stating that they do not have a social security number." Your office referenced this statement in Attorney General Opinion No. JC-0409, but made no specific observations or findings regarding the statement's validity or effect. The Texas DPS has, however, adopted such an affidavit, apparently at least in part due to the HHS PIQ.

Given the importance of collection of child support, it seems apparent that state licensing agencies should adopt reasonable procedures to ensure enforcement of child support orders through confirmation of applicant identity to be used for cross-checking with your office's child support enforcement program. State and federal law would appear to designate the applicant's social security number as the most effective form of identity confirmation. In the face of a claim that an applicant does not possess the primary form of identification designated by statute, we believe that the procedures for establishing identity must include collection, review, and confirmation of supplemental information.

Because the matching system between state licensing agencies and your office for child support enforcement depends heavily upon the use of an applicant's social security number, supplemental information is critical to confirm the truthfulness of the claim, that the applicant has no social security number. This supplemental information additionally serves as further proof of the identity of the applicant in the absence of a social security number. Thus, to the extent it is permissible to accept and process the application of a person who claims to have no social security number, we believe it is critical that licensing agencies require such applicants to submit an affidavit incorporating necessary supplemental information on identity, as well as a

<sup>3</sup> See 5 U.S.C. § 552a (Endnote "Disclosure of Social Security Number").

release to obtain additional information from the Social Security Administration. Collection of this supplemental information will help ensure the effectiveness of the matching system for identifying applicants who are delinquent on child support.

We additionally note that the Legislature has generally left the determination regarding what constitutes proper and adequate application information to agency discretion. For example, with respect to commercial pesticide applicator licenses, Section 76.108(b) of the Texas Agriculture Code provides, in part, that "a person shall apply for an original or renewal commercial applicator license on forms prescribed by the [department]." Thus, we believe the department is authorized to require an applicant to submit an affidavit in a form similar to or the same as Exhibit A, as well as any other information necessary to carry out our statutory duties and to ensure that license applicants meet all requirements of state law. In this case, we have determined that the affidavit and requested supplemental information are necessary for the aforementioned purposes.

In this case, the applicant has consistently failed to submit a response of any kind which does not qualify his claim to not have a social security number. In each case, the applicant has qualified his claim by stating that he does not have a "valid" social security number. The applicant now appears to be claiming that his religious objections supersede any requirement of any kind with respect to whether he does or does not have a social security number or whether he must provide any social security number he has.

Furthermore, during a time period of several months after the department received his application, the applicant received at least three written communications apprising him that his application had been rejected for, among other items, failure to supply a social security number on his application. Despite raising various other objections to the department's licensing requirements, including a claim that he should not have to obtain a license for the type of work he anticipated, the applicant never informed the department of his claim to not have a social security number, much less his religious objections thereto, during that same time period. The claim that the applicant has no "valid" social security number, and his religious objections, were not raised until after his other objections to the licensing process had been rejected.

The applicant's responses, therefore, suggest that he may have been issued a social security number, but merely considers the number to be "invalid" or no longer in use. Supporting this conclusion, we note that the applicant has requested assistance on this matter from the National Workers' Rights Committee, a group apparently associated with the Save-A-Patriot "anti-tax" organization. Although it is difficult to find detailed information on the NWRC itself, the website [taxtruth4u.com](http://taxtruth4u.com), also apparently associated with Save-A-Patriot, shows the following information regarding the NWRC and their views on the federal tax system and social security:

*[t]he National Workers' Rights Committee is an auxiliary to the Save-A-Patriot Fellowship, formed to help fellowship members in their efforts to assert their Constitutional prerogative to live and work in the States of the Union without participating in the welfare state via the Social Security entitlement programs offered [not imposed] within subtitle "C" of the Internal Revenue Code . . .*

*. . . For several years we have been telling you about examples of those who filed an Affidavit of Revocation and Rescission for their application for the Social Security Number and have given a Statement of Citizenship to their employer. After the employer had sent a copy of the Statement of Citizenship to the International Service Center in Philadelphia, we have consistently reported that that was the end of that.” See <http://www.taxtruth4u.com/nwrc.html>.*

[emphasis added]

Given the nature of the applicant’s responses and his representation by the NWRC, it appears possible or even likely that the applicant was issued a social security number at some point, but considers it to be “rescinded” or “invalid.” However, the Social Security Administration, in response to the frequently asked question “[c]an I cancel my Social Security number,” provides the following answer:

*No. When someone has applied for and been assigned a Social Security number (SSN) based on a validly signed application, the Social Security Administration (SSA) may not cancel or destroy that record.*

Regardless of the applicant’s participation or non-participation in Social Security, the department believes that it is required to obtain any social security number assigned to the applicant, even if it is, or the applicant considers it to be, “no longer in use” or “not valid.” In these circumstances, then, the department believes further inquiry is warranted regarding the applicant’s claim to not have a “valid” social security number. The release and the supplemental information required by the department’s affidavit form (Exhibit A) is necessary to ensure that such further inquiry can be effectively completed.

#### Analysis – May An Applicant Refuse to Supply A Social Security Number or File an Acceptable Affidavit on the Basis of Religious Objections

The department believes that *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990) is dispositive. In *Employment Division v. Smith*, two employees of a drug rehabilitation organization were fired after sacramental use of peyote in violation of Oregon criminal statutes. Subsequently, they were denied unemployment compensation because the basis for termination of their employment was work-related misconduct. The employees sued, claiming that the statute which made their sacramental use of peyote illegal was an unconstitutional restriction of religion practice in violation of the free exercise clause of the First Amendment. The Supreme Court held that the right of free exercise does not render unconstitutional a law that is “a valid and neutral law of general applicability,” not adopted as “an attempt to regulate religious beliefs.”

Here, the law requiring an applicant to either obtain or provide (an existing) social security number is a valid, neutral law of general applicability which does not attempt to regulate religious beliefs. The department did not request information regarding the applicant’s religious beliefs, nor did the department find such beliefs relevant to the situation. Indeed, the department rejected the applicant’s application for failure to provide a social security number, or an

acceptable affidavit in lieu thereof, long before the applicant made his religious objections known. Consequently, it would seem that the applicant's religious beliefs provide no relief from either a requirement to obtain a social security number or to provide any existing social security number.

We have attached copies of the bulk of the correspondence between the department and the applicant as Exhibit B. Some letters were computer generated and copies were not kept. Other communications occurred by phone. The relevant written communications are provided in chronological order, oldest to most recent. Please note that the applicant's correspondence includes several affidavits that the department considers unsuitable and insufficient for the purposes noted herein.

The department's representatives regarding this matter will be General Counsel Kathryn A. Reed, (512) 475-1656, and Deputy General Counsel David R. Gipson, (512) 475-3617 or [David.Gipson@agr.state.tx.us](mailto:David.Gipson@agr.state.tx.us).

Thank you in advance for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin A. Hubert", with a long horizontal flourish extending to the right.

Martin A. Hubert  
Deputy Commissioner

SC:dg