S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 02-003

Disclosure of Social Security Numbers as a Condition for the Issuance of Handgun Carry Permits

QUESTIONS

1. May the Department of Safety refuse to issue a permit to carry a concealed handgun to a person who refuses to disclose his or her social security number on the application but otherwise meets the qualifications set forth in Tenn. Code Ann. § 39-17-1351?

2. May the Department of Safety print a permit holder's social security number on the face of the permit if the person to whom the permit has been issued objects to the disclosure of such information on the face of the permit?

OPINIONS

1. Yes. The Department of Safety can require an individual requesting a handgun permit to provide his/her social security number, if he or she has one, because the Department of Safety is authorized by both federal and state statutes to record that information on the application for use in connection with the enforcement of child support obligations.

2. No. Although Tenn. Code Ann. § 39-17-1351(o)(1) requires the disclosure of the permit holder's social security number on the face of the permit, applicable federal law prohibits states from doing so over the objection of the permit holder. Federal law further requires states to keep such information confidential and to disclose such information only when authorized to do so under federal law .

ANALYSIS

1. Social Security Number on Application:

Tenn. Code Ann. § 39-17-1351 authorizes any Tennessee resident who is twenty one years of age or older to apply to the Department of Safety for a permit to carry a concealed handgun. Tenn. Code Ann. § 39-17-1351(b) states that the Department shall issue the permit to any applicant who meets all of the qualifications set forth in the statute and who is not under a statutory disqualification to own a firearm or

obtain a concealed carry permit.[1] Tenn. Code Ann. § 39-17-1351(c) requires the Department of Safety to obtain certain types of information from all applicants for concealed carry permits. In addition to disclosing a full legal name and any aliases, addresses for the preceding five years and date of birth, the applicant must also disclose his or her social security number. Tenn. Code Ann. § 39-17-1351(c)(4).

The Privacy Act of 1974, Pub. L. 93-579, 88 Stat. 1896, 1909 (1974), as codified at 5 U.S.C. § 552(a), regulates the disclosure and use of social security numbers.[2] Under the Supremacy Clause of the U.S. Constitution, a state may be prohibited from requiring disclosure of social security numbers notwithstanding express state statutes to the contrary.[3] The Privacy Act does not prohibit the recording of social security numbers where another federal statute authorizes disclosure. 5 U.S.C. §552(a)(2)(A). In order to determine whether the Department of Safety may require disclosure of social security numbers, it is thus necessary to look first to federal law.

As a result of the Welfare Reform Act, states have since 1997 been required to suspend or revoke certain types of licenses to enforce child support obligations. The Act provides, in pertinent part:

> (a) Types of procedures required
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> In order to satisfy section 654(20)(A) of this title, each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary to increase the

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[1]Tenn. Code Ann. § 39-17-1351(b) states that a person who is prohibited from purchasing or possessing firearms under Tenn. Code Ann. § 39-17-1316 (no firearms sales to persons who are addicted to alcohol or anyone ineligible to purchase firearms under 18 U.S.C. § 922), Tenn. Code § 39-17-1307(b)(violent felons and drug addicts), and 18 U.S.C. § 922(g) (convicted felons, drug addicts , illegal aliens, the mentally ill, persons who have been dishonorably discharged from the military and persons who have renounced their U.S. citizenship) is not eligible to receive a permit to carry a concealed handgun. In addition, Tenn. Code Ann. § 39-17-1351(c) identifies classes of persons who are not eligible for a concealed carry permit. These include any convicted felon, fugitive from justice and persons addicted to drugs and alcohol.

[2]5 U.S.C.§ 552(a) states, in pertinent part:
(1) It shall be unlawful for any Federal, State, or local government agency to deny to an 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 statue...

[3] For example, in Op.Tenn.Atty.Gen. No 01-023, this office opined that the Tennessee Bureau of Investigation could not refuse to issue a unique identifying number and thus prevent a person from purchasing a firearm based solely on the purchaser's refusal to disclose his or her social security number as required by Tenn. Code Ann. 39-17-1316(c)(4)(G). The primary basis for that opinion was that this state law requirement was overridden by federal law, 5 U.S.C. § 552(a). This federal law prohibits the Bureau from requiring a person to disclose his or her social security number as a condition for issuing the unique identifying number which is required before a firearms dealer may lawfully complete the sale of a firearm under Tenn. Code Ann. § 39-17-1316

effectiveness of the program which the State administers under this part:
. . .

* * *

(16) Authority to withhold or suspend licenses

Procedures under which the State has (and uses in appropriate cases) authority to withhold or suspend, or to restrict the use of driver's licenses, professional and occupational licenses, and recreational and sporting licenses of individuals owing overdue support or failing, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings.

42 U.S.C. § 666(a)(16).

In order to facilitate the appropriate withholding, suspension, or restriction of such state-issued licenses as a means of enforcing child support obligations, 42 U.S.C. § 666 also specifically requires states to record social security numbers on applications for such licenses. Subsection(a)(13)identifies the types of licenses for which states are required to obtain social security numbers as follows: "professional license, drivers' license, occupational license, recreational license or marriage license."[4]

There is no definition of these types of licenses in the statute. In common parlance and legal usage, the terms "license" and "permit" are synonymous in that both are defined as grant of permission to engage in certain types of activity.[5] On the other hand, the statute does not mention "handgun." In the absence of a statutory definition or a conclusive interpretation of the law by a federal court,[6] it is necessary to apply the canons of statutory interpretation which a federal court would apply in resolving the ambiguity.[7]

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[4]42 U.S.C. §666(a)(13)(A). States are also required to record social security numbers in "divorce decrees, support orders and paternity determinations or acknowledgments." 42 U.S.C. § 666(a)(13)(B).

[5]Websters II New College Dictionary, at 632 and 819 (1995).

[6]In an unreported decision, *Deeds v. County of Fairfax*, 1998 WL 372817 (4th Cir., June 5, 1998)(copy attached), the Court ruled that disclosure of a person's social security number on an application for a handgun carry permit and the accompanying FBI fingerprint card did not violate section 7(b) of the Privacy Act.. The Court emphasized that notice procedures required by the Act were followed and that the number was used by the state for the stated purpose (background check). The Court did not mention 42 U.S.C. § 666.

[7]Since this is a federal statute, federal rules of statutory construction apply. *In re White*, 164 B.R. 976 (Bankr. N.D. Ind. 1993).

Federal courts interpret federal statutes with the primary purpose of ascertaining and effectuating the legislative intent from the statutory text. In searching for such intent, however, federal courts are supposed to look to the language of and give effect to the entire statute and to read that language in light of the policies and purposes behind the statute. *Massachusetts v. Morash*, 490 U.S. 107, 109 S.Ct. 1668, 104 L.Ed2d 98 (1989).[8]

Examination of the statutory text shows that not only are the various licenses undefined, there is variation between the two relevant subsections as to the descriptive language used as to licenses. The statutory description of licenses which the state is required to withhold, suspend, or restrict, set forth in subsection (a)(16), does not exactly correspond to the description in subsection (a)(13) of the licenses for which the state is to obtain a social security number as a pre-requisite on the application. The first set includes "sporting" and "recreational" licenses. The second set includes "recreational" licenses but does not include "sporting" licenses. In view of this inconsistency, it is logical to conclude that these terms are terms of description rather than terms of limitation. This conclusion, however, does not completely resolve the question whether a handgun "permit" fits within these terms.

Examination of the language of other parts of the statute tends to support the conclusion that handgun permits are included. Subsection (a)(1) requires states to adopt procedures for withholding child support payments from income. Subsection (a)(3) authorizes the seizure of tax refunds to satisfy support obligations, and subsection (a)(7) prescribes the adoption of procedures to report arrearage in support payments to credit bureaus. Social security numbers are the primary means of identification in each of these situations. The language shows that the purpose of the disclosure requirements is to provide the means for more easily collecting money from parents who owe child support. It would further the collection of child support to conclude that states are required to obtain social security numbers from applicants for handgun permits, just as they do for applicants for other state-granted individual privileges of the sort traditionally issued by the states.

In addition to looking at the language of the whole statute and the purpose of the statute, it is well settled that federal courts can look to legislative history to ascertain legislative intent. *Train v. Colo. Pub. Int. Research Grp.*, 426 U.S. 1, 96 S.Ct. 1938, 48 L.Ed2d 434 (1976). The legislative history of section 666 also supports inclusion of handgun permits. Section 666 was first enacted in 1996 as part of the massive federal overhaul of the welfare system.[9] The caption of section 666 indicates that its purpose is to prescribe certain procedures to improve the effectiveness of child support enforcement. [10]

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[8]Tennessee courts apply the same rule of statutory construction. *See Hill v. City of Germantown*, 31 S.W.3d 234 (Tenn. 2000).

[9] The statute became effective on January 1, 1997.

[10]The caption of section 666 states:

> Requirement of statutorily prescribed procedures to improve effectiveness of child

The House Report on section 666 shows that one component of the reform was to place greater emphasis on state enforcement of child support obligations of noncustodial parents.[11] In an effort to increase parental responsibility for the support of their children, Congress sought to establish uniform tracking procedures to catch delinquent parents and significantly strengthen enforcement measures to require noncustodial parents to comply with child support obligations.[12] Congress intended to use the social security number as the "key piece of information around which the child support system is constructed."[13] That number is supposed to serve as the primary tracking number to be used to enable those responsible for the enforcement obligations to search various databases to find parents who are delinquent in their support obligations.

The legislative history also shows that Congress recognized that suspension or revocation of various types of licenses could be a potent weapon in the enforcement of child support obligations. Congress recognized that the prospect of losing "licenses to . . . vital activities" would induce noncustodial parents to meet their support obligations.[14] It would be consistent with this intent to conclude that in today's society state-issued handgun carry permits are also "licenses to . . . vital activities."[15]

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support enforcement.

The statute was enacted as part of the welfare reform legislation which Congress enacted in 1996. Along with reducing the amount of government benefits available to welfare recipients, the legislation was intended to shift additional responsibility for child support to parents. *See,* H. Rep. No. 104-65, reprinted in 1997 U.S.C. C. A. N. S., at 2185.

The statute became effective January 1, 1997, but provided for additional time for states to comply by taking action in the first regular session of the state legislature convened after the effective date of the act. Pub. L. 104-193, § 395.

[11]See, also, H. Rep. No. 104-651, reprinted in 1997 U.S.C.C.A.N.S. 1435.

[12]H. Rep. 104-65, *reprinted* in 1997 U.S.C.C.A.N.S. 2176, at 2185.

[13]H.Rep. No. 104-651, at 1411, *reprinted* at 1997 U.S.C.C.A.N.S. 2176, 2470. That same portion of the report also notes that Congress intended to protect the privacy of the applicant by requiring a state to keep social security information confidential. As discussed in part 2, below, the States are required to remove the social security number from the face of the license upon the request of the applicant.

[14]In describing the role which suspension or revocation of licenses is intended to play in the enforcement of child support obligations, the Report states:

> Drivers licenses, professional and occupational licenses, and recreational licenses are all essential features of life in America. Without them, individuals have serious restrictions on their ability to get from one place to another, and to engage in recreational activity. Placing licenses to these vital activities in jeopardy is an exceptionally effective way to ensure that noncustodial parents pay child support in a timely fashion. *Id*, at 2494.

[15]The intent to use the suspension or revocation of licenses to create a strong incentive for compliance with child support obligations together with the importance of social security numbers as a device for tracking deadbeat parents indicates a congressional intent to authorize or require states to obtain social security numbers in connection

In the alternative, the same result would be reached if the statute were interpreted as requiring that courts look to state law in defining what is a "license" of the type covered by the statute. All of the licenses described in section 666 involve activities which have traditionally been the subject of state and not federal regulation. It is not unknown for federal courts to conclude that Congress in certain areas looks to state law to define the nature of the state-created interest which is at issue. For example, in cases involving the Internal Revenue Code, federal courts have held that although federal law determines the federal tax consequences flowing from state-created property interests, state law determines the nature of the property interests at issue. *See Morgan v. Commissioner*, 309 U.S. 626, 60 S.Ct. 424, 84 L.Ed 1035 (1940).[16]

By analogy, it would be logical for federal courts to turn to state law to determine whether a particular state-granted privilege is of the sort that is to be used to induce compliance with the child support purposes of section 666. In each case, there is no express federal statutory definition, and the terms used in the statute are ambiguous. Using this approach in interpreting section 666 would also be consistent with the manifest Congressional intent to place greater responsibilities on the states in the area of child support enforcement. This approach has been adopted by at least one other attorney general's office in dealing with a similar question under section 666.[17]

State law is clear on whether handgun permits are intended to be "licenses" for child support enforcement purposes. The statute governing handgun carry permits specifically states:

> Any permit issued pursuant to this section shall be deemed a "license" within the meaning of title 36, chapter 5, part 7, dealing with the enforcement of child support obligations through license denial and revocation.

Tenn. Code Ann. § 39-17-1351(w).

Tenn. Code Ann. § 36-5-701(4) defines a "license" for purposes of child support enforcement as:

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with licenses which are subject to suspension or revocation to enforce child support obligations. Concealed carry permits are within that class of licenses which, if placed in jeopardy, are likely to induce compliance with support obligations.

[16] In that case, the court looked to state law to determine whether a power of appointment was general or limited. The nature of the interest was important to determination of the estate's federal tax liability.

[17] In Op. Neb. Atty Gen. No. 01025, state law was used to determine whether hunting, fishing, trapping and falconry licenses were "recreational licenses." Since falconry licenses were not included in the state law definition of a recreational license, such licenses could not be suspended for non-payment of support. Therefore the state could not require disclosure of social security numbers on applications for such licenses unless section 666 required it *simpliciter*.

> a license, certification, registration, permit, approval or other similar document issued to an individual evidencing admission to or granting authority to engage in a profession, trade, occupation, business, or industry, to hunt or fish, or to operate any motor vehicle or other conveyance, but does not include a license to practice law unless the supreme court establishes guidelines pursuant to § 36-5-713 making the provisions of this part applicable to such license.

Read together, Tenn. Code Ann. §§ 36-5-701(4) and 39-17-1351(w) indicate that the Tennessee legislature intended to classify handgun permits as recreational licenses for purposes of child support enforcement.[18] This result is consistent with the policies and purpose of the federal statute, and with the federal legislative history. The Department of Safety is thus required by federal law to follow Tenn Code Ann. § 39-17-1351(c)(4) by requiring an applicant for a handgun permit to disclose his or her social security number on the application.

2. Social Security Number on face of permit:

Tenn. Code Ann. § 39-17-1351(o) prescribes the information which must be disclosed on the face of the permit, stating:.

> The permit shall be issued on a wallet-sized card of the same approximate size as is used by the State of Tennessee for driver licenses and shall contain only the following concerning the permit holder:
>
> (1) The permit holder's name, address, date of birth and social security number.

As noted above, federal law controls a state's authority to require disclosure of social security numbers. The Privacy Act prohibits requiring a person to disclose his or her social security number as a

[18]The term recreational is sometimes used to distinguish pursuit of an activity for some purpose other than as a trade or business. For example, when used in connection with fishing or woodworking, the term is used to describe people who are engaging in those activities for reasons other than to earn a livelihood.

At least two other states, Kentucky and Texas, make handgun carry permits subject to suspension or revocation for nonpayment of child support. *See* Ky. Rev.Stat. Ann. § 237.110(5) and Tex. Code Ann. § 411.172(a)(10). Kentucky requires disclosure of a social security number on the application for a carry permit. Ky. Rev. Stat. Ann. § 237.110(5)(a). Virginia also requires disclosure of a social security number on an application for a handgun carry permit. *See, Deeds v. County of Fairfax*, 1998 W.L. 372817 (4th Cir., June 5, 1998). Texas does not require an applicant to provide a social security number on such an application.

condition for exercising a right or receiving a benefit or privilege provided by law unless such disclosure is required by federal statute.[19]

The text of 42 U.S.C. §§666(a)(13) and (a)(16) requires disclosure on the applications for the types of licenses identified therein. The statute does not require disclosure of the number on the face of the permit, which would amount to public disclosure of the applicant's number by the state to the general public. No other federal statute authorizing or requiring public disclosure by the state has been found. Therefore, on the question of such public disclosure, the state is subject to the general prohibitions contained in the Privacy Act.[20] The Department of Safety must keep the number confidential in its files [21] and use and disclose it only as authorized under federal law.[22] 5 U.S.C. § 552a(b).[23] The Department of Safety is thus prohibited by federal law from public disclosing social security numbers on the face of

[19]*See* footnote 2, *supra.*

[20]In *Deeds v. County of Fairfax, supra*, the plaintiff brought suit based on allegations that the County had imporperly disclosed her social security number to the public in connection with her application for a handgun permit. In that case, the County took the applicant's picture on the courthouse steps. The applicant was photographed while holding a sign board which contained the applicant's name, social security number and other infromation. A television news crew was at the site when plaintiff's photograph was taken. Plaintiff brought suit after the sign board with her social security number was broadcast during a news story.

[21]The Department of Safety already protects the confidentiality of social security numbers on drivers license applications. Tenn Code Ann. § 55-50-351(c)(1) authorizes the Department of Safety to issue drivers licenses which do not disclose the person's social security number, so long as the social security number is disclosed on the application.

[22]As set forth in part 1, above, the Department of Safety would be permitted to disclose this information to those involved in the enforcement of child support obligations.

[23]5 U.S.C. § 552a(b) states that "No agency shall disclose any record which is contained in a system of records...." unless such disclosure is authorized under one of the subsections of that provision.

state-issued handgun carry permits.[24] The state may use another number instead, but if it does it must so notify applicants.[25]

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

MICHAEL A. MEYER
Assistant Attorney General

Requested by:

Ben West, Jr.
State Representative, 60th Legislative District
Suite 37, Legislative Plaza
Nashville, TN 37243-6959

[24]This construction is also consistent with the legislative history of 42 U.S.C. § 666. The House Report states:

> To promote privacy in keeping Social Security numbers confidential, the provision does not require States to place the numbers directly on the face of licenses, decrees or orders. Rather, the number must simply be kept in applications and records that, in most cases, are stored in computer files.
>
> In requiring use of Social security numbers, the committee does not intend to alter current law concerning confidentiality of records containing such numbers. Present law provides that Social security numbers can be used in nonconfidential public records if those records were nonconfidential and public under State law prior to October 1, 1990. H. Rep. No. 104-651, *reprinted in* 1997 U.S.C.C.A.N.S. 2176, at 2470.

Tenn Code Ann. § 39-17-1351 was first enacted in 1996. Chapter 905 of 1996 Public Acts of Tennessee. The grandfather provisions in the Privacy Act are thus inapplicable to handgun carry permits.

[25]As noted above, use of another number by the Department of Safety would require legislation by the General Assembly.

The federal language requiring dislcosure of any such alternative number is found in 42 U.S.C.§ 666(a)(13), which provides, in pertinent part:

> 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.