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Opinion No. 08-126

Requirement of Social Security Number in Tenn. Code Ann. §36-3-104(a)

QUESTION

Does Tenn. Code Ann. § 36-3-104(a) require applicants for marriage licenses to produce a social security number or a visa in order to secure a marriage license in Tennessee?

OPINION

Tenn. Code Ann. § 36-3-104(a) requires applicants for a marriage license to provide their social security numbers. The statute does not require a person to have a social security number to qualify for a marriage license. Thus, applicants who have not been issued a social security number do not have to provide a social security number in order to obtain a marriage license. Op. Tenn. Att'y Gen. 98-005 (Jan. 9, 1998), which concluded otherwise, is hereby withdrawn. The statute contains no requirement that applicants for marriage licenses produce a visa.

ANALYSIS

In *Saenz v. Bredesen, et al*., U.S. District Court for the Middle District of Tennessee, Docket No. 3:08-cv-00404, the plaintiff has challenged the policy of the Davidson County Clerk that allegedly required a marriage license applicant to have a social security number or, for an applicant without a social security number, a current passport and valid visa in order to obtain a license. This policy, which has now changed, was consistent with this Office's interpretation of the statute as stated in an opinion issued soon after the statute was amended to require applicants to list their social security numbers. Op. Tenn. Att'y Gen. No. 98-005 (Jan. 9, 1998). As discussed below, in light of legal developments since the issuance of that opinion, the Office is now of the view that the statute should be read only to require applicants with social security numbers to provide them in order to obtain a marriage license. The Office has filed a brief in *Saenz* so stating on behalf of the State defendant.

The origin of the requirement that applicants for marriage licenses provide their social security numbers can be found in federal, not state, legislation. In 1997, Congress passed comprehensive federal legislation addressing child support issues, including provisions designed to make it easier to track parents and enforce obligations. *See Michigan Dep't of State v. United States*, 166 F.Supp.2d 1228, 1232-33, (W.D. Mich. 2001)(case challenging federal statute describes history of nationwide efforts to enforce child support obligations and use of social security numbers in

process). This was accomplished in part by requiring the states to use social security numbers in a variety of situations. *Id*. The 1997 legislation amended 42 U.S.C. § 666(a)(13) and directed states to enact statutes requiring the social security number of "any applicant for a professional license, driver's license, recreational license, or marriage license" to be recorded on the application. Federal funding for the states depended on their passing this and other legislation as part of the states' participation in the national program. *See Michigan*, 166 F.Supp. at 1232.

There was initial confusion about what state procedures were required by the federal statute in situations in which a person did not have a social security number. It was not until 1999 that the federal government issued an interpretive memorandum taking the position that the federal statute does not require a person to have a social security number to apply for a license. U.S. Department of Health and Human Services, Office of Child Support Enforcement Policy Interpretation Question ("PIQ") 99-05, dated July 14, 1999. In the "PIQ," the commissioner of the Office of Child Support Enforcement said the agency does not interpret the language to "require that an individual have a social security number as a condition of receiving a license, etc." Instead, a person is to provide the number if he or she has one. PIQs are official replies by the Office of Child Support Enforcement to inquiries by state child support agencies.

The Tennessee legislation that included the requirement of social security numbers on marriage license applications was also part of a comprehensive bill addressing child support issues. 1997 Tenn. Laws Pub. Ch. 551. Section 30 of the bill added "social security numbers" to the list of information to be included on marriage applications set out in Tenn. Code Ann. §36-3-104(a). The statute now states, in part:

> No county clerk nor deputy clerk shall issue a marriage license until the applicants make an application in writing, stating the names, ages, addresses and social security numbers of both the proposed male and female contracting parties and the names and addresses of the parents, guardian or next of kin of both parties. . .

Tenn. Code Ann. §36-3-104(a).

The 1998 Attorney General opinion was issued soon after the state statute was enacted (and before the federal statute was clarified in PIQ-99-05). Op. Tenn. Att'y Gen. No. 98-005 ("1998 Opinion"). In the opinion, the state statute was read to require that all applicants provide social security numbers -- even if an applicant did not have one -- but noted that some constitutional questions would be raised by this interpretation. 1998 Opinion, p. 1. The opinion anticipated that such a reading of the statute would result in courts carving out exceptions for persons "legitimately unable to obtain a social security number and members of religious groups exempted from participation in the social security program."[1] 1998 Opinion, p. 1. However, the opinion also

[1]It is understood that the Davidson County Clerk's policy of accepting a current passport and valid visa from applicants without social security numbers who were in the United States legally reflected the need for an exception to the social security number requirement. As stated above, the statute contains no reference to the need for a valid visa or any other type of substitute documentation from those without social security numbers. Thus, the statue does not

suggested the exceptions may not extend to illegal aliens. 1998 Opinion, p. 4. The opinion noted that the Child Support Enforcement Office within the federal Department of Health and Human Services had the authority to interpret the social security number disclosure requirements in the federal statute. 1998 Opinion, p. 2. In 1999, after the issuance of Attorney General Opinion No. 98-005, the federal Child Support Enforcement Office made clear that the federal statute should not be interpreted to bar applicants without social security numbers from obtaining state licenses.

Based upon this development as well as a comprehensive review of how similar statutes passed in other states have been interpreted, this Office now concludes that the proper reading of the statute requires social security numbers to be provided by each applicant only if the applicant has one. While it is understandable that one could read the statute to require that every person provide a social security number, there is no clear statement that applicants must have numbers in order to obtain a marriage license. Instead, it appears there is a presumption that the applicants will have social security numbers just as the statute presumes applicants will have addresses and the names and addresses of parents, guardians or next of kin. To read the statute to deny marriage licenses for applicants without social security numbers would suggest that clerks should also deny licenses to applicants without addresses or particular information about their parents, guardians or next of kin.

In other states, marriage license statutes with similar language regarding social security numbers have been interpreted not to require applicants to provide numbers if they do not have them. As mentioned, the federal government has clarified that 42 U.S.C. §666(a)(13) does not require persons to have a social security number in order to obtain licenses; they just have to provide their numbers if they have them. In Ohio, courts have held that a statute similar to Tennessee's should not be interpreted so that applicants who do not have social security numbers are denied marriage licenses. *Vasquez v. Kutscher*, 767 N.E.2d 267 (Ohio S.Ct. 2002), *State v. Belskis*, 755 N.E.2d 443, 445-46 (Ohio Ct. App. 2001). Florida's attorney general issued an opinion stating that its similar statute does not require a social security number from a person who has never had one. Fla. Atty. Gen. Opinion 97-74 (Oct. 20, 1997), 1997 WL 651950 (Fla. A.G.).

Reading the statute to require marriage license applicants to provide their social security numbers only if they have them is also favored by rules of statutory construction. In interpreting Tennessee statutes, the state's courts are "charged with upholding the constitutionality of statutes where possible." *State v. Pickett*, 211 S.W. 3d 696, 700 (Tenn. 2007). The courts are to favor reasonable interpretations of statutes that avoid constitutional issues. *Bailey v. County of Shelby*, 188 S.W.3d 539, 547 (Tenn. 2006). In *Bailey*, the Tennessee Supreme Court explained this "established rule of statutory construction":

> [W]here one reasonable interpretation would render a statute unconstitutional and another reasonable interpretation would render it valid, courts are to choose the construction which validates the statute.

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require a visa be provided by marriage license applicants.

Id. Federal courts deciding between two plausible statutory constructions are also to favor interpretations that do not raise constitutional problems. *Clark v. Martinez*, 543 U.S. 371, 380-81, 125 S.Ct. 716, 724, 160 L.Ed.2d 734 (2005); *Davet v. Cleveland*, 456 F.3d 549, 554-55 (6th Cir. 2006). While this Office is not taking the position that the statute would necessarily be unconstitutional if read to require social security numbers from all applicants as a condition to obtaining a marriage license, such a reading would certainly raise more constitutional issues related to the fundamental right to marry than one that only requires those with social security numbers to provide them. *See Zablocki v. Redhail*, 434 U.S. 374, 386, 98 S.Ct. 673, 681, 54 L.Ed.2nd 618 (1978)(fundamental right to marry is not violated by reasonable regulations that do not significantly interfere with entry into marital relationship); *McKay v. Thompson*, 226 F.3d 752, 756 (6th Cir. 2000)(fundamental right to vote not unconstitutionally burdened by requirement that voters provide social security numbers in order to register to vote).

Therefore, it is our opinion that Tenn. Code Ann. § 36-3-104(a) should be read to require that applicants for marriage licenses provide their social security number only if the applicants have social security numbers. The 1998 opinion is hereby withdrawn.

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