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STATE OF NEBRASKA
OFFICIAL
MAY 1 1994
DEPT. OF JUSTICE

DATE: April 25, 1994

SUBJECT: Use of Social Security Numbers in Applications for Nebraska Handgun Certificates

REQUESTED BY: Ron Tussing, Colonel
Superintendent of Law Enforcement

WRITTEN BY: Don Stenberg, Attorney General
Lynn A. Melson, Assistant Attorney General

You have requested an Attorney General's Opinion concerning the use of social security numbers in applications for handgun certificates submitted pursuant to Neb. Rev. Stat. § 69-2404 (Cum. Supp. 1992). Your specific questions are as follows:

1. Is the "social security number" requirement of Neb. Rev. Stat. § 69-2404 inconsistent with preempting federal provisions?

2. If so, may/must the involved state and local agencies violate the statute's mandate either by not asking for the social security number or making its provision optional?

Based on the following analysis, we conclude that the social security number requirement found in the Nebraska handgun control statutes is in contravention of federal law. Applicants for handgun certificates may voluntarily provide their social security numbers, but may not be required to do so in order to obtain a handgun certificate.

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There are two provisions of the Nebraska handgun control statutes which require the use of a social security number. Neb. Rev. Stat. § 69-2404 provides that anyone desiring to purchase or lease a handgun shall submit an application on a form approved by the Superintendent of Law Enforcement and Public Safety. That statute further provides that the application shall include the applicant's social security number. Neb. Rev. Stat. § 69-2407 states that the certificate authorizing the acquisition of handguns shall also contain the certificate holder's social security number.

There are also two federal statutory provisions which are pertinent to your inquiry: Section 7 of the Privacy Act of 1974, 5 U.S.C. § 552a Note, and a 1976 amendment to the Social Security Act, codified at 42 U.S.C. § 405(c)(2)(C). The Privacy Act of 1974 does not generally apply to state agencies. In fact, "agency" is defined as "each authority of the Government of the United States." 5 U.S.C. § 551(1). However, as you have pointed out in your letter, 5 U.S.C. § 552a Note provides as follows:

> (a)(1) It shall be unlawful for any Federal, State or local government 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, 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.

This language has been described as necessary "to permit an individual to make an informed decision whether or not to disclose the social security account number, and it is intended to bring

recognition to, and discourage, unnecessary or improper uses of [the] number." ***Greater Cleveland Welfare Rights Organization v. Bauer***, 462 F.Supp. 1313, 1319, n.3 (N.D. Ohio 1978) (quoting legislative history). Therefore, the disclosure by an applicant of his social security number cannot be required unless one of the two exceptions listed in the Note apply. The first exception is if disclosure of the social security number is required by federal statute. We are not aware of any federal statute which would require disclosure of a social security number in these circumstances. We have reviewed the federal firearms statutes including the recent Brady Handgun Violence Prevention Act enacted in late 1993. We have found no reference to mandatory disclosure of an individual's social security number under these statutory provisions.

The other exception provided at 5 U.S.C. § 552a Note allows mandatory disclosure of a social security number to an 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 identify of an individual." In connection with your opinion request, you have advised us that social security numbers have been used as identifiers in some criminal justice files prior to January 1, 1975, but may not have been required by statute or regulation. We are not aware of any pre-1975 state laws mandating disclosure of an individual's social security number for a purpose similar to handgun certification.

Congress has provided another exception to the prohibition against use of social security numbers as part of the Social Security Act. 42 U.S.C. § 405(c)(2)C provides that a state or political subdivision may require an individual to furnish a social security number "in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction. . . ." It is clear that handgun certification does not fall within this exception.

Therefore, we conclude that Neb. Rev. Stat. §§ 69-2404 and 69-2407, insofar as they require the disclosure of an applicant's social security number, are in direct contravention of federal law. The Supremacy Clause of the United States Constitution provides that the federal constitution and laws are the supreme laws of the land.

As earlier stated, the Privacy Act provides that if a state or local agency requests an individual to disclose his social security account number, that agency must inform the 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. 5 U.S.C. 552a Note. In light of this provision, you could indicate on the application form that disclosure of the applicant's social security number is voluntary. The applicant should be made aware of the fact that his refusal to provide a social security number will not serve as a basis for the denial of a handgun certificate. The applicant should also be informed as to what uses will be made of the number. In the alternative, you may wish to simply delete the request for a social security number on the application form.

Sincerely,

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Approved By:

Attorney General

9-159-6.21