

**FORMAL OPINION
2002-F-10**

DATE ISSUED: September 27, 2002

REQUESTED BY: Richard Riha, Burleigh County State's Attorney

QUESTION PRESENTED

Whether N.D.C.C. § 14-03-17(4), which requires an applicant for a marriage license to provide his or her social security number, applies to individuals who do not have a social security number.

ATTORNEY GENERAL'S OPINION

It is my opinion that the requirement to provide one's social security number on a marriage license application does not apply to persons who do not have a social security number.

ANALYSIS

Under North Dakota law, "[e]ach application for a marriage license must contain the social security number of each applicant." N.D.C.C. § 14-03-17(4).¹ This change was made as part of the 1997 welfare reform legislation. 1997 N.D. Sess. Laws ch. 404, § 2. Much of the 1997 North Dakota legislation on welfare reform was required for the state to be in compliance with welfare reform adopted by the federal government, in particular a federal requirement that applicants for a professional license, driver's license, occupational license, recreational license, or marriage license have their social security number recorded on the application. 42 U.S.C. § 666(a)(13)(A).²

¹ Also, each divorce decree must include the social security numbers of the parties to the divorce. N.D.C.C. § 14-05-02.1.

² One purpose of the state and federal welfare reform legislation was to simplify the means to track delinquent child support obligors by using their social security numbers and by incorporating new administrative remedies to encourage delinquent obligors to pay their child support obligations. This same legislation also created the centralized

Section 14-03-17(4), N.D.C.C., can be read to mean that the application for a marriage license must contain the social security numbers for those applicants who have social security numbers or it can be read to mean that only a person with a social security number may apply for a marriage license. A statute is ambiguous if it is susceptible to differing but rational meanings. Kallhoff v. N.D. Workers Comp. Bureau, 484 N.W.2d 510, 512 (N.D. 1992). Even statutes that are clear and unambiguous may contain a latent ambiguity when applied to a particular situation. Kroh v. American Family Ins., 487 N.W.2d 306, 308 (N.D. 1992). The intent of the legislature must be ascertained when construing statutory provisions. Republican Comm. v. Democrat Comm., 466 N.W.2d 820, 824 (N.D. 1991). "If the language of a statute is ambiguous or of doubtful meaning, extrinsic aids may be used to interpret the statute." Kim-Go v. J. P. Furlong Enters., Inc., 460 N.W.2d 694, 696 (N.D. 1990). Extrinsic aides which may be considered in determining the legislative intent of an ambiguous statute include, among other matters, the object sought to be obtained, the circumstances under which the statute was enacted, the legislative history, the common law or former statutory provisions, including laws upon the same or similar subjects, the consequences of a particular construction, the administrative construction of the statute, and the preamble. N.D.C.C. § 1-02-39.

The purpose of requiring social security numbers on marriage license applications was to give the state the ability to track absent parents and to insure that enforcement activities are focused on the right person. Hearing on H.B. 1226 Before the House Comm. on Human Services, 1997 N.D. Leg. (Jan. 21) (Statement of William Strate, Director, Child Support Enforcement Agency, Department of Human Services). The state is required to enact these laws in order to be in compliance with the federal Personal Responsibility and Work Opportunity Reconciliation Act. Id. A review of the legislative history reveals an intent on the part of the Legislature to use social security numbers only for this purpose. Id. Hearing on H.B. 1226 Before the Senate Comm. on Human Services, 1997 N.D. Leg. (Mar. 4) (Statement of William Strate).

The North Dakota Department of Human Services has advised that applicants for professional licenses who do not have a social security number are not required to provide a social security number. Letter from Deputy Director and General Counsel James C. Fleming, State Child Support Enforcement Division, Department of Human Services, to Michael Daley (Aug. 13, 2002). Similar advice has been provided by the Office of Child Support Enforcement in the United States Department of Health and Human Services. A memo to state directors and regional program managers stated:

state disbursement unit for the payment of child support obligations. Hearings on H.B. 1226 Before the House Comm. on Human Services, 1997 N.D. Leg. (Jan. 21) (Statement of William Strate, Director, Child Support Enforcement Agency, Department of Human Services).

We interpret the statutory language . . . to require that States have procedures which require an individual to furnish any social security number that he or she may have. . . . [T]he Act does not require that an individual have a social security number as a condition of receiving a license, etc. We would advise States to require persons who wish to apply for a license who do 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. Such an affidavit should also be required for divorce, support or paternity matters where an individual indicates that he or she does not have a social security number or in death cases where a family member, next of kin indicates that the deceased did not have a social security number.

David Gray Ross, Commissioner, Office of Child Support Enforcement, July 14, 1999, Office of Child Support Enforcement Document PIQ-99-05.

“[T]he right to marry is of fundamental importance for all individuals.” Zablocki v. Redhail, 434 U.S. 374, 384 (1978). Further, “the right to marry is part of the fundamental ‘right of privacy’ implicit in the Fourteenth Amendment’s Due Process Clause.” Id. While reasonable regulations that do not significantly interfere with decisions to marry may legitimately be imposed, statutes that clearly interfere directly and substantially with the right to marry will not be upheld unless they are supported by sufficiently important state interests and are closely tailored to effectuate only those interests. Id. at 386-88.

Statutes are construed to avoid constitutional conflicts. McCabe v. N.D. Workers Comp. Bureau, 567 N.W.2d 201, 204 (N.D. 1997). “If a statute may be construed in two ways, one that renders it of doubtful constitutionality and one that does not, we adopt the construction that avoids constitutional conflict.” Ash v. Traynor, 579 N.W.2d 180, 182 (N.D. 1998). Interpreting N.D.C.C. § 14-03-17(4) as requiring an applicant for a marriage license to first obtain a social security number before being issued that license would risk imposing an unconstitutional barrier on the fundamental right of marriage. That interpretation would also be inconsistent with the legislative purpose of the enactment and contrary to its administrative construction. Therefore, it is my opinion that the requirement in N.D.C.C. § 14-03-17(4) that an applicant for a marriage license provide his or her social security number does not apply to applicants who do not have a social security number.

FORMAL OPINION 2002-F-10
September 27, 2002
Page 4

EFFECT

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.³

Wayne Stenehjem
Attorney General

Assisted by: Edward E. Erickson
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³ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).