May 28, 1999

OPINION NO. 99-034

The Honorable Mark Ochsenbein
Jackson County Prosecuting Attorney
266 E. Main Street
P.O. Box 188
Jackson, Ohio 45640

Dear Prosecutor Ochsenbein:

We have received your request for an opinion concerning the necessity of providing a social security number in order to secure a motor vehicle title. Your specific question is whether R.C. 4505.07(F)(12)(d) requires an applicant for a motor vehicle title to list his or her social security number on the application, or whether it merely requires that a space for such information be provided. Your question concerns individuals who have social security numbers but do not wish to disclose them.[1]

You have indicated that the question was raised by an attorney in your community whose clients, when applying to the title department of the Office of the Clerk of the Court of Common Pleas of Jackson County for motor vehicle titles, have encountered a requirement that they list their social security numbers. The title department bases this requirement upon a requirement of the Bureau of Motor Vehicles that the social security number of each motor vehicle title applicant be placed in the space provided on the application. The attorney in question argues that the statute requires only that a space for the social security number be provided, and not that the space be filled in.

In order to address this question, let us first look at R.C. 4505.07, which is part of Ohio's certificate of motor vehicle title law. R.C. 4505.07 describes the forms for motor vehicle

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[1] This opinion does not consider an individual who has never obtained a social security number. *See, e.g.*, R.C. 4501.31(B)(1); R.C. 4503.10(A)(7); R.C. 4507.06(A)(1)(a); R.C. 4507.13(A).

certificates of title and applications.[2] The statute states that every certificate of title shall bear a distinguishing number. R.C. 4505.07(B). The statute goes on to list information that must appear on the front of the certificate. That information includes the date and county of issuance, the name and address of the owner and the previous owner, a description of the vehicle, information about first and second liens, the purchase price and amount of sales or use tax paid, and the mileage registered on the odometer. With respect to spaces, the front of the certificate must include a space for the seal of the clerk, a space for the notation of the deputy clerk, a space for noting if the vehicle was previously a law enforcement vehicle, a taxicab, or in a flood, and a space for other pertinent information as may be required by the Registrar of Motor Vehicles. *Id.*; *see also* R.C. 4505.08(B), (C). The certificate of title must also include the signature of the clerk. R.C. 4505.07(B)(15).

The statute also lists information that must appear on the reverse side of the certificate of title. R.C. 4505.07(F). This information relates to the transfer of title. It includes the total consideration of the vehicle, the printed name and address of the buyer, an odometer certification statement, a lien disclosure statement, the buyer's odometer acknowledgment statement, a notice that the buyer and seller must state the true selling price, subject to stated penalties, and that the buyer may be assessed any additional tax found to be due, and an application for a certificate of title. With respect to spaces, the reverse side of the certificate of title must include a space for the signature of the transferor, a space for the seal of the clerk or a notary, and a space for the signature of the clerk, the deputy clerk, or a notary. *Id.*

The application for a certificate of title that must appear on the reverse side of each certificate of title is required to contain various items, including a disclosure describing it as an application for a certificate of title, a disclosure of a five-dollar fee for failure to apply for title within thirty days of assignment, a disclosure of lien information, and a disclosure that all information contained in the application is true and correct. R.C. 4505.07(F)(12). With respect to spaces, the application on the reverse side of a certificate of title must include a space for the applicant's printed name and address, a space for the applicant's social security number or

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[2] The importance of a certificate of title is clear. With certain exceptions concerning a manufacturer's or importer's certificate or a salvage vehicle, no one may buy or otherwise acquire a motor vehicle without obtaining a certificate of title, or sell or otherwise dispose of a motor vehicle without delivering a certificate of title. R.C. 4505.03; R.C. 4505.05; R.C. 4505.11; R.C. 4505.19. Similarly, no one acquires any right, title, claim, or interest in or to a motor vehicle without a certificate of title or a manufacturer's or importer's certificate. R.C. 4505.04. No one may operate a motor vehicle that does not have the required certificate of title. R.C. 4505.18(A). Hence, both the buyer and seller of a motor vehicle have an interest in complying with provisions governing certificates of title.

employer's identification number,[3] a space for the purchase price, tax paid, and vehicle condition, a space for the lienholder's name and address, a space for the applicant's signature, a space for the acknowledgment statement of the clerk, the deputy clerk, or a notary, a space for the seal of the clerk or a notary, and a space for the signature of the clerk, the deputy clerk, or a notary. *Id.*

As materials submitted with your opinion request indicate, the statutes relating to application for a certificate of title do not expressly state that all the spaces on the application form must be filled in. Instead, the statute providing for the submission of an application for a certificate of title to the clerk of the court of common pleas states merely that "[a]pplication for a certificate of title shall be made in a form prescribed by the registrar of motor vehicles, and shall be sworn to before a notary public or other officer empowered to administer oaths." R.C. 4505.06(A); *see also* R.C. 4505.01(B); R.C. 4505.02. It is clear that the form prescribed by the Registrar of Motor Vehicles must comply with statutes governing that form, including R.C. 4505.07.[4] It is also clear that the General Assembly intended that, to obtain a certificate of title, an applicant must not merely submit the form but must also put the applicable information in the various spaces. *See generally State ex rel. Calhoun v. Scioto County Bd. of Elections*, 36 Ohio St. 3d 164, 522 N.E.2d 49 (1988); *State ex rel. Loss v. Board of Elections*, 29 Ohio St. 2d 233, 281 N.E.2d 186 (1972).

It is evident that it would be impossible to provide a certificate of title in the name of a particular person if the applicant failed to fill in the spaces for the applicant's name and signature. *See Zoloto v. Scott*, 111 Ohio App. 372, 160 N.E.2d 318 (Butler County 1959) (title to motor vehicle was not transferred when application did not contain name of assignee and signature was not notarized). Enforcement of sales and use tax provisions would be impeded if

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[3] R.C. 4505.07 does not specify when an employer's identification number is to be provided in place of a social security number. Other provisions of the Revised Code call for submission of an employer's federal taxpayer identification number when a motor vehicle is used for hire or principally in connection with an established business. *See* R.C. 4503.10(A)(7). Because you have asked about social security numbers, this opinion does not discuss employer's identification numbers. It addresses only applications for certificates of title for motor vehicles that are not used for hire or in business.

[4] The Registrar of Motor Vehicles is authorized to issue rules to ensure uniform and orderly operation of the certificate of motor vehicle title law. R.C. 4505.02; *see also* R.C. 4501.02(A)(1). Certificates of title are issued by the clerks of the courts of common pleas. R.C. 4505.08; *see also* R.C. 4505.06. The clerks of the courts of common pleas are required to conform to the Registrar's rules and are also required to provide forms as prescribed by the Registrar. *Id.*; *see also* R.C. 4505.02. Duplicate copies of certificates of title are kept on file by the clerks of the courts of common pleas, and indexes are maintained. R.C. 4505.08.

spaces governing purchase price and tax paid were not filled in. *See* R.C. 4505.06; *see also* R.C. 5739.03; R.C. 5739.13; R.C. Chapter 5741. *See generally* R.C. 5703.24; R.C. 5703.26; R.C. 5703.27. If the application is sworn to as required by R.C. 4505.06(A), the appropriate place to note verification is the space provided for that information. *See generally* 1978 Op. Att'y Gen. No. 78-028. Thus, while there may not be an express statutory statement that spaces appearing in an application for a certificate of title must be filled in, such a requirement is clearly implied.

The requirement that the application form contain a disclosure that all information contained in the application is true and correct and the requirement that the form contain the applicant's notarized signature work together to impose a mandate that, if the applicant has been issued a social security number, that number must appear in the appropriate space. To omit the social security number in such circumstances would be to falsely indicate that no social security number has been issued. *See United States v. Mattox*, 689 F.2d 531 (5th Cir. 1982).

The statutes governing applications for motor vehicle certificates of title thus clearly contemplate that all portions of the form will be filled in with accurate information. Therefore, R.C. 4505.06 and R.C. 4505.07 require that, in order to obtain a certificate of title for a motor vehicle that is not used for hire or in business, an applicant who has been issued a social security number must include that social security number in the space on the application form provided for that information.

It is of interest that the form for transferring title, appearing on the reverse side of a certificate of title, requires a space for the applicant's social security number or employer's identification number, while that information is not required to be included on the front of the certificate of title. That discrepancy cannot be assumed to indicate that the social security number or employer's identification number need not be submitted by an applicant for a certificate of title. Instead, it suggests that the primary importance of that information is in connection with the process of transferring title and assuring proper payment of taxes, and that the necessary functions can be accomplished even though the number does not appear on the front of the certificate of title.

Beginning in 1989, the social security number or the federal taxpayer identification number of the owner was required to appear on the front of a certificate of title, but there was no requirement of a space for a social security number on the reverse side of the certificate of title. *See* 1989-1990 Ohio Laws, Part III, 4759-67 (Am. Sub. H.B. 381, eff. July 1, 1989). In 1996, the General Assembly amended the statute to remove the owner's social security number or federal taxpayer identification number from the front of the certificate of title and to provide a space for the applicant's social security number or employer's identification number in the application on the reverse side of the certificate. *See* 1995-1996 Ohio Laws, Part III, 4128-31 (Am. Sub. H.B. 353, eff. Sept. 17, 1996). It is evident, therefore, that the General Assembly has given consideration to the nature of the social security number provision, and it is appropriate that the provision be read and applied in accordance with its terms.

Further, there are various other state statutes that deal specifically with social security numbers. An applicant for a driver's license, temporary instruction permit, motorcycle operator's license or endorsement, commercial driver's license, or identification card must submit the applicant's social security number, if one has been assigned, but the individual may request that the number not be displayed on the license, permit, or card and the request will be granted unless federal law requires that the number be displayed. R.C. 4501.31; R.C. 4506.07; R.C. 4506.11; R.C. 4507.06; R.C. 4507.13; R.C. 4507.51-.52. Similarly, an application for registration of a motor vehicle must contain the owner's social security number, if such a number has been assigned, or, if the vehicle is used for hire or principally in connection with an established business, the owner's federal taxpayer identification number. R.C. 4503.10(A)(7). The disclosure of a social security number is required in those instances and is consistent with the requirement that a social security number be provided to obtain a certificate of title.[5]

In order to consider whether the disclosure of a social security number may be required, it is necessary to examine also relevant provisions of federal law. Specific provisions of federal law allow states to require the disclosure of social security numbers for purposes of identification in connection with the administration of certain types of law, including tax law and motor vehicle registration, as follows:

> It is the policy of the United States that *any State* (or political subdivision thereof) *may, in the administration of any tax*, general public assistance, driver's license, *or motor vehicle registration law within its jurisdiction, utilize the social security account numbers* issued by the Commissioner of Social Security *for the purpose of establishing the identification* of individuals affected by such law, *and may require any individual* who is or appears to be so affected *to furnish* to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, *the social security account number* (or numbers, if he has more than one such number) issued to him by the Commissioner of Social Security.

42 U.S.C.A. § 405(c)(2)(C)(i) (West Group Supp. 1999) (emphasis added).

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[5] As discussed more fully in the text that follows, the submission of social security numbers in connection with the administration of state driver's license or motor vehicle registration law is permitted under federal law for the purpose of establishing the identification of individuals affected by the state law. *See* 42 U.S.C.A. § 405(c)(2)(C)(i) (West Group Supp. 1999). It is assumed for purposes of this opinion that this is the use given to social security numbers under the statutes referenced above. *See generally Nowlin v. Department of Motor Vehicles*, 53 Cal. App. 4th 1529, 62 Cal. Rptr. 2d 409 (1997); *Penner v. King*, 695 S.W.2d 887 (Mo. 1985).

While the certificate of title of a motor vehicle is a document separate from the registration, the certificate of title law is part of the arrangement by which motor vehicles are identified under Ohio law. *See* R.C. 4501.02(A) (the Registrar of Motor Vehicles "shall administer the laws of the state relative to the registration of and certificates of title for motor vehicles"); R.C. Chapter 4503; R.C. Chapter 4505. The duty to register a motor vehicle that is operated or driven upon public roads or highways is imposed upon the owner and "every person mentioned as owner in the last certificate of title." R.C. 4503.10(A).[6] Thus, the titling and registration statutes are part of a single system, and it appears reasonable to include an application for a certificate of title as part of the motor vehicle registration law under this federal provision.

Further, an application for a certificate of title must be accompanied by payment of the appropriate sales and use taxes. *See* R.C. 4505.06(B); *Geo. Byers Sons, Inc. v. Metzger*, 172 Ohio St. 354, 176 N.E.2d 417 (1961); *Ohio Body Mfg. Co. v. Lindley*, No. H-79-16, 1980 Ohio App. LEXIS 9853 (Ct. App. Huron County June 20, 1980). Thus, the certificate of title provisions are part of the administration of state tax law, and submission of a social security number may be required for that reason, as well. Therefore, it appears that Ohio is permitted under federal law to require that an applicant submit a social security number for identification purposes in order to secure a motor vehicle certificate of title.[7]

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[6] Effective July 1, 1999, the applicant will be required to present a certificate of title or a memorandum certificate in order to register a motor vehicle for the first time. *See* Am. Sub. H.B. 611, 122nd Gen. A. (1998) (eff. March 9, 1999, with some provisions effective on different dates) (amending, *inter alia*, R.C. 4503.10 and R.C. 4505.06, eff. July 1, 1999). Until that date, the following documentation may be presented in place of such a certificate: "proper bills of sale or sworn statement of ownership, the originals of which have been filed with the clerk of the court of common pleas, or a certificate of the clerk certifying that such bills of sale or sworn statement of ownership have been filed with the clerk." R.C. 4503.10(B); *see also* R.C. 4505.06.

[7] The provisions of 42 U.S.C.A. § 405(c)(2)(C)(i) quoted above were adopted in 1976 as an exception to the Federal Privacy Act of 1974, Pub. L. No. 93-579, 88 Stat. 1896 (1974). *See* Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1525, 1711-12 (1974). The Federal Privacy Act of 1974 generally prohibits a governmental agency from denying an individual any rights, benefits, or privileges provided by law for refusal to disclose the individual's social security number upon request, except when a federal statute requires disclosure or when disclosure was required for identification under a statute or regulation adopted prior to January 1, 1975, by a governmental agency maintaining a system of records in existence and operating before that date. Privacy Act of 1974, Pub. L. No. 93-579, 88 Stat. 1896, 1909 (section 7(a), uncodified, appearing at 5 U.S.C.A. § 552a note (West 1996)). Under Ohio law, social security numbers were required for driver's licenses as early as 1967, *see* 1967-1968 Ohio Laws, Part I, 1582 and 1967-1968 Ohio Laws, Part II-III, 2542 (Am. H.B. 193, amending R.C. 4507.06(A)),

There are provisions of law that expressly protect the confidentiality of social security numbers. *See* 42 U.S.C.A. § 405(c)(2)(C)(viii)(I) (West Group Supp. 1999) (establishing

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but they were not used in connection with certificates of title prior to 1989, *see* 1989-1990 Ohio Laws, Part III, 4759-67 (Am. Sub. H.B. 381, eff. July 1, 1989) (social security number required on front of certificate of title); 1995-1996 Ohio Laws, Part III, 4128-31 (Am. Sub. H.B. 353, eff. Sept. 17, 1996) (space for social security number on reverse side of certificate of title).

The Federal Privacy Act of 1974 requires that certain information be provided when a governmental entity requests disclosure of a social security number, as follows:

> 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.

Privacy Act of 1974, Pub. L. No. 93-579, 88 Stat. 1896, 1909 (1974) (section 7(b), uncodified, appearing at 5 U.S.C.A. § 552a note (West 1996)). It has been argued that this provision does not apply when social security numbers are requested in the administration of tax, general public assistance, driver's license, or motor vehicle registration law pursuant to 42 U.S.C.A. § 405(c)(2)(C)(i). However, that argument has been rejected by the courts, which have held that such information must be provided even if authority to request the social security number is granted pursuant to 42 U.S.C.A. § 405(c)(2)(C)(i). *See State v. Hughes*, 2 Ohio App. 3d 443, 442 N.E.2d 786 (Cuyahoga County 1981); *see also Doyle v. Wilson*, 529 F. Supp. 1343 (D. Del. 1982); *Greater Cleveland Welfare Rights Org. v. Bauer*, 462 F. Supp. 1313 (N.D. Ohio 1978); *Doe v. Sharp*, 491 F. Supp. 346 (D. Mass. 1980); 1994 Op. Att'y Gen. No. 94-084.

The Ohio Attorney General does not have authority to make definitive decisions concerning questions of federal law. *See, e.g.*, 1985 Op. Att'y Gen. No. 85-078. We note, on the basis of the foregoing discussion, that there may be an obligation for a governmental entity to make disclosure under the Privacy Act of 1974 when a social security number is sought, and that it is not clear whether this disclosure has been provided in the circumstances you have described. *See generally Penner v. King*, 695 S.W.2d 887, 892 (Mo. 1985) ("[t]he plaintiffs were adequately advised that the disclosure was mandatory when they were denied licenses for failure to disclose. The requirement is listed along with other identifying data, and so the requirement of disclosure is patently 'for purposes of identification'"). As a practical matter, the failure to comply with this aspect of the Federal Privacy Act of 1974 has not been found to invalidate governmental actions so taken, although a court may grant prospective relief. *See Yeager v. Hackensack Water Co.*, 615 F. Supp. 1087 (D.N.J. 1985); *Greater Cleveland Welfare Rights Org. v. Bauer*; 1994 Op. Att'y Gen. No. 94-084; *see also Doyle v. Wilson*; *State v. Hughes*.

confidentiality of social security numbers obtained pursuant to a provision of law enacted on or after October 1, 1990); *see also, e.g.*, 1999 Op. Att'y Gen. No. 99-006; 1996 Op. Att'y Gen. No. 96-034. For example, R.C. 4501.15(A) states that the Department of Public Safety "shall not provide social security numbers from its driver license and vehicle registration records to any person, except local, state, or federal governmental agencies." Other provisions prescribe limited circumstances in which the Bureau of Motor Vehicles may disclose a social security number or other personal information about an individual. R.C. 4501.27.

Further, an individual may block disclosure by the Bureau of Motor Vehicles, a deputy registrar, or a clerk of the court of common pleas of personal information contained in motor vehicle records, including records that pertain to driver's licenses, certificates of title, and motor vehicle registration. *See* R.C. 4501.27; 10 Ohio Admin. Code 4501:1-12-02. The information that may be blocked includes social security numbers. *See* R.C. 4501.27(G)(3); 10 Ohio Admin. Code 4501:1-12-02(A)(1).

These provisions do not restrict the information that may be obtained for motor vehicle records, but only the manner in which the information may be disclosed to outside persons. *See generally State ex rel. Beacon Journal Publ'g Co. v. City of Akron*, 70 Ohio St. 3d 605, 640 N.E.2d 164 (1994); 1996 Op. Att'y Gen. No. 96-034. The fact that social security numbers are expressly listed makes it evident that the General Assembly intended that there be instances in which the submission of one's social security number will be required. For the reasons discussed above, it is apparent that the application for a motor vehicle certificate of title is one such instance.

Therefore, it is my opinion, and you are advised, that R.C. 4505.06 and R.C. 4505.07 require that, in order to obtain a certificate of title for a motor vehicle that is not used for hire or in business, an applicant who has been issued a social security number must include that social security number in the space on the application form provided for that information.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

May 28, 1999

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SYLLABUS: 99-034

R.C. 4505.06 and R.C. 4505.07 require that, in order to obtain a certificate of title for a motor vehicle that is not used for hire or in business, an applicant who has been issued a social security number must include that social security number in the space on the application form provided for that information.