

**CITY OF MADISON
CITY ATTORNEY'S OFFICE
Room 401, C.C.B.
266-4511**

March 30, 1999

OPINION 99-005

TO: Larry Nelson, City Engineer
FROM: Eunice Gibson, City Attorney
RE: **Use of Social Security Number as an Employee Identification Number**

You have asked for the opinion of the City Attorney regarding the City's use of an individual's Social Security number as an employee identification number. I understand that several employees have expressed concerns that Social Security numbers, obtained by the City as an employer for tax purposes, are now being used as employee identification numbers for general personnel and other communicative and identification purposes. Since the original inquiry was made, I have learned that the City does not intend the Social Security Number to be used for that purpose. The Comptroller is, in fact, taking steps to "audit" its use on City documents and to remind the payroll users group of the appropriate uses of this taxpayer identifier. Because this issue resurfaces from time to time, I have decided to address this question in a formal opinion notwithstanding the fact that the City is not now using the SSI as an employee identification number. For the reasons outlined below, it is my opinion that any such use is prohibited under federal law unless it is made voluntary on the employee's part.

Access to and use of an individual's Social Security number is protected by federal law. The law makes a distinction between use of a Social Security number by a private entity and governmental use. Disclosure of a Social Security number to a private entity remains a personal matter between the individual and the requiring entity; governmental use, however, is regulated and restricted by the Privacy Act of 1974 [§ 5, USC § 552a] and the Social Security Act [42 USC § 405]. Amendments to the Privacy Act enacted in 1988 specifically addressed the growing use of Social Security numbers as identifiers by governmental entities. With respect to mandatory disclosure of a Social Security number to a public authority, § 7 of the Pub. L. 93-579 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 number¹.

Courts have underlined the strong Congressional intent to protect an individual's privacy reflected in the amendment:

The purpose of the Privacy Act of 1974 was "to curtail the expanding use of social security numbers by federal and local agencies and, by so doing, to eliminate the threat to individual privacy and confidentiality of information posed by common numerical identifiers." Doyle v. Wilson, 529 F. Supp. 1343, 1348 (D. Del. 1982).

Both the Privacy Act of 1974 and the Social Security Act contain exemptions to the general prohibition against mandatory disclosure requirements. They include disclosure to state and local governments required under federal laws, including, for example, required disclosure to a public employer for IRS purposes. [§ 7 of Pub. L. 93-579]. A municipality may also require individuals to provide their Social Security numbers in order to administer certain governmental programs including, but not limited to, tax programs; public assistance programs; driver's license and motor vehicle registration programs; blood donor programs. [42 USC § 405(c)(2)(C)(i) & (D)]. While other public uses of Social Security numbers not specifically mentioned in the statutes are not prohibited, they cannot be made mandatory. Use of a Social Security number by a public employer as an employee identification number is not listed among the exceptions. Consequently, this use must be voluntary.

One further point must be made. You should be reminded that federal law places additional conditions on a public entity's collection of Social Security numbers. Specifically, the Privacy Act contains the following mandatory notice provisions:

(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. (§ 7, Publ. L., 93-579)

In summary, it is my opinion that use of a City employee's Social Security number as an employee identification number must be voluntary on the employee's part. Should the City wish to use Social Security numbers for such purpose, it must first advise individuals of all of the following:

¹The law includes an exemption if disclosure is required under a law or regulation adopted prior to 1975. The exemption is inapplicable here. The City's use of the Social Security number as an employee identification number is not mandated by law.

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- 1) whether disclosure of the Social Security number is mandatory or voluntary;
- 2) under what legal authority the number is requested;
- 3) how the number will be used.

Employees who demur should be assigned an identification number other than their Social Security numbers. If you have any questions regarding this opinion, please contact Assistant City Attorney Carolyn Hogg.

Yours truly,

Eunice Gibson
City Attorney

EG:CSH:sal

cc: Mayor Susan J.M. Bauman
City Clerk

Summary: Use of employee Social Security numbers, originally collected for tax purposes, as a City employee identification number must be voluntary and is further conditioned on compliance with federal notification provisions concerning the authority for disclosure and intended uses.

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