

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

January 26, 1984

Honorable John L. Martin
Speaker, House of Representatives
State House Station #2
Augusta, Maine 04333

Honorable Courtney E. Stover
House of Representatives
State House Station #2
Augusta, Maine 04333

Dear Speaker Martin and Representative Stover:

This Opinion is provided in response to your inquiry whether the provisions of 32 M.R.S.A. § 1094-B, enacted by P.L. 1983, c. 21, concerning the identification of dentures, are in conflict with the Federal Privacy Act, 5 U.S.C. § 552b, enacted by P.L. 93-579, and therefore violative of the Supremacy Clause of the United States Constitution. It is the conclusion of this Department that the Maine statute is not in conflict with the Federal Act.

Briefly stated, the Maine statute requires that dentures fabricated in Maine or at the direction of a dentist licensed in Maine contain the Social Security Number and name of the owner, if such identification is practical. From the text of the Maine law and inquiry into its actual operation, it is apparent that the intended purpose of the law is to provide a means of identifying the owner of a denture in the event of its

loss.^{1/} The identification requirement is unrelated to any medical benefit program or other program administered by the State or Federal government. Moreover, the operation of this denture identification program does not require that any records be maintained by any governmental agency.

The Federal Privacy Act is concerned almost exclusively with personal information contained in records maintained by the Federal government and State, local or private agencies administering Federal programs. The purpose of the Act is, generally, to limit the uses to which such records can be put and to insure each person's access to his own records. Therefore, as long as the Maine statute neither requires nor results in the maintenance of any governmental records listing a patient's Social Security Number, there would be no conflict with the Federal Privacy Act.

However, the Federal Act does contain an uncodified provision addressed specifically to governmental requirements that a Social Security Number be disclosed. Section 7 of the Privacy Act of 1974 provides:

Sec. 7. (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 (2) 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.

^{1/} The program may incidentally enable the identification of persons wearing dentures where identification may otherwise be difficult or impossible to ascertain. This potential alternative use does not affect the conclusions of this Opinion for the reasons set forth therein.

(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.

88 Stat. 1909, reprinted in a note to 5 U.S.C. § 552b.

From this provision and the associated Congressional history, S. Report, 93-1183,^{2/} it is plain that Congress was keenly aware of the dangers to personal privacy associated with disclosure of a Social Security Number, since many data banks containing personal information are coded by this number. In adopting this section, Congress sought to restrict mandatory disclosure to public agencies, except in cases of pre-existing record systems or where expressly authorized by Congress. Even under these circumstances, Congress has required advance notification of the nature and authority for the request, and of what uses may be made of the information. Finally, Congress provided that no personal right or governmental benefit may be denied based upon a person's refusal to provide a Social Security Number except under one of these two express authorizations.

It does not appear, however, that the prohibition of Section 7 of the Federal Privacy Act would apply to the Maine statute since, under the Maine law, the demand is not that a Social Security Number be disclosed to the government, but rather to another private person. Thus, although the demand is brought about by virtue of the State's action, the disclosure is made in a purely private context. There does not appear to be any reported case dealing with disclosure of a Social Security Number to private parties. Nonetheless, it is the conclusion of this Office that Section 7 of the Act would most likely be interpreted to be limited to cases where Social Security Number disclosure is both required by a governmental agency and results in a government record. If the Federal Privacy Act is so interpreted, the Maine statute is not in conflict with it.

^{2/} 1974 U.S. Code Cong. & Adm. News 6916.

If we can be of further assistance to you, please do not hesitate to contact me.

Sincerely,



JAMES E. TIERNEY
Attorney General

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