

November 18, 2008

Adrienne R. Youmans, Director  
South Carolina Department of Labor, Licensing, and Regulation  
Post Office Box 11329  
Columbia, South Carolina 29211-1329

Dear Ms. Youmans:

We understand from your letter that you desire an opinion of this Office on the South Carolina Illegal Immigration Reform Act. Specifically, you inquire as to whether public agencies and political subdivisions are limited to use of the Systematic Alien Verification of Entitlement System (“SAVE”) to verify the lawful presence in the United States of all applicants for state or local public benefits. According to your letter:

The South Carolina Department of Motor Vehicles currently uses SAVE to verify that an individual in the United States before issuing a drivers license. Private employers are allowed to rely upon this verification as an alternative to using the federal E-Verify work authorization program. S.C. Code §41-8-20 (B)(2). We inquire as to whether state agencies and political subdivisions may also rely upon this verification and accept a valid South Carolina Drivers License in lieu of making another query to SAVE when determining qualifications for public benefits.

#### **Law/Analysis**

In 2008, the Legislature enacted the South Carolina Illegal Immigration Reform Act (the “Act”). 2008 S.C. Acts 2325. As you explained in your letter, section 8-29-10 of the South Carolina Code, adopted under the Act, requires, except for limited exceptions as provided under State and federal law, as follows:

every agency or political subdivision of this State shall verify the lawful presence in the United States of any alien eighteen years of age or older who has applied for state or local public benefits, as defined in 8 USC Section 1621, or for federal public benefits, as defined in 8

Ms. Youmans  
Page 2  
November 18, 2008

USC Section 1611, that are administered by an agency or a political subdivision of this State.

Id. § 8-29-10(A). Section 8-29-10 provides that the applicant must execute an affidavit claiming he or she is lawfully present in the United States. S.C. Code Ann. § 8-29-10(D). Furthermore, this provision explains how agencies and political subdivisions verify such affidavits.

For an applicant who has executed an affidavit that he or she is an alien lawfully present in the United States, eligibility for benefits shall be made through the Systematic Alien Verification of Entitlement (SAVE) program operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security. Until the eligibility verification is made, the affidavit shall be presumed to be proof of lawful presence for the purposes of this article.

Id. § 8-29-10(E).

As you point out in your letter, section 41-8-20 of the South Carolina Code, also included in the Act, requires private employers in South Carolina to maintain a South Carolina employment license. As a condition to this license, section 41-8-20 requires certain private employers to register or participate in the E-Verify federal work authorization program to verify an employee's authorization to work. Alternatively, section 41-8-20 allows employers to employ only workers who possess or are eligible to obtain a South Carolina driver's license or identification card or a valid driver's license or identification card issued by another State whose requirements are at least as strict as South Carolina's standards for the issuance of such a license or identification. S.C. Code Ann. § 41-8-20(B). Thus, as you indicate, the private employers are authorized to rely upon a potential employee's driver's license or identification card to verify his or her authorization to work in the United States. Thus, you ask whether or not state agencies and political subdivisions may rely on an applicant's driver's license or identification card for purposes of section 8-29-10.

In responding to inquiry, we first look to the language in section 8-29-10. As our Supreme Court recently commented:

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature. All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute. The court should give words their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute's operation.

Ms. Youmans  
Page 3  
November 18, 2008

Auto Owners Ins. Co. v. Rollison, 378 S.C. 600, 609, 663 S.E.2d 484, 488 (2008) (citations and quotations omitted).

Section 8-29-10(E) states that once an applicant for benefits executes an affidavit “eligibility for benefits shall be made through the Systematic Alien Verification of Entitlement (SAVE) program . . . .” (emphasis added). Our courts, looking at other statutes containing the word “shall,” interpret this word as meaning the action is mandatory. Johnston v. South Carolina Dep’t of Labor, Licensing, and Regulation, South Carolina Real Estate Appraisers Bd., 365 S.C. 293, 296-97, 617 S.E.2d 36, 364 (2005). Accordingly, we read section 8-29-10(E) to require agencies and political subdivisions to use the SAVE program to verify the lawful presence of an alien applying for benefits. Moreover, we also note that while the Legislature provided an alternative means of verifying the lawful presence of an employee to private employers, it failed to do so with regard to agencies and political subdivisions providing public benefits. We believe that if the Legislature intended for agencies and political subdivisions to rely on an applicant’s driver’s license or identification card, it would have allowed for such as it did with regard to private employers and their employees.<sup>1</sup>

### Conclusion

Based on our analysis above, we are of the opinion that section 8-29-10 requires agencies and political subdivisions to use the SAVE program to verify the lawful presence of an alien seeking benefits as described in this statute. As such, we do not believe agencies and political subdivisions may accept an applicant’s South Carolina driver’s license or identification card as a substitute for SAVE verification.

Very truly yours,

Henry McMaster  
Attorney General

By: Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook  
Deputy Attorney General

<sup>1</sup>Note also that the Legislature allowed the possession of a South Carolina driver’s license or identification card as a method of verifying employment authorization for employees of contractors performing work for public employers. S.C. Code Ann. § 8-14-20(B).