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## **Memorandum**

**Date:** May 20, 2010

**To:** County Treasurers  
DMV Staff

**From:** Debra A. Hillmer, Director, Division of Motor Vehicles

**RE:** Non-resident Titling and Registration Requirements

After much discussion and review of our current statutes, the Department offers the following direction as to titling and registration of "non-residents."

The Department has determined that the current language of Title 32 does not expressly prohibit out-of-state applicants from titling and registering in South Dakota. This position is consistent with a 1996 opinion issued by the South Dakota Attorney General's Office, a copy of which is attached.

The Department shares the counties' concerns with applicants listing addresses to which they appear to have little to no actual affiliation. It is assumed that many of these false addresses are provided in an attempt to show South Dakota residency when, in fact, under current law, South Dakota residency is not required for titling and registration.

Regardless of the inadequacies and gray areas of the current statutory scheme, the Department remains committed to ensuring that applicants are providing the most accurate information possible and that counties are prepared to exercise their legal discretion when necessary. Both SDCL 32-3-18 and 32-5-3 require an applicant to provide either a South Dakota driver's license number (SDDL) or Social Security Number (SSN). Effective immediately, applicants who list a SSN and who do not have a South Dakota driver's license must provide a photo copy of their picture ID (e.g., out-of-state driver's license or tribal photo identification). This applies to each applicant listed on the application.

The above-referenced statutes also require an applicant to provide "the county in which the vehicle is to be kept." Please make sure that applicants are providing you this information, regardless of state. The above-referenced statutes further require an applicant to provide his "residence post office address." There is, understandably, much confusion surrounding what address information is sufficient to satisfy application requirements. Again, South Dakota law does not prohibit out-of-state residents from registering in our state. If an applicant truly

lives at an out-of-state address, that's the information we want reflected on our applications. The ultimate goal is to discourage false information and encourage applicants to provide their actual home address, regardless of state.

The Department anticipates that some applications will continue to reflect South Dakota addresses that, in all likelihood, have absolutely no connection to the applicant. While establishing residence is not difficult, it does require at least brief "bodily presence as an inhabitant in a given place." Black's Law Dictionary (8<sup>th</sup> ed. 2004). If an applicant provides only a South Dakota residential post office address and you reasonably suspect that the applicant has never had physical presence at said location, deny the application until such time as the applicant provides sufficient proof to satisfy at least the minimum burden of physical presence. Once again, an applicant need not have a South Dakota address to apply for South Dakota title and registration. Under current law, out-of-state residential post office addresses will suffice.

The Department understands that certain counties handle a number of mail forwarding services whose customers are, in fact, true "nomads" without abodes in this or any other state. Applicants wishing to list only a mail forwarding address will be required to indicate, under the penalties of perjury already present on current applications, that he or she claims no residential post office address in this or any other state. This will allow true nomads to provide their mail forwarding address information without requiring a traditional residential post office address. However, if the person does claim residence in another state, they are required to list that address, even if it is outside of South Dakota.

Above all, bear in mind the last sentence of SDCL 32-5-2: "The department or the county treasurer may not accept an incomplete application form or an application form which the department considers erroneous." Use your discretion and always feel free to contact the Department with questions or concerns.

STATE OF SOUTH DAKOTA



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MARK W. BARNETT  
ATTORNEY GENERAL  
June 19, 1996

LAWRENCE E. LONG  
CHIEF DEPUTY ATTORNEY GENERAL

Robert A. Haivala  
Harding County State's Attorney  
P.O. Box 515  
Buffalo, SD 57720-0515

Re: Registration of motor vehicles by potential nonresidents of  
South Dakota

Dear Mr. Haivala:

You have requested an opinion regarding the following facts:

FACTS:

The Treasurer of Harding County, South Dakota, has been receiving applications for motor vehicle titles and registrations from individuals whom the Treasurer believes are living in Arizona. The Treasurer believes that these individuals from Arizona have no connection with our state. The Treasurer has also noticed that the applications in question are primarily related to luxury vehicles, such as Corvettes, Mercedes-Benz, and Jeep Grand Cherokees.

Based upon the above facts, you ask the following question:

QUESTION:

Does SDCL 32-5-46 prohibit nonresidents of South Dakota from registering their vehicles in South Dakota?

GENERAL DISCUSSION:

SDCL ch. 32-5 discusses "annual registration and license plate" mandates in South Dakota. Specifically, SDCL 32-5-46 describes the requirements of registration, payment of license fees, and display of registration numbers for vehicles owned by nonresidents of South Dakota. That statute provides as follows:

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The provisions of this chapter, except as otherwise specifically provided, relative to registration, payment of license fees, and display of registration numbers do not apply to any motor vehicles owned by a nonresident of this state, if the owner has complied with the provisions of the law of the state of which he is a resident, relative to the registration thereof and the display of a registration number plate or plates thereon. The owner shall conspicuously display his registration number plate or plates as required by the law of this state.

In addition, SDCL 32-5-47 defines a nonresident as:

A nonresident within the meaning of § 32-5-46 is a person who does not reside in this state. If present in this state for more than ninety days, a person is considered a resident for the purposes of § 32-5-46.

The question you raise can be resolved by using the statutory rule of construction which states that "statutes are to be accorded their plain meaning and effect." Matter of Petree, 520 N.W.2d 610, 613 (S.D. 1994) (citing State v. Ohlmann, 444 N.W.2d 377, 378, 379 (S.D. 1989)). In other words, a statute is primarily interpreted according to the statutory language in its plain, ordinary and popular meaning. Chiolis v. Lage Development Company, 512 N.W.2d 158, 160 (S.D. 1994). See also National Farmers v. Universal, 534 N.W.2d 63, 65 (S.D. 1995) (citing Oahe State Conservatory Subdistrict v. Janklow, 308 N.W.2d 559, 561 (S.D. 1981)). The plain language of SDCL 32-5-46 does not explicitly prohibit out-of-state residents, such as those whom the Harding County Treasurer believes live in Arizona, from submitting applications for motor vehicle titles and registrations in South Dakota. Moreover, SDCL 32-5-47 simply explains, in pertinent part, that: "If present in this state for more than ninety days, a person is considered a resident for the purposes of § 32-5-46." In my opinion, based upon the facts you have provided, SDCL 32-5-46 does not prohibit individuals who may be nonresidents from registering their vehicles in our state. See, e.g., Petree, 520 N.W.2d at 613 (statute said nothing about effective date of revocation order); Ohlmann, 444 N.W.2d at 379 (nothing in language of provision indicating expansive application).

It should be emphasized, however, that any vehicle registered in the state must be registered in compliance with state law. SDCL 32-5-2 provides as follows:

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Every owner of a motor vehicle, motorcycle, truck tractor, road tractor, trailer or semitrailer, or recreational vehicle or trailer, which is operated or driven upon the public highways of this state, shall, except as otherwise expressly provided, present to the county treasurer of his county, or, in case of a nonresident of this state, the treasurer of any county, application for the registration of that vehicle. The application form shall be furnished by the department and shall contain but not be limited to the following information:

- (1) The number of cylinders or the bore and stroke of each cylinder;
- (2) The manufacturer's weight;
- (3) Whether the vehicle operates on diesel fuel, liquified petroleum gas, gasoline or any other special fuel;
- (4) The make, model, body, year, color and vehicle identification number of the vehicle;
- (5) The odometer reading; and
- (6) The purchase price and the name and address of the seller, buyer and lienholder, if any.

Any person who fails to provide the above information to the county treasurer or the department is guilty of a Class 2 misdemeanor. The department or the county treasurer may not accept an incomplete application form or an application form which the department considers erroneous.

Emphasis added.

The mandatory language of SDCL 32-5-2 should be given full effect regardless of whether the owner of the vehicle is a resident. If

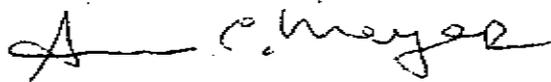
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it appears that an application is fraudulent or an attempt to "title wash," the treasurer should reject the application and report the matter to the local authorities.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ann C. Meyer". The signature is written in dark ink and is positioned above the typed name.

Ann C. Meyer

Assistant Attorney General

ACM:nan