



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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FILE NO. 10-002

STATE MATTERS:
Acceptance of Mexican Consular
Identification Cards by a Notary Public

The Honorable Edward Acevedo
Assistant Majority Leader
State Representative, 2nd District
1836 West 35th Street
Chicago, Illinois 60609

Dear Representative Acevedo:

I have your letter inquiring whether a Mexican consular identification card (CID) constitutes an "identification document" that a notary public (notary) must accept under the Illinois Notary Public Act (the Notary Public Act) (5 ILCS 312/1-101 *et seq.* (West 2008)). For the reasons stated below, it is my opinion that notaries are required to accept the Mexican CID for identification purposes, except as specifically provided in section 10 of the Consular Identification Document Act (the Identification Act) (5 ILCS 230/10 (West 2008)) or in certain real estate transactions described in section 3-102 of the Notary Public Act (5 ILCS 312/3-102 (West 2008)).

BACKGROUND

Consular identification cards have been issued since at least 1871. "[E]mbassies and consulates of foreign states * * * encourage their citizens abroad to register with the consulates so that they can receive standard consular services, be notified if necessary, and be located upon inquiry by relatives and authorities."¹ The demand for the cards has grown dramatically, however, since the terrorist attacks of September 2001. A number of countries issue consular identification cards to their citizens who reside in the United States.² The identification cards are accepted for several purposes, including opening bank accounts, registering for local services (*e.g.*, telephone and other utilities), and providing identification when requested by police.

Your opinion request specifically addresses the use of the Mexican CID, which is issued by the Mexican government to its citizens living in the United States when they register

¹Congressional Research Service, The Library of Congress, CRS Report for Congress, Consular Identification Cards: Domestic and Foreign Policy Implications, the Mexican Case, and Related Legislation 1-2 (updated May 26, 2005), *available at* <http://www.fas.org/sgp/crs/misc/RL32094.pdf> (CRS Report); *see also* Remarks of Rep. Hostettler, June 19, 2003, House of Representatives, 108th Congress, Hearing before the Subcommittee on Immigration, Border Security, and Claims, of the Committee on the Judiciary, on Consular Identification Cards, at 10-12, *available at* http://commdocs.house.gov/committees/judiciary/hju87813.000/hju87813_of.htm.

²It is our understanding that other countries issue CIDs, or cards similar to the Mexican CIDs but referred to by different name. *See, e.g.*, Argentina, <http://www.consuladoargentino-losangeles.org/matricula.asp> (last visited December 22, 2010); Brazil, <http://www.brazilian-consulate.org/forms/matricula.pdf>; Colombia, http://consuladocolombia.com/servicios_otros_matricula.htm (last visited December 22, 2010); Ecuador, http://consulecuadornewyork.com/index.php?option=com_content&task=view&id=29&Itemid=35 (last visited December 22, 2010); Guatemala, http://www.consulateofguatemalaindenver.org/ticg_eng.asp (last visited December 22, 2010); Mali, http://www.maliembassy.us/images/stories/forms/demande_de_carte_didentite_consulaire.pdf; Pakistan, http://www.pakconsulatela.org/nicop_poc.html (last visited December 22, 2010). To the extent that these identification cards meet the statutory requirements in the Identification Act and have security features equal to or more stringent than the Mexican CID, the analysis and conclusions reached in this opinion would be applicable to those documents.

with a Mexican consulate. The Mexican government issues the Mexican CID for a five-year period upon the payment of the appropriate fee. The most recent version of the Mexican CID, which became available in the United States in March 2002, contains the photograph, name, signature, date and place of birth, and United States address of the holder, a serial number, a date of issuance and expiration of the CID, and the name of the issuing consulate. Further, the current version of the Mexican CID has a number of security features intended to make the cards tamper-proof and non-duplicable.³

To obtain a Mexican CID, an applicant must appear in person at a consulate office and present: (1) an original birth certificate or other document demonstrating Mexican citizenship; (2) an official, government-issued photo identification document demonstrating identity; and (3) proof of a local address in the United States, such as a utility bill.⁴

The United States Department of the Treasury recognizes the Mexican CID as a valid form of customer identification for financial institutions.⁵ Further, the Mexican CID "is accepted as valid identification in 377 cities, 163 counties, and 33 states, as well as 178 financial

³The security features include the printing of the plastic laminated cards on special green paper with the official Mexican seal and a one-of-a-kind hologram of the Foreign Affairs Ministry that appears over the holder's picture, two additional security features that may be viewed under fluorescent light, and eight additional features visible only with special decoder equipment distributed to local law enforcement authorities. CRS Report 2 n.2.

⁴CRS Report 1-2.

⁵U.S. Department of the Treasury, A Report to Congress in Accordance with §326(b) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA Patriot Act) 16 n.17 (October 21, 2002), *available at* <http://www.ustreas.gov/press/releases/reports/sec326breport.final.pdf>.

institutions and 1,180 police departments in the United States."⁶ Moreover, both the City of Chicago and Cook County have adopted ordinances recognizing the CID as a valid form of identification.⁷ You have asked whether notaries are required to accept a Mexican CID as an identification document when performing their duties.

ANALYSIS

The Consular Identification Document Act

The Identification Act (5 ILCS 230/1 *et seq.* (West 2008)) provides for the acceptance and use of consular identification documents with regard to specified government activities. Section 10 of the Identification Act provides:

(a) When requiring members of the public to provide identification, each State agency and officer and unit of local government shall accept a consular identification document^[8] as valid identification of a person.

⁶CRS Report 1-2.

⁷See Chicago Municipal Code §§2-160-065, 2-173-040 (1990), available at <http://www.chicityclerk.com/municipalcode.php> (the Chicago Municipal Code recognizes the Mexican CIDs as well as other Latin American CIDs, if the country is represented by a consulate office located in the City of Chicago); Cook County Code of Ordinances §2-4 (adopted July 12, 2006), available at <http://www.voterinfonet.com/countyboard/cookcountyordinances/Pages/default.aspx> (the Cook County Code recognizes the Mexican CIDs as well as other Latin American CIDs, if the country is represented by a consulate office located in Cook County).

⁸Pursuant to section 5 of the Identification Act (5 ILCS 230/5 (West 2008)), a "consular identification document" is an official identification card issued by a foreign government that meets all of the following requirements: (1) it is issued through the foreign government's consular offices for the purpose of identifying foreign nationals living outside of the nation; (2) the foreign government requires an individual to provide proof of nationality, proof of identity, and proof of residence in the consular district; (3) the foreign government includes the following security features in the consular identification document: a unique identification number, an optically variable feature such as a hologram or color-shifting inks, an ultraviolet image, encoded information, machine readable technology, micro printing, secure laminate, and an integrated photograph and signature; (4) the consular identification document includes the name and address of the individual to whom it is issued, the date of issuance, the date of expiration, the name of the issuing consulate, and an identification number; and (5) the issuing consulate has filed with the Department of State Police a copy of the issuing consulate's consular identification document and a certification of the procedures used to satisfy the requirements of (2) and (3). The Mexican CID appears to satisfy each of the foregoing requirements.

* * *

(c) A consular identification document may not be accepted as identification for obtaining a driver's license or registering to vote.

* * *

(e) The requirements of subsection (a) do not apply if:

(1) a federal law, regulation, or directive or a federal court decision requires a State * * * officer * * * to obtain different identification;

(2) a federal law, regulation, or directive preempts state regulation of identification requirements[.]

* * *

(f) Nothing in subsection (a) shall be construed to prohibit a State * * * officer * * * from:

(1) requiring additional information from persons in order to verify a current address or other facts that would enable the State * * * officer * * * to fulfill its responsibilities, except that this paragraph (1) does not permit a State * * * officer * * * to require additional information solely in order to establish identification of the person when the consular identification document is the form of identification presented;

(2) requiring fingerprints for identification purposes under circumstances where the State * * * officer * * * also requires fingerprints from persons who have a driver's license or Illinois Identification Card; or

(3) requiring additional evidence of identification if the State * * * officer * * * reasonably believes that: (A) the consular identification document is forged, fraudulent, or altered; or (B) the holder does not appear to be the same person on the consular identification document. (Emphasis added.)

Under the plain and unambiguous language of section 10 of the Identification Act, "each State * * * officer * * * shall accept a consular identification document as valid identification of a person[,]" except as otherwise provided. Based on this language, to answer your question concerning whether notaries must accept the Mexican CID, we must determine whether they are State officers for purposes of section 10 of the Identification Act.

In *Midwest Television, Inc. v. Champaign-Urbana Communications, Inc.*, 37 Ill. App. 3d 926, 931 (1976), the appellate court delineated the criteria to be used when determining whether a position constitutes a public office, stating:

The characteristics of a public office are generally agreed upon, although the distinction between an office and employment may be vague in particular fact situation. The characteristics of a public office include: (1) creation by statute or constitution; (2) exercise of some portion of the sovereign power; (3) a continuing position not occasional or contractual; (4) fixed tenure; (5) an oath is required; (6) liability for misfeasance or nonfeasance; and (7) the official has an independence beyond that of employees.

The court further indicated that "[n]ot all [of] these factors are required in order to determine that a position is an office." *Midwest Television, Inc.*, 37 Ill. App. 3d at 932. The most important of the factors, however, is the exercise of some portion of the sovereignty of the State. *People v. Brady*, 302 Ill. 576, 582 (1922).

Applying this criteria to the position of notary public, that position qualifies as a public office. The notary position is created by section 2-101 of the Notary Public Act (5 ILCS 312/2-101 (West 2008)). Notaries have the authority to perform their duties throughout the

State. 5 ILCS 312/3-105 (West 2008). They may take acknowledgments,⁹ administer oaths or affirmations, take verifications upon oath or affirmation,¹⁰ and witness or attest to signatures. 5 ILCS 312/6-101 (West 2008). Although their duties are ministerial in nature (*People ex rel. Village of Grayslake v. Village of Round Lake Beach*, 242 Ill. App. 3d 750, 756 (1993), *appeal denied*, 151 Ill. 2d 576 (1993); *see also Bernal v. Fainter*, 467 U.S. 216, 104 S. Ct. 2312 (1984); *Cheng v. State of Illinois*, 438 F. Supp. 917 (N.D. Ill. 1977); *Taggart v. Mandel*, 391 F. Supp. 733 (D.C. Md. 1975)), the official attestation of duly appointed and commissioned notaries are entitled to full faith and credit. 5 ILCS 312/3-106 (West 2008). Thus, notarial acts represent the exercise of a portion of the sovereign power of State government. *See* 5 ILCS 255/1, 2 (West 2008); Wis. Att'y Gen. Op. No. 43-85, issued November 7, 1985 (notaries public exercise some part of the sovereign power of the State); Kan. Att'y Gen. Op. No. 83-48, issued April 4, 1983 (a notary public holds a public office, and the authentication of documents, administration of oaths and affirmations and the performance of other notarial acts represents the exercise of a portion of the sovereign power of State government); *but see* Cal. Att'y Gen. Op. No. 04-310 at 6, issued October 14, 2004 ("a notary public does not occupy a 'public office' for purposes of the incompatible offices rule"). Illinois residents who are appointed and commissioned by the

⁹An "acknowledgment" is a declaration by a person that the person has executed an instrument for the purposes stated therein and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified therein. 5 ILCS 312/6-101(b) (West 2008).

¹⁰A "verification upon oath or affirmation" is a declaration that a statement is true made by a person upon oath or affirmation. 5 ILCS 312/6-101(c) (West 2008).

Secretary of State as notaries serve a four-year term of office.¹¹ 5 ILCS 312/2-101, 3-105 (West 2008). All notary applicants must give a bond (5 ILCS 312/2-105 (West 2008)) and sign an oath of office (5 ILCS 312/2-104 (West 2008)). A notary and the surety on the notary's bond are liable for all damages caused by the notary's official misconduct. 5 ILCS 312/7-101 (West 2008). Further, a notary who commits official misconduct is guilty of a criminal offense.¹² 5 ILCS 312/7-105 (West 2008). Finally, the statutory duties of notaries reveal a degree of discretion not generally granted to employees. A notary possesses exclusive authority to determine whether the person appearing before him or her is the person whose signature is on an instrument and whether the notary will affix his or her notarization to a particular document.¹³

When considered as a whole, the position of notary, in my opinion, satisfies the criteria for public office. The notary position satisfies the most important criteria: by administering oaths and taking verifications upon oath or affirmation, notaries exercise a portion of the sovereign power; their positions are created by statute; they take an oath of office; and they

¹¹Non-residents who work in Illinois may be appointed by the Secretary of State to a one-year term of office. 5 ILCS 312/2-101 (West 2008).

¹²A notary who knowingly and willfully commits official misconduct is guilty of a Class A misdemeanor. A notary who recklessly and negligently commits any official misconduct is guilty of a Class B misdemeanor. 5 ILCS 312/7-107 (West 2008).

¹³A State officer generally is one whose duties and powers are coextensive with the State. *Ramsay v. VanMeter*, 300 Ill. 193, 200 (1921). All officers whose duties concern the State at large, or the general public, are State officers even if such duties are exercised within defined territorial limits. *Ramsay*, 300 Ill. at 201. A notary's commission is recorded with the county clerk. 5 ILCS 312/2-106 (West 2008). Notaries are authorized to perform their duties throughout the State of Illinois, however, as long as they reside in the same county in which they were commissioned (or, if they reside in a bordering state, as long as their principal place of work or business is located in the same county in which they were commissioned). Their official rubber stamp seals indicate that they are "Notary Public[s]" for the "State of Illinois" (5 ILCS 312/3-101 (West 2008)), and they serve the general public.

have an independence beyond that of an employee. Given these factors, notaries are State officers for purposes of the Identification Act. Accordingly, section 10 of that Act requires notaries to accept Mexican CIDs for identification purposes.

The Illinois Notary Public Act

You have also inquired whether the recent amendment to section 6-102 of the Notary Public Act (5 ILCS 312/6-102 (West 2008)) contained in Public Act 95-988, effective June 1, 2009, changes this analysis. Pursuant to section 6-102, when taking acknowledgments or verifications, notaries must determine, "either from personal knowledge or from satisfactory evidence," that the person appearing before them is the person whose true signature is on the instrument or verified statement (or, in the case of witnessing or attesting a signature, that the signature is that of the person appearing before them). Section 6-102 provides:

(d) A notary public has satisfactory evidence that a person is the person whose true signature is on a document if that person:

(1) is personally known to the notary;

(2) is identified upon the oath or affirmation of a credible witness personally known to the notary; or

(3) is identified on the basis of identification documents.
Until July 1, 2013, identification documents are documents that are valid at the time of the notarial act, issued by a state or federal government agency, and bearing the photographic image of the individual's face and signature of the individual. (Emphasis added.)

The General Assembly added the emphasized language in Public Act 95-988. Prior to this amendment, the Notary Public Act did not include a definition of "identification documents" or

any indication of the type of documents to which the term was intended to refer. *See* 5 ILCS 312/6-102 (West 2006).

The fundamental rule of statutory construction is to give effect to the intent of the General Assembly, and the best indication of this intent is the language of the statute. *People v. McCarty*, 223 Ill. 2d 109, 124 (2006). If statutory language is ambiguous, however, it is appropriate to examine the legislative history of the statute in determining legislative intent (*People v. Whitney*, 188 Ill. 2d 91, 97-98 (1999); *Monat v. County of Cook*, 322 Ill. App. 3d 499, 506 (2001)), and to consider the purpose behind the law and the issues the law was designed to remedy (*In re M.T.*, 221 Ill. 2d 517, 524-25 (2006)).

Under the plain and unambiguous language of section 6-102, it is clear that notaries may rely on "identification documents" as evidence to establish the identity of a person. It is not clear, however, whether the term "identification documents" is limited to only those documents "issued by a [United States] state or federal government agency" that bear the individual's photographic image and signature, or whether documents issued by foreign governments and consuls, such as a Mexican CID, may also constitute "identification documents." It is appropriate, therefore, to review the legislative history of section 6-102.

Section 6-102 was included in the original enactment of the Notary Public Act (*see* Public Act 84-322, effective July 1, 1986) and, to date, Public Act 95-988 contains the only amendment of section 6-102. The legislative debates for Senate Bill 546, which became Public Act 95-988, clearly indicate that the amendments were part of an effort to prevent mortgage fraud

in Cook County through the use of a pilot program imposing stricter identification requirements when notaries are involved in real estate conveyances in Cook County. Representative Brosnahan, the bill's co-sponsor, explained the bill as follows:

[Senate Bill 546] only involves notaries when they're dealing with conveyance of real property and that real property is located in Cook County, Illinois. And it's a pilot program for up to three (3) years.^[14]

* * *

* * * Everybody came to an agreement that this was something worth doing in an effort to at least attempt to prevent mortgage fraud in the future. That's why we settled on a three-year term, it sunsets in three (3) years. But I know of no opposition. We are just trying ... there have been many instances, especially in Cook County, where mortgage fraud takes place because identity theft is occurring. And when the transaction is complete, it's finalized. The police have nowhere to go to look for the person because false identification was used. So this was just an attempt to combat a very serious problem, especially in Cook County. Remarks of Rep. Brosnahan, October 10, 2007, House Debate on Senate Bill No. 546, at 47-48.

Given this clear legislative intent, it is my opinion that the language added to subsection 6-102(d)(3) is applicable only to those documents that may be used as identification documents with regard to real estate transactions in Cook County. The additional language was not intended to be an all inclusive definition of the term "identification document." Further, nothing in the legislative history of section 6-102 indicates that the amendment is intended to limit the use of CIDs by foreign nationals to establish their identities generally.

¹⁴The General Assembly subsequently accepted the Governor's specific recommendation to extend the program to July 1, 2013. Remarks of Sen. Cullerton, September 23, 2008, Senate Debate on Senate Bill No. 546, at 3; Remarks of Rep. Brosnahan, September 23, 2008, House Debate on Senate Bill No. 546, at 25.

As explained above, section 10 of the Identification Act requires notaries to accept consular identification documents for identification purposes, subject to certain limited exceptions. While that Act creates exceptions for Federal laws, regulations, or directives setting forth different identification requirements, it does not contain an exception for State laws such as the Notary Public Act.¹⁵ In contrast, section 6-102 of the Notary Public Act appears to require notaries to accept only identification documents issued by a State or Federal agency.

Where two legislative enactments may conflict, it is appropriate to construe the statutes in a manner that avoids inconsistency and gives effect to both statutes, if such a construction is reasonably possible. *Chavda v. Wolak*, 188 Ill. 2d 394 (1999). Further, if there are two statutory provisions, one of which is general and designed to apply to cases generally and the other is particular and relates only to one subject, the particular provision must be treated as an exception to the general provision. *Paszkowski v. Metropolitan Water Reclamation Dist.*, 213 Ill. 2d 1, 8 (2004). Here, the legislative debates for Senate Bill 546, amending the Notary Public Act, clearly indicate that the General Assembly intended to impose stricter identification requirements for real estate conveyances in Cook County. The General Assembly did not express an intent to impose stricter identification requirements for all notarial acts. Accordingly, when the Identification Act and the Notary Public Act are construed together, it is my opinion that notaries are required to accept Mexican CIDs as identification documents under the Notary

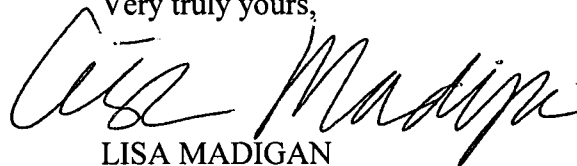
¹⁵Section 10 of the Identification Act provides an exception for State agencies, State officers, or units of local government that would be unable to comply with a condition because compliance would cause a loss of funds from a funding source. 5 ILCS 230/10(e)(3) (West 2008). Section 10 also authorizes State agencies, State officers, or units of local government to require additional information in certain limited circumstances. 5 ILCS 230/10(f) (West 2008).

Public Act, except as provided in section 10 of the Identification Act or for the specific real estate transactions described in section 3-102 of the Notary Public Act.

CONCLUSION

Notaries public are State officers under section 10 of the Consular Identification Document Act. As such, they are required to accept Mexican consular identification cards from Mexican nationals for identification purposes with limited exceptions. Section 6-102 of the Illinois Notary Public Act, which provides that identification documents include those "documents * * * issued by a state or federal government agency," applies only to certain real estate conveyances in Cook County, as contemplated by section 3-102 of the Notary Public Act. Accordingly, construing the Notary Public Act and the Consular Identification Document Act so as to give effect to both statutes, it is my opinion that notaries are required to accept the Mexican consular identification card for identification purposes, subject only to the exceptions set out in section 10 of the Identification Act and for real estate transactions contemplated by section 3-102 of the Notary Public Act.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa Madigan", written in a cursive style.

LISA MADIGAN
ATTORNEY GENERAL