



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

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Earl Ray Tomblin
Governor

Paul A. Mattox, Jr., P. E.
Cabinet Secretary

July 9, 2014

Michael D. Silverman
Executive Director
Transgender Legal Defense & Education Fund, Inc.
151 West 19th Street, Suite 1103
New York, New York 10011

Dear Mr. Silverman:

Thank you for your letter dated June 30, 2014 concerning the issuance of West Virginia driver's licenses to two applicants, Trudy Kitzmiller and Kristen Skinner. I found Kristen Skinner's information, but need a driver's license or social security number for Trudy Kitzmiller.

With that being said, I have reviewed the circumstances you recount in your letter and from your letter, it appears that both applicants submitted the correct documents to change their names. There are three ways to document a name change; amended birth certificate, marriage certificate, or circuit court order. In both cases, the applicants obtained a court order to change their names. Nothing further is required to change their names.

However, it appears from your letter that neither court order contained specific instruction to the Division of Motor Vehicles to change the gender on their driver's license in accordance with West Virginia Legislative Rule 91 CSR 4.9.5.

9.2.b. The licensee or identification card holder shall substantiate a change of name by divorce, or court order with a copy of the certified divorce decree or certified court order that specifically states the new name the applicant will use for legal purposes; and

9.2.c. Any other change in the name requires a certified birth certificate or a court order ordering the name change.

9.3. Any change in the birth date requires a certified birth certificate.

9.4. Any change or correction of the social security number requires a social security card.

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9.5. Any change of gender requires a court order specifically indicating that the gender change is complete.

Consequently, while the court orders permit the Division of Motor Vehicles to change the name, they did not permit the applicants to change their gender.

The Division of Motor Vehicles is required under West Virginia Code § 17B-2-8(a) to issue driver's licenses that contain an applicant's full legal name, color photograph and a brief description of the licensee along with other information. The brief description includes eye color, hair color, and gender. The agency has a number of policies in place to ensure that the photograph is clear, and that the applicant is not wearing apparel or makeup that would conceal or intentionally disguise his or her identity. Under West Virginia Code §17B-2-8(c), the Division is mandated to use such processes as necessary to prevent fraudulent actions.

While an applicant may believe he or she is of a certain gender, and may dress as though he or she is of a certain gender, like an applicant's legal name, the gender change must be substantiated by documentation, not simply by choice or dress. Dressing or presenting one's self as a person of another gender is an attempt to alter their appearance contrary to their gender just like wearing a mask or scarf across their face.

Obviously, it does become somewhat subjective as to what constitutes concealing or intentionally disguising one's identity. Hair length in and of itself is not a determining factor as individuals of both genders may wear their hair long or short. While hats and sunglasses are prohibited because they mask identity features, a headscarf for a chemo patient is a reasonable accommodation. Conversely, wearing full theater make-up or clown make-up would not be permitted. However, while these various individual accommodations are, at times subjective, an objective determination was apparently made in the two cases you cite that the photo taken for the driver's license was not representative of the gender originally substantiated by the applicant's birth certificate at the time of initial licensing. As a result, the applicant's appearances were considered an attempt to conceal or alter their identities.

DMV has in place the criteria for a person to change his or her gender on the driver's license by Legislative Rule 91 CSR 4.9.5 which provide that gender change may be accomplished by a Court Order "specifically indicating that the gender change is complete." This process had been used in the past without issues. Until these two drivers take the steps necessary to change their gender to the satisfaction of a Circuit Court Judge, their photographs must reflect their identities as males.

Mr. Michael D. Silverman

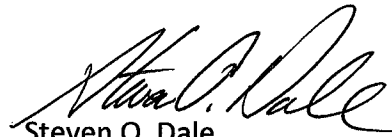
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Please know that I sympathize with Trudy and Kristen's difficulty and regret any inconvenience the DMV process may have caused them. I take their issues seriously. As a precautionary measure, I have instructed the DMV Regional Office Director to remind employees to treat customers with respect and sensitivity.

Should you have additional questions or need further information, please contact Larry Cavender, Assistant Director of Driver Services at (304) 926-3975 or Don Estep, Manager of the Drivers Licensing Section at (304) 926-3801.

Sincerely,



Steven O. Dale
Commissioner

/em

Cc: Jill Dunn, General Counsel

Larry Cavender

Don Estep