

VITAL STATISTICS:
HEALTH:
DIVISION OF HEALTH:
DEATH CERTIFICATES:
FORGERY:

Funeral directors who make copies of death certificates prior to filing with the local registrar and with the Division of Health or funeral directors who make copies of certified copies of death certifi-

cates are in violation of the provisions of Section 193.380, RSMo Supp. 1967.

OPINION NO. 303

October 9, 1969

L.M. Garner, M.D.
Acting Director
Division of Health
Broadway State Office Building
Jefferson City, Missouri 65101

FILED
303

Dear Dr. Garner:

This opinion is in response to your question asking whether funeral directors who make copies of death certificates prior to submitting said certificates to the Division of Health for filing and recording are in violation of any statutory provisions.

It is our understanding that funeral directors often make copies of death certificates for their own files and thereafter make additional copies for other persons upon request. Sometimes the copies that they have furnished to other persons have been notarized by notaries public as a true copy of the death certificate. At the time of copying these "certificates" have not been sent to the local registrar; and although they are on the form furnished by the Division of Health and are completed and signed by the physician, they are not Division of Health certified death certificates.

We note first that under Section 193.070, RSMo Supp. 1967, the Director of the Division of Health or a deputy appointed by him is the State Registrar and has charge of vital statistics and is the custodian of all vital files and records. He has the authority to perform the duties prescribed; and under Section 193.240, RSMo Supp. 1967, it is unlawful for any officer or employee of the state to disclose data contained in vital statistical records except as authorized by law and by the Division. Essentially, the Division of Health has the ultimate control of the content and dissemination of the information contained in vital statistical records.

L.M. Garner, M.D.

Section 193.380, RSMo Supp. 1967, states in part as follows:

"1. Any person who wilfully makes or alters any certificate or certified copy thereof provided for in this chapter, except in accordance with the provisions of this chapter, shall be fined not more than one thousand dollars or confined in the county jail for not longer than six months, or both fined and confined."

Section 193.130, RSMo 1959, provides:

"Registration of deaths and stillbirths. -- A certificate of every death or stillbirth shall be filed with the local registrar of the district in which the death or stillbirth occurred within three days after the occurrence is known; or if the place of death or stillbirth is not known then with the local registrar of the district in which the body is found within twenty-four hours thereafter. In every instance a certificate shall be filed prior to interment or other disposition of the body."

Section 193.140, RSMo 1959, provides in full as follows:

"1. The person in charge of interment shall file with the local registrar of the district in which the death or stillbirth occurred or the body was found a certificate of death or stillbirth within three days after the occurrence.

"2. In preparing a certificate of death or stillbirth the person in charge of interment shall obtain and enter on the certificate the personal data required by the division from the persons best qualified to supply them. He shall present the certificate of death to the physician last in attendance upon the deceased or to the coroner having jurisdiction who shall thereupon certify the cause of death according to his best knowledge and belief. He shall present the certificate of stillbirth to the physician, midwife or other person in

L.M. Garner, M.D.

attendance at the stillbirth, who shall certify the stillbirth and such medical data pertaining thereto as he can furnish.

"3. Thereupon the person in charge of interment shall notify the appropriate local registrar, if the death occurred without medical attendance, or the physician last in attendance fails to sign the death certificate. In such event the local registrar shall inform the local health officer and refer the case to him for immediate investigation and certification of the cause of death prior to issuing a permit for burial, cremation or other disposition of the body. When the local health officer is not a physician or when there is no such officer, the local registrar may complete the certificate on the basis of information received from relatives of the deceased or others having knowledge of the facts. If the circumstances suggest that the death or stillbirth was caused by other than natural causes, the local registrar shall refer the case to the coroner for investigation and certification."

It is clear therefore that the person in charge of interment has certain duties with respect to the preparation and filing of death certificates. However, such persons are not charged with the duty of maintaining vital statistics, nor do they have the statutory right or duty to furnish such certificates or copies thereof to other persons. It is also clear that the legislature has given the Bureau of Vital Statistics of the Division of Health the sole authority to perform the required functions with respect to vital statistics to the exclusion of other persons.

With the framework of these laws in mind, we next consider the application of Section 193.380, RSMo Supp. 1967, which has been set out above. Whether or not a funeral director who makes a copy of the certificate before it has been sent to the Division of Health, or of a certificate which has been completed by the Division of Health and certified by the Division as a certified copy of the death record violates the provisions of Section 193.380, depends largely upon the interpretation of the word "makes".

In this respect, it is recognized in 54 C.J.S., p. 907, that the word "make" is at best a very ambiguous term and has many significations and may convey many meanings. It is our opinion, however, that the word "makes" is used in the same sense as used in the more common significance of forgery; i.e., it is recognized

L.M. Garner, M.D.

that the acts of making and altering are not the same. The act of forging is "to make or imitate falsely; to produce or devise, to fabricate" or "to make in the likeness of something else". State v. Talbot, 160 Me. 103, 198 A.2d 163, 166 (1964). Similarly, "forgery" is the "fraudulent making or alteration of a writing to the prejudice of another man's rights." Rowley v. U.S., 191 F.2d 949, 950 (1951); Phleger v. Phleger, 345 Mo. 512, 134 S.W.2d 26 (1938).

The crime of forgery of such documents is contained within the provisions of Section 561.011, RSMo 1959. Section 193.380 does not speak in terms of forgery. However, Section 193.380 provides that the willfull act of making or altering any certificate or certified copy is, in fact, a crime without showing prejudice to another man's rights, which is presumed under the terms of that section and without showing that the making is fraudulent.

The conclusion we reach then is that the term "makes" was intended by the legislature and is sufficiently comprehensive to include the copying of these certificates because copying is, in fact, the making of the certificate without regard as to whether or not the copy is fraudulently made.

CONCLUSION

It is therefore the opinion of this office that funeral directors who make copies of death certificates prior to filing with the local registrar and with the Division of Health or funeral directors who make copies of certified copies of death certificates are in violation of the provisions of Section 193.380, RSMo Supp. 1967.

This opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Yours very truly,



JOHN C. DANFORTH
Attorney General