

DIVISION OF HEALTH: The information required in a birth certificate is very largely a matter of discretion resting
ILLEGITIMATE CHILDREN: in the Department of Health of the State of Missouri; that mothers may assign names to their
BIRTH CERTIFICATES: children in those cases where paternity is doubtful or in which the child is illegitimate; that birth records, based upon information furnished by the mother of the child, which records supply personal particulars relating to the father, but not the name of the father, should not have the name of the child removed nor the information relating to the father, prior to the filing of the birth certificate.

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JOHN M. DALTON



May 1, 1953

J.C. Johnsen
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Honorable James R. Amos, M.D.
Director
Division of Health
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your recent request for an official opinion. You thus state your opinion request:

"Under date of March 22, 1935, your office rendered an opinion relative to the surname to be assigned to an illegitimate child. Since that date a new State Constitution and a new birth registration law have become effective. The birth registration law is included in Chapter 193, Missouri Revised Statutes, 1949. Is the opinion of 1935 still in effect?

"For convenience in filing records in this office we recommend that the name of the child and all information relating to the father be omitted on birth records where the paternity is doubtful. We also recommend that the mother sign the birth record in the space where the informant's signature is to be shown. We usually file such a record here under the legal name of the mother for convenience in subsequent identification of the original record. Further, we assume as a matter of convenience that the addition of a surname to the child's record can be made through an affidavit of the natural mother or the legal guardian and through the presentation of some document identifying the child. This leads to a second question. Is this procedure

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still satisfactory in view of the fact that the legitimacy status of the child no longer appears on the portion of the record provided for certified copies?

"Many mothers assign names to the children even in those cases where paternity is doubtful. Some mothers also supply personal particulars relating to the father, but not the name. Should such records have the name of the child removed and information relating to the father removed prior to the filing?"

Your first inquiry is in regard to an opinion rendered by this department on March 22, 1935, to Doctor E. T. McGaugh, State Health Commissioner.

We do not believe that the McGaugh opinion, which passes upon the right of an illegitimate child to assume a name, is upon the same issue as the opinion in the instant case, which is upon the right of the mother of an illegitimate child to give such child a name. Since there is no point of conflict, we shall not review the McGaugh opinion except to state that it yet is an official opinion of this department upon the issue with which it deals.

We have carefully noted the general procedure which you outlined in the second paragraph of your letter, in regard to the handling of cases such as you describe, and believe that the procedure which you follow to be proper.

We here direct attention to Section 193.160, RSMo 1949, which section reads:

"The forms of certificates shall include as a minimum the items required by the respective standard certificates as recommended by the national office of vital statistics subject to approval of and modification by the division. The form and use of such certificate shall be subject to the provisions of section 193.240."

As we interpret the above section, it gives to the Department of Health practically unrestricted authority in its require-

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ments as to the contents of the certificates filed with the Department of Health. It will be noted that the section states that "the forms of certificates shall include as a minimum the items required by the respective standard certificates as recommended by the national office of vital statistics." However, this requirement is very largely amended by the words which follow, which words are "subject to approval of and modification by the division." It will be observed that there is no restriction as to the degree of modification, which, as we stated above, in our opinion, makes the form of these certificates almost wholly a matter within the discretion of the Department of Health.

In your letter of inquiry you further state that "Many mother assign names to the children even in those cases where paternity is doubtful.", and ask whether this is proper. We believe that it is. We are unable to find any Missouri law which serves as a directive in this matter, but we are also unable to find any Missouri law which would prohibit that practice. Upon the parents of a child there is placed the responsibility and the unrestricted right to bestow upon their child whatever name they wish. We find nothing which would restrict the mother of an illegitimate child, or a child of doubtful paternity, from doing the same thing.

You further state that some mothers supply personal particulars relating to the father, but not the name of the father. You then ask whether, under such circumstances, your records should have the name of the child removed and the information relating to the father removed. We believe not because of the obvious fact of the desirability of having as much recorded information as possible (within the limits of reason) in regard to an illegitimate child or one of doubtful paternity, inasmuch as information would be of possible use and interest to the child later, and would no doubt be of advantage in adoption proceedings.

CONCLUSION

It is the opinion of this department that the information required in a birth certificate is very largely a matter of discretion resting in the Department of Health of the State of Missouri; that mothers may assign names to their children in those cases where paternity is doubtful or in which the child is illegitimate; that birth records, based upon infor-

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mation furnished by the mother of the child, which records supply personal particulars relating to the father, but not the name of the father, should not have the name of the child removed nor the information relating to the father, prior to the filing of the birth certificate.

This opinion, which I hereby approve, was prepared by my assistant, Mr. Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON
Attorney General

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