

June 6, 1974

OPINION LETTER NO. 20
Answer by letter-Wood

Herbert R. Domke, M.D.
Director, Missouri Division
of Health
Broadway State Office Building
Jefferson City, Missouri 65101



Dear Dr. Domke:

This letter is in response to your request that we review and comment on the current validity of two previous opinions of this office, namely Attorney General's Opinion No. 60 dated March 22, 1935, to E. T. McGaugh and Attorney General's Opinion No. 2 dated May 1, 1953, to James R. Amos. You further request our opinion on the question of whether the birth record of an illegitimate child can be subsequently amended so as to change the child's last name.

The 1935 opinion expressed the view that, based on the common law doctrine of nullius filius (the child of no one), an illegitimate child had no lawful right to any last name. We do not believe this view reflects the present law of Missouri, and we are therefore withdrawing the 1935 opinion.

The 1953 opinion holds that the mother of an illegitimate child is entitled to designate the child's last name for purposes of birth registration, which does not necessarily have to be the mother's last name at the time of birth.

We are not aware of any law or judicial decision in this state requiring that on the birth certificate of an illegitimate child the mother's surname and the child's surname must coincide. Accordingly, we adhere to the views expressed in the 1953 opinion.

Section 193.200, RSMo, provides as follows:

Herbert R. Domke, M.D.

"A person born in this state, or a resident of Missouri born outside of this state whose birth is not recorded in any other state, may file, or amend a certificate after the time herein prescribed, upon submitting such proof as shall be required by the division, or by any court."

In view of this statute, we believe that regulations may be adopted (Section 193.030, RSMo) setting forth procedures and requirements for the administrative amendment of a birth record. However, the request for the amendment must be made by the person whose birth is the subject of the record (see enclosed copy of Attorney General's Opinion No. 2 dated April 21, 1953, to James R. Amos).

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 2
4-21-53, Amos