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January 11, 1935.



Hon. E. T. McGaugh
State Health Commissioner
Capitol Building
Jefferson City, Missouri

Dear Dr. McGaugh:

This is to acknowledge your letter of January 3d, 1935, as follows:

"Relative to Chapter 52, Article 2, Section 9054a, page 230 of the Session Laws of 1931, it has been the custom of the Bureau of Vital Statistics to require the fee of two dollars and fifty cents (\$2.50) to be paid in advance before sending out the necessary blanks to complete the registration of a birth occurring prior to 1910, the fee of course being returned if it is impossible to complete the registration of such a birth.

Will you please render this office an opinion as to whether or not it is legal to collect this fee in advance or whether the blanks should be sent out without demanding advance payment and register same only when the blanks are returned with the two dollar and fifty cent (\$2.50) fee."

Article 2, Chapter 52, R. S. Mo. 1929, pertains to "Registration of Births and Deaths." Section 9040 of said article and chapter provides in part as follows:

"It shall be the duty of the state board of health to have charge of the state

system of registration of births and deaths; to prepare the necessary methods, forms and blanks for obtaining and preserving such records, and to insure the faithful registration of the same in the registration districts and in the central bureau of vital statistics at the capital of the state."

Section 9041 of said article and chapter provides in part as follows:

"The secretary of the state board of health shall have supervision over the central bureau of vital statistics, which is hereby authorized to be established by said board, and shall act as state registrar of vital statistics."

Laws of Missouri, 1933, page 269, Section 9024, provides in part as follows:

"The Commissioner of Health as hereby constituted shall assume all the rights, powers, privileges and duties heretofore conferred by law upon the Secretary of State Board of Health heretofore authorized by law, which office is hereby abolished."

Thus, the Commissioner of Health since July 24, 1933, by virtue of Section 9024 performs the same duties relative to the central bureau of vital statistics as did the secretary prior to that time.

Section 9043, R. S. Mo. 1929, provides in part as follows:

"Within ninety days after the taking effect of this article, or as soon thereafter as possible, the state board of health shall appoint a local registrar of vital statistics for each registration district in the state."

Section 9052, R. S. Mo. 1929, provides in part as follows:

"It shall be the duty of the attending physician or midwife to file a certificate of birth, properly and completely filled out, giving all

the particulars required by this article, with the local registrar of the district in which the birth occurred, within ten days after the date of the birth."

Section 9053 provides as to what the certificate of birth shall contain.

Section 9057 provides in part as follows:

"The state registrar shall prepare, print and supply to all registrars all blanks and forms used in registering, recording and preserving the returns, or in otherwise carrying out the purposes of this article; and shall prepare and issue such detailed instructions as may be required to secure the uniform observance of its provisions and the maintenance of a perfect system of registration. And no other blanks shall be used than those supplied by the state registrar."

A reading of the above statutes shows that the Commissioner of Health is the State Registrar of Vital Statistics and that the State Board of Health has charge of the State system of registration of births and deaths and that local registrars are appointed by the State Board of Health and certain duties imposed upon them. The attending physicians or midwives are required to fill out a certificate of birth within ten days after such occurs, upon a blank furnished to the local registrars by the Commissioner of Health.

Section 9059 provides for fees for local registrars. And Section 9060 provides fees for the State registrar.

In 1931, Laws of Missouri, 1931, page 230, Section 9054a, was enacted and said section reads as follows:

"Whenever, prior to the taking effect of this article, a person was born in the state of Missouri, or a resident of Missouri born outside this state, such birth may be registered in the manner and according to, nearly as

possible, the provisions of section 9053 of this article, by filling out blank registration papers secured from the local registrar and filing same, together with a registration fee of \$2.50, with the state registrar of vital statistics. Such papers shall contain the affidavits, sworn to before a notary, of at least two persons, knowing the facts. The state registrar may require further affidavits to establish the truth of the facts endeavored to be made of record by the certificate and may withhold filing of such birth certificate until his requirements are complied with. The state registrar may make and enforce appropriate rules and regulations to carry out this act and to prevent fraud and deception."

There is nothing mysterious or ambiguous about the above section. The words employed by the Legislature when given their plain, usual and ordinary meaning simply provide that any birth desiring to be registered by a person born in this State, or a resident of Missouri born outside of this State, prior to the date of registering births provided by Article 2, Chapter 52, R. S. Mo. 1929, shall obtain a blank secured from the local registrar and fill it out and send same to the State registrar (Commissioner of Health) for filing, and enclose a fee of \$2.50 for such filing.

In your letter you state that it has been the custom to require a fee of \$2.50 to be paid in advance before sending out the necessary blanks. In view of the above statute, which authorizes such filing of certificates of birth before Article 2, Chapter 52, was effective, we do not see possibly how such a custom could have prevailed as the statute (9054a) says that the blanks shall be obtained from the local registrar and when properly filled out and filed the \$2.50 fee shall accompany. It is needless to say that this custom should be done away with and that the statute creating and allowing the acceptance of this fee should be complied with.

A further reason why we do not understand how such a custom could have been promulgated is in view of Section 9060, R. S. Mo. 1929, which in part provides as follows:

"And the state registrar shall keep a true and correct account of all fees by him

received under these provisions, and turn the same over to the state treasurer."

If, as stated in your letter, you exact a fee in advance when you forward the blanks to the person desiring to register a birth under the provisions of Section 9054a, then it means that these fees must be kept separately and do not find their way into the State Treasury until after the blanks have been returned properly filled out and ready for filing. Section 9060 says that all the fees shall be turned over to the Treasurer, and a like section was enacted in 1933, Laws of 1933, page 414.

What we are saying is this: That when the fees are collected such must be turned over to the Treasurer, and when they are turned over to the Treasurer you could not possibly return the fee to the person, in the event the blanks were not filed. If it has been your custom to exact the fee in advance and keep that fee pending the time in which the blanks were actually filed, then such custom is illegal, unauthorized, unwarranted and without the sanction of the statutes. If the blank when presented for filing is not sufficient as to form and substance, then such should be returned to the person presenting same for completion, and the fee, if it accompanies the certificate, should likewise be returned. No fee should be accepted until the blanks are in proper form and ready for filing.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

JLH:EG