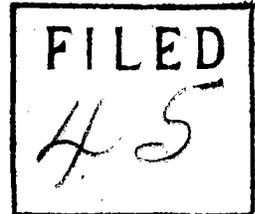


STATE BOARD OF HEALTH: Question of what the surname of a child should be.

June 12, 1946



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Dr. R. M. James
State Health Commissioner
The State Board of Health
Jefferson City, Missouri

Dear Sir:

We heroby acknowledge receipt of your letter to this office requesting an opinion, as follows:

"We should like to have an opinion from your office relative to the following matter.

"Under what surname should a child be registered when the father and mother are divorced, the mother re-marries and gives birth to a child, who is actually the child of the first husband. Should the birth be registered under the name of the first husband, the actual father, or in the name of the second husband?

"This office has had several requests recently from hospitals and doctors relative to such cases. Your opinion at the earliest possible date will be greatly appreciated."

Sections of the Missouri statutes requiring the registration of births are covered in Sections 9760, 9771, 9772, 9773, 9774, 9775 and 9782, R. S. Mo. 1939.

Section 9760 provides:

"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. The said board shall be charged with the uniform and thorough enforcement of the law throughout the state, and shall from time to time promulgate any additional forms and amendments that may be necessary for this purpose."

Section 9771 requires that:

"All births that occur in the state shall be immediately registered in the districts in which they occur, as hereinafter provided."

Section 9772 provides:

"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. And if there be no attending physician or midwife, then it shall be the duty of the father or mother of the child, householder or owner of the premises, manager or superintendent of public or private institutions in which the birth occurred, to notify the local

registrar within ten days after the birth of the fact of such birth having occurred. It shall then, in such case, be the duty of the local registrar to secure the necessary information and signature to make a proper certificate of birth: Provided, that in cities the certificate of birth shall be filed at a less interval than ten days after birth, if so required by municipal ordinance (or regulation) now in force or that may hereafter be enacted."

Section 9773 provides:

"The certificate of birth shall contain the following items:

"(1) Place of birth, including state, county, township or town, village or city. If in a city, the ward, street and house number; if in a hospital or other institution, the name of the same to be given, instead of the street and house number.

"(2) Full name of child. If the child dies without a name, before the certificate is filed, enter the words 'died unnamed.' If the living child has not yet been named at the date of filing certificate of birth, the space for 'full name of child' is to be left blank, to be filled out subsequently by a supplemental report, as hereinafter provided.

"(3) Sex of child.

"(4) Whether a twin, triplet, or other plural birth. A separate certificate shall be required for each child in case of plural birth, giving number of child in order of birth.

"(5) Whether legitimate or illegitimate.

- "(6) Full name of father.
- "(7) Residence of father.
- "(8) Color or race of father.
- "(9) Birthplace of father; city or town, state or foreign country.
- "(10) Age of father at last birthday, in years.
- "(11) Occupation of father. (Answers shall not be recorded to items 6, 7, 8, 9, 10 and 11 in case of illegitimate births.)
- "(12) Maiden name of mother.
- "(13) Residence of mother.
- "(14) Color or race of mother.
- "(15) Birthplace of mother; city or town, state or foreign country.
- "(16) Age of mother at last birthday, in years.
- "(17) Occupation of mother.
- "(18) Number of child of this mother, and number of children of this mother now living.
- "(19) Born at full term.
- "(20) The certificate of attending physician or midwife as to attendance at birth, including statement of year, month, day and hour of birth, and whether the child was alive or dead at birth. This certificate shall be signed by the attending physician or midwife, with date of signature and

address; if there is no physician or midwife in attendance, then the father or mother of the child, householder or owner of the premises, or manager or superintendent of public or private institution, or other competent person, whose duty it shall be to notify the local registrar of such birth, as required by section 9772 of this article.

"(21) Exact date of filing in office of local registrar, attested by his official signature, and registered number of births, as hereinafter provided.

"All certificates, either of birth or death, shall be written legibly, in unfading black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for herein, or satisfactorily account for their omission."

Section 9774 requires that the given name of the child must be registered, and sets out the necessary action to be taken if the certificate of birth is presented without the statement of the given name.

Section 9775 provides for the action to be taken if the certificate of birth has not been registered prior to the taking effect of this article.

Section 9782 provides for the penalties to be imposed if the foregoing sections are not carried out.

By the common law, since early times, a legal name has consisted of one surname and one given name, the given name being used first and the surname last. Anciently, the given name was regarded as the more important of the two, but in modern days the surname has become the principal name. 45 C.J. 367.

In *E.H. Perry & Co. v. Langbehn*, 113 Tex. 72, 252 S.W. 472, the Court states that a name is a word

or words, designation or appellation used to distinguish a person or thing or class from others.

The surname or family name of a person is that which is derived from the common name of his parents, or is borne by him in common with other members of his family. 45 C.J. 368.

Therefore, in order to determine what the surname of the child in question should be under the above premise it will be necessary to determine the legal meaning of the word "parents".

In McDonald et al. v. Texas Employers' Ins. Ass'n., 267 S.W. 1074, the Court states, l.c. 1075:

"(1) The primary meaning of the term 'parent' is one who procreates, begets, or brings forth offspring, as father or mother; hence, when the term is literally interpreted, it can only include a father or mother related by blood to the child, and by the same token would, of course, exclude adopting parents and all others who by reason of the facts or circumstances stand in loco parentis. * * * "

In the dissenting opinion in Lanferman et al. vs. Vanzile, 150 Ky. 751, 150 S.W. 1008, the Court states:

" * * * That the word "parent" * * * * * means natural parents, and not parents by adoption, cannot be doubted. * * * * * the word "parents", both by derivation and common understanding, means the natural parents'".

In 46 C.J. 1212, it is stated:

"The term 'parent' primarily means one who produces young, one who procreates, begets, or brings forth an offspring. The word ordinarily is employed as meaning the father or mother related

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by blood, sometimes including a putative or 'natural' father, but sometimes limited to a father or mother of a legitimate offspring. * * * * ".

In consideration of the above authorities, we believe the word "parent" refers to the actual father, and, since a person's name is derived from their parents, the child in question should be registered under the name of the first husband. There is a presumption that a child born in wedlock is the child of the first husband, but this presumption is overcome by the facts stated in your letter, that the father is actually the first husband.

Conclusion

Therefore, it is the opinion of this department that a child, conceived during one marriage and born during a subsequent marriage, should be registered under the name of the first husband, the actual father.

Respectfully submitted,

PERSHING WILSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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