

VITAL STATISTICS : Residents of Missouri born elsewhere may re-  
HEALTH: cord such birth in this State if the birth  
BIRTH CERTIFICATES: is not recorded in any other State or county  
or municipal office upon the furnishing of  
proof required by the registrant.

October 31, 1949

11/7/49

Honorable Ben W. Oliver  
House of Representatives  
Jefferson City, Missouri



Dear Mr. Oliver:

This department is in receipt of your request for an interpretation of certain provisions in House Bill No. 207, relating to vital statistics, which became effective October 14, 1949. Your inquiry is, in part, as follows:

"I wish you would please give me an opinion in reference to the phrase 'not recorded in any other state' as contained in House Bill 207. The department of Health and Welfare does not know whether this is broad enough to mean the department of such other state having the records in reference to vital statistics under their control, or whether it would mean also any county or municipal office having such records also.

"Also please advise what proof shall be required of the fact that the birth of the applicant or registrant is not recorded in any other state?"

House Bill No. 207 amended the act approved May 10, 1948, Laws of 1947, Vol. II, page 237, by repealing Section 20 and sub-section 1 of Section 22 of said act and enacting a section and sub-section in lieu thereof. Your inquiry is directed to the new Section 20, which is as follows:

"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."

You have advised us that the Bureau of Vital Statistics, Division of Health, considers the provision relative to the recording of a birth "in any other state" indefinite, as not defining specifically whether it includes the recording of a birth in county and city offices or only in the state office registering births and other vital statistics.

The language of the statute seems plain that in order to file or amend a certificate the person doing so must state that his birth is not recorded in any other state. This seems a most reasonable and necessary provision. We take the term "state" to mean the states of the United States and territories and possessions of the United States where recordation is carried on. We believe that a reasonable interpretation to be given the phraseology "recorded in any other state" would include any county or municipal office where such birth may be recorded. In the event a copy of such record would be available to the person interested it would certainly be of more evidentiary value than one filed in the Bureau of Vital Statistics of Missouri under the provisions of House Bill No. 207.

The statute provides that such new or amended certificate shall be filed "upon submitting such proof as shall be required by the division." As a matter of practical administration, it would seem reasonable that the applicant should state under oath that his birth is not recorded in any other state, and particularly that the same is not recorded in the state in which he was born. The filing of a certificate by a resident of Missouri who was born in another state must be accompanied by the usual proof of facts as to the date and place of birth.

Under the law prior to the enactment of the Vital Statistics Act, there was a requirement that a resident of Missouri born outside the state had to file the affidavits of at least two persons knowing the facts in order to have a birth registered in Missouri. The affidavits had to be sworn to before a notary. The State Registrar had the authority to require further evidence to establish the truth of the facts and could withhold filing of such birth certificate until the requirements were complied with. (Section 9775, R.S. Mo. 1939.)

It would seem perfectly reasonable for the Division to accept the affidavit of the applicant as sufficient proof of the fact that his birth is not recorded in another state. As a matter of fact, there is little chance that an applicant would misrepresent the facts concerning registration since,

if his birth was recorded elsewhere, there would be little use in filing the certificate in this state. As a general rule, administrative tribunals are not bound by the strict or technical rules of evidence governing jury trials, especially where the administrative order has only the effect of prima facie evidence. (42 Am. Jur. 461.) The rule concerning reception of evidence by administrative agencies is well set out in the case of Spillers vs. Atchison, T. & S.F.R. Co., 253 U.S. 117, 64 L. Ed., 810, 40 S. Ct. 466. In that opinion the court said:

"In Interstate Commerce Commission v. Baird, 194 U.S. 25, 44, 48 L. ed 860, 869, 24 Sup. Ct. Rep. 563, it was said: 'The inquiry of a board of the character of the Interstate Commerce Commission should not be too narrowly constrained by technical rules as to the admissibility of proof. Its function is largely one of investigation, and it should not be hampered in making inquiry pertaining to interstate commerce by those narrow, rules which prevail in trials at common law, where a strict correspondence is required between allegation and proof.' In Interstate Commerce Commission v. Louisville & N.R. Co. 227 U.S. 88, 93, 57 L. ed. 431, 434, 33 Sup. Ct. Rep. 185, the court recognized that 'the Commission is an administrative body, and, even where it acts in a quasi judicial capacity, is not limited by the strict rules as to the admissibility of evidence which prevail in suits between private parties.' And the fact that a reparation order has at most only the effect of prima facie evidence (Meeker v. Lehigh Valley R. Co. 236 U.S. 412, 430, 59 L. ed. 644, 657, P.U.R. 1915 D. 1072, 35 Sup. Ct. Rep. 328, Ann. Cas. 1916B, 691; Meeker v. Lehigh Valley R. Co. 236 U.S. 434, 439, 59 L. ed. 659, 661, 35 Sup. Ct. Rep. 337; Mills v. Lehigh Valley R. Co., 238 U.S. 473, 482, 59 L. ed. 1414, 1418, 35 Sup. Ct. Rep. 888), being open to contradiction by the carrier when sued for recovery of the amount awarded, is an added reason for not binding down the

Honorable Ben W. Oliver -4-

Commission too closely in respect of the character of the evidence it may receive or the manner in which its hearings shall be conducted."

The statute authorizes the Division of Health to require such proof as may be reasonable, and under this authorization the Division may make a general regulation specifying what proof shall be required or it may pass upon the proof submitted by a particular applicant.

#### CONCLUSION

It is the opinion of this department that a resident of Missouri born outside of this state may file or amend the certificate upon submitting such proof as may be required by the Division of Health that his birth is not recorded in any other state, and particularly in the state of his birth, together with proof of place and date of birth.

Respectfully submitted,

JOHN R. BATY  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General

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