



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Dr. Geo. W. Cox  
State Health Officer  
Austin, Texas

Dear Sir:

Opinion No. O-1079

Re: Is the State Registrar under any conditions authorized to refuse to file a record which has been approved by the county judge? And other questions, involving the construction of H. B. 614, 46th Leg., Reg. Session, 1939.

Your request for an opinion of this department on the following four questions has been received.

"(1) Is the State Registrar, under any conditions authorized to refuse to file a record which has been approved by the County Judge?

"(2) When the record of an unregistered birth or death is submitted to the County Judge, who should pay the fees due the County Judge and the County Clerk for handling this record, as provided for in this Act?

"(3) Are the fees mentioned above controlled by and included in Article 3925 and Article 3930, Revised Statutes of 1936?

"(4) What entry, if any, should be made in the minutes of the Probate Court as to the consideration of the record?"

The pertinent paragraph of H.B. 614 of the Forty-sixth Legislature, involving births and deaths "not previously registered" is contained in Section 2 and reads as follows:

Dr. Geo. W. Cox, Page 2

"And provided further, that any citizen of the State of Texas wishing to file the record of any birth or death, not previously registered, may submit to the Probate Court in the county where the birth or death occurred, a record of that birth or death written on the adopted forms of birth and death certificates. The certificate shall be substantiated by the affidavit of the medical attendant present at the time of the birth, or in case of death, the affidavit of the physician last in attendance upon the deceased, or the undertaker who buried the body. When the affidavit of the medical attendant or undertaker cannot be secured, the certificate shall be supported by the affidavit of some person who was acquainted with the facts surrounding the birth or death, at the time the birth or death occurred, with a second affidavit of some person who is acquainted with the facts surrounding the birth or death, and who is not related to the individual by blood or marriage. The Probate Court shall require such other information or evidence as may be deemed necessary to establish the citizenship of the individual filing the certificate, and the truthfulness of the statements made in that record. The Clerk of the said Court shall forward the certificate to the State Bureau of Vital Statistics with an order from the court to the State Registrar that the record be, or be not, accepted. The State Registrar is authorized to accept the certificate when verified in the above manner, and shall issue certified copies of such records as provided for in Section 21 of this Act. Such certified copies shall be prima facie evidence in all Courts and places of the facts stated thereon. The State Bureau of Vital Statistics shall furnish the forms upon which such records are filed, and no other form shall be used for that purpose." (Underscoring ours).

Particular attention is called to the following sentences:

"The clerk of the said Court shall for-

Dr. Geo. W. Cox, Page 3

ward the certificate to the State Bureau of Vital Statistics with an order from the Court to the State Registrar that the record be, or be not accepted. The State Registrar is authorized to accept the certificate when verified in the above manner, \* \* \* (Underscoring ours)

The above quoted section of H. B. 614 creates a new method for the registration of births and deaths "not previously registered". In opinion No. O-1201 this department has held the phrase "not previously registered" applicable to all records and certificates of birth and death not registered in strict compliance with Section 9 and 12 of Article 4477, Revised Civil Statutes. The new method involves the hearing of evidence by the Probate Court and an order of the court verifying or denying the record and instructing the State Registrar to accept or reject the record. In opinion No. O-1203 we have ruled that the matter of delayed registration of births and deaths be accorded the status and dignity of a probate proceeding and that a record of the proceedings be kept.

In view of the above reasoning and previous opinions of this department, it follows that the order of the Probate Judge accompanying the certificate of birth or death, registration of which has been delayed, has full judicial force and is binding upon the State Registrar. The Statute reads that "the State Registrar is authorized to accept the certificate when verified in the above manner," *etc.* when verified by court order. At the time the Legislature conferred the authority to accept the certificate upon the State Registrar, in our opinion it impliedly subjected the State Registrar to the judgment of the court in respect to the validity of the record. Consequently, we reach the conclusion that the order would be binding upon the State Registrar. He could not refuse to accept a certificate of delayed registration of a birth or death. On the other hand, this does not mean that the State Registrar could not return a certificate to the Probate Court for correction when patent errors or omissions, or inconsistencies appear on the face of the certificate.

It is our opinion that the State Registrar is

Dr. Geo. W. Cox, Page 4

not authorized under any conditions to refuse to file a record of a birth or death not previously registered which has been approved by the county (probate) judge when said record on its face is technically correct.

Your second question is answered in opinions Nos. O-1065 and O-1203 of this department, in which we hold that the fees due the county (probate) judge and county clerk are payable by those who receive the benefit of the services, i.e. the applicants in respect to delayed registration of births and deaths. It is true that the statute (H.B. 614) does not specify who shall bear the burden of paying the fees involved in the proceedings, but it is our opinion that the citizen applying for the delayed registration of birth or death must pay the fees of the county (probate) judge and county clerk.

Your third question is treated in our opinion No. O-1065. In that opinion we held that Articles 3925 and 3930, Revised Civil Statutes, of the General Fee Statutes, governed in the case of delayed registrations of births and deaths under H.B. 614, and that the county judge and county clerk shall each receive the fee of fifty-cents (\$.50) in return for their respective services of entering the order and certifying the same to the Bureau of Vital Statistics.

In respect to the fee of fifty-cents (\$.50) for the county clerk, we quoted in opinion O-1065 the following provision of Article 3930, Revised Civil Statutes:

"Each certificate to any fact or facts contained in the records of his office, with certificate and seal, where not otherwise provided for \* \* \* fifty-cents (\$.50)."

The county clerk under said provision would be entitled to fifty-cents (\$.50) for forwarding the certificate to the State Bureau of Vital Statistics with an order from the Court.

It is our further opinion that the following provision of Article 3930, Revised Civil Statutes,

Dr. Geo. W. Cox, Page 5

would also apply:

"Recording all papers required or permitted by law to be recorded, not otherwise provided for, including certificate and seal, for each 100 words \* \* \* ten cents (\$.10)."

It is our opinion that the county clerk is also entitled to his recording fee provided for in the above provision Article 3930, Revised Civil Statutes.

Your fourth and final question is fully answered in opinion No. 0-1201 in which this department ruled that applications for registration of birth and death certificates "not previously registered", in accordance with the terms of H. B. 614, should be numbered and entered on the docket of the Probate Court and that all proceedings in connection therewith should be entered in the minutes of the Probate Court.

We suggest the following entry for the minutes of the Probate Court as a general form in the event of the granting of said above registration:

: "On this day, came on to be heard the applica- :  
 : tion of \_\_\_\_\_, a citizen of the :  
 : State of Texas, to file the record of the birth (or :  
 : death) of \_\_\_\_\_ the said birth :  
 : (or death) not having been previously registered. :  
 : The certificate of birth (or death) (as the case :  
 : may be), having been substantiated by the affidavit :  
 : of the medical attendant, \_\_\_\_\_, :  
 : present at the time of the birth (or death), the :  
 : affidavit of the physician, \_\_\_\_\_, :  
 : last in attendance upon the deceased, or the under- :  
 : taker \_\_\_\_\_, who buried the body. :  
 : :  
 : (The medical attendant or undertaker not having :  
 : been secured): The certificate having been :  
 : substantiated by an affidavit of a person who was :  
 : acquainted with the facts surrounding the birth or :  
 : death, to-wit: \_\_\_\_\_, who was :  
 : :

: not related to the deceased or the individual by :  
 : blood or marriage (or in the event the court sees :  
 : fit to require further information or evidence as :  
 : to the citizenship of the applicant or individual :  
 : making the certificate), and said certificate be- :  
 : ing further substantiated by further evidence and :  
 : affidavits of \_\_\_\_\_ and :  
 : \_\_\_\_\_ as to the truthful- :  
 : ness of the statements made in the certificate :  
 : and as to the citizenship of the citizen or indivi- :  
 : dual making the certificate. :

: It appearing to the court that the birth of :  
 : \_\_\_\_\_ occurred in the County of :  
 : \_\_\_\_\_, State of Texas on the \_\_\_\_\_ :  
 : day of \_\_\_\_\_, A.D. 19\_\_\_\_\_; (or in case of :  
 : death), it appearing to the court that the death :  
 : of \_\_\_\_\_ occurred in the County of :  
 : \_\_\_\_\_, State of Texas, on the \_\_\_\_\_ :  
 : day of \_\_\_\_\_, A.D. 19\_\_\_\_\_. :

: IT IS, THEREFORE, ORDERED that the Clerk of :  
 : the County Court of the County of \_\_\_\_\_, :  
 : State of Texas, forward the certificate to the :  
 : State Bureau of Vital Statistics, and it is here- :  
 : by ordered of the State Registrar that the record :  
 : herein be accepted. :

\_\_\_\_\_  
 County Judge

Trusting that the above fully answers the four inquiries contained in your letter, we are

Yours very truly

APPROVED  
 Opinion Committee  
 By BWB  
 Chairman

ATTORNEY GENERAL OF TEXAS

*Dick Stout*  
 By (Signed) Dick Stout  
 Dick Stout  
 Assistant

DS:ob  
 ENCL. (3 opinions  
 0-1065, 0-1201, 0-1203)

Dr. Geo. W. Cox, Page 7

c.c.: Hon. John R. Shook  
Criminal District Attorney  
San Antonio, Texas

c.c. Hon. Leo. C. Buckley  
County Attorney  
Zapata County  
Zapata, Texas

c.c. Mr. Leon Kotosky  
Assistant County Attorney  
El Paso, Texas

APPROVED SEPT. 13, 1939

(Signed)

*Gerald C. Mann*  
Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS