



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GERALD C. MANN
~~EDOUARD WILSON~~
ATTORNEY GENERAL

Honorable John R. Shook
Criminal District Attorney
Bexar County
San Antonio, Texas

Dear Sir:

Attention: Hon. L. J. Gittinger, First
Assistant

Opinion No. O-4637

Re: Can a delayed certificate of birth be filed under the provisions of House Bill 614, Acts of the 46th Legislature as amended by House Bill 974, Acts of the 47th Legislature (codified as Rule 51a, Article 4477 V.C.S.) although the person whose birth is sought to be established is no longer living?

You have requested the opinion of this department upon the above stated question, citing three specific cases illustrating the desirability, and even the practical necessity, of filing a birth certificate as a means of establishing proof of the citizenship of a person who is now deceased.

The applicable provisions of House Bill 614, Acts of the 46th Legislature, as amended by the 47th Legislature, are as follows:

"And provided further, that any citizen of the State of Texas wishing to file the record of any birth or death that occurred in Texas, not previously registered, may submit to the Probate Court in the County where such birth or death occurred, a record of such birth or death written on the adopted forms of birth and death certificates; and provided further that any citizen of the State of Texas wishing to file the record of any birth or death that occurred outside of the State of Texas, not previously registered, may submit to the Probate Court in the County where he resides 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 varified 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."

It will be noted that this statute provides that delayed birth certificates may be filed by "any citizen of the State of Texas", whether such birth occurred within the State of Texas or outside of the State of Texas. We agree with you in your opinion that this law contemplates that the birth certificate may be filed by someone other than the person whose birth is being recorded. Nor do we find any provision in this statute or in any other law which prohibits the filing of a birth certificate evidencing the birth of a person who is deceased at the time the certificate is filed. The statute conveys a right which is not limited to cases in which the person whose birth is being recorded is living at the time of the filing of such record.

We are therefore of the opinion that a delayed certificate of birth may be filed under the provisions of said House Bill 614, as amended, although the person whose birth is sought to be established is no longer living.

Honorable John R. Shook, Att'n: L.J. Gittinger, page 3 0-4637

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/W. R. Allen
W. R. Allen
Assistant

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APPROVED JUN 12, 1942
s/Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman