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July 1, 1985

ATTORNEY GENERAL OPINION NO. 85- 74

Charles V. Hamm
General Counsel
Department of Health and Environment
Forbes Field
Topeka, Kansas 66620

Re: Public Health -- Uniform Vital Statistics Act --
Disclosure of Records; Effect of Kansas Parentage
Act on Issuance of Birth Certificates

Synopsis: The Kansas Parentage Act, contained in 1985 House Bill No. 2012, amends K.S.A. 65-2422 to require that no information regarding the birth of a child shall be released in a manner which allows determination of the marital status of the parents. This amended statute may be read so as to be consistent with K.S.A. 65-2423, which allows adopted persons to obtain an original of their birth certificate upon demand once they obtain the age of 18. In any other circumstances, however, the intent of the legislature is to prevent access to such information, with this prohibition including those birth certificates filed in the past which contain questions regarding the legitimacy of the birth. Such certificates may be released only after the prohibited information is removed or obscured in such a way as to be unintelligible. Cited herein: K.S.A. 1984 Supp. 65-2409; K.S.A. 65-2422, as amended by 1985 House Bill 2021; K.S.A. 65-2423; K.A.R. 28-17-1.

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Dear Mr. Hamm:

On behalf of the Department of Health and Environment, you have written to this office seeking our opinion concerning certain provisions of the Kansas Parentage Act. The act, which was enacted by the legislature in 1985 House Bill No. 2012, contains a number of new sections dealing with the establishment of the parent-child relationship. It further amends a number of existing statutes so as to remove the concept of legitimate-illegitimate relative to the birth of a child. In particular, you raise a number of questions concerning the records kept by the department.

First, you ask if there is a conflict between the revised portions of K.S.A. 65-2422(b) and the unchanged provisions of K.S.A. 65-2423. Prior to amendment by the Parentage Act, the former statute stated that "no disclosure of illegitimacy of birth or of information from which illegitimacy can be ascertained shall be made." Exceptions were made for a court order in certain cases, and for a person whose birth had been listed as illegitimate who was of legal age and who demanded the opening. Under the Parentage Act, the subsection has been amended to prohibit release of "information concerning the birth of a child" in such a manner "that enables determination of whether the child's parents were married at the time of the child's birth." K.S.A. 65-2423, which is a portion of the Vital Statistics Act, allows a person who has been adopted to obtain access to his or her original certificate of birth, which is normally sealed following the issuance of a certificate in the new name of the adopted person. You ask if there is a conflict between these two statutes, and, if so, how this conflict may be resolved.

It is a long-standing rule of statutory construction in this state that statutes dealing with the same subject matter, even if enacted at different times, should be read in pari materia and construed so as to make each sensible and harmonious. Clafin v. Walsh, 212 Kan. 1, 509 P.2d 1130 (1973). In order to reconcile the provisions of K.S.A. 65-2422(b), as amended, and K.S.A. 65-2423, it is only necessary to recognize that the special status given to adopted persons under the latter statute has been retained by the legislature, which could have, if desired, amended such provisions in the Parentage Act. When both of the statutes are read together, it would be our conclusion that an adopted person who proceeds under K.S.A. 65-2423 would still be entitled to see an original copy of his or her birth certificate, notwithstanding the prohibition against general disclosures now found at K.S.A. 65-2422(b), as amended.

You next enclose a copy of the application for certified birth certificate which is employed by the department, and ask if a certificate could be issued if a person lists the names of the parents as they appear on the birth certificate. In other words, you ask if the applicant already appears to know the marital status of the parents, would it be permissible to issue a copy of the certificate which may reflect that the parents were not married at the time of the birth. In our reading of K.S.A. 65-2422(b), as amended, the legislature did not appear to allow for such a disclosure, absent a special circumstance such as that found for adopted persons under K.S.A. 65-2423. The mere fact that a person has the names of his or her parents does not mean that he may necessarily know of the marital status of his parents at the time of the birth, and the language of the revised subsection is quite clear that no information may be disclosed in such a way that allows marital status to be determined. Indeed, we would note that the application form itself may be in need of revision, for it requests a person seeking a copy of a birth certificate to list the full name of the father along with the full maiden name of the mother. The use of the term "maiden" reflects on the marital status of the parents, and so is now questionable under the provisions of the Parentage Act.

Your third question inquires if the limitations on disclosure in K.S.A. 65-24229(b), as amended, apply to all past birth certificates as well as those registered in the future. You inform us that the department has a file of nearly one and half million birth certificates (representing the years 1911-1948) which include a question about legitimacy on the top of the certificate. Under the plain language of the subsection, such a disclosure, even if on a certificate over 70 years old, would be prohibited as disclosing information as to the marital status of the child's parents. Unlike the former language of the subsection, which merely prohibited disclosure of illegitimacy, the new language essentially prohibits disclosure of marital status, and so would affect all of the certificates, not just those which have been segregated into a particular category, i.e. illegitimate births.

As a result, the options open to the department appear to be limited, and include those set out in Mr. Franzen's memo to Dr. Phillips of May 3, 1985. These would include: (1) issuance of type-written certifications; (2) on-line computer certifications; or (3) some kind of new short form. For the short run, it is conceivable that some kind of system could be devised where prohibited information could be blacked out, using a special stamp or seal which would indicate that it was done by the department, with perhaps a reference to the statutory basis appearing somewhere on the margin of the form. Again, this

result probably was not anticipated by the legislature, but we do not see any way to avoid it, given the language of the statute and the lack of any indication that the prohibition is to have only a prospective application.

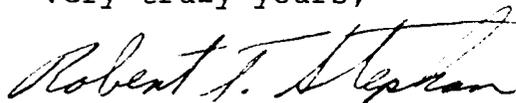
Your fourth question concerns issuance of delayed birth certificates, which we understand are used for out-of-wedlock births. Such certificates only show the mother's name. Again, you inquire if the department may assume it is permissible to include the names of parents if the applicant is already aware of the marital status. In our opinion, the department should not, and as a practical matter, could not get involved in making such determinations, for it would be impossible to know for a certainty whether each applicant is actually aware of the marital status of his or her parents. As to the certificates themselves, we I note that K.S.A. 984 Supp. 65-2409, which was not amended by the Parentage Act, still provides [at subsection (c)] that the name of the father shall not be entered on the certificate of birth if the mother was not married either at the time of conception or at birth. While it is difficult to reconcile the provisions of this statute with the legislative intent contained in the Parentage Act, if only the mother's name is known, the fact that the father's name is not listed does not automatically enable determination of whether the child's parents were married. Again, this would appear to be an oversight which the legislature did not consider in enacting the Parentage Act--one that should be brought to their attention at the next legislative session. For the present, the department will have to work with the information which is provided to it.

Finally, you inquire concerning the provisions of K.A.R. 28-17-7, which makes two references to "legitimate" births and one to "illegitimate" births. You inquire if these regulations should be revised to change the wording to "out-of-wedlock" births, or if this may be deferred until other vital statistic regulations are being revised. In that the regulation deals with the furnishing to newspapers of lists of legitimate births, and provides that illegitimate birth records should be sent directly to Topeka, we do not believe that the regulation is so at odds with the Parentage Act that it must immediately be revised. However, in view of the stated legislative policy in the Parentage Act that the marital status of parents is no longer a vital statistic which is to be released by the state, the term "legitimate" and "illegitimate" used in the regulation should be cleaned up at some point in the future.

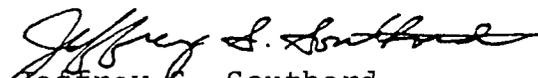
In conclusion, the Kansas Parentage Act, contained in 1985 House Bill No. 2012, amends K.S.A. 65-2422 to require that no information regarding the birth of a child shall be released in a

manner which allows determination of the marital status of the parents. This amended statute may be read so as to be consistent with K.S.A. 65-2423, which allows adopted persons to obtain an original of their birth certificate upon demand once they obtain the age of 18. In any other circumstances, however, the intent of the legislature is to prevent access to such information, with this prohibition including those birth certificates which were filed in the past which contain questions regarding the legitimacy of the birth. Such certificates may be released only after the prohibited information is removed or obscured in such a way as to be unintelligible.

Very truly yours,



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