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ATTORNEY GENERAL OPINION NO. 90- 35

Mary Kathleen Babcock
Attorney at Law
Board of Education of U.S.D. 259
700 Fourth Financial Center
Broadway at Douglas
Wichita, Kansas 67202

Re: Public Health -- Uniform Vital Statistics Act --
Adoption Cases -- Change of Date of Birth on Birth
Certificate of Adopted Child

Synopsis: The adoption of a child creates a new domestic
relations status of parent and child. Adoptions
and the legal consequences of adoption are
controlled by statute. A district court does not
have statutory authority to alter the adopted
child's birth date in the final order of adoption.
Cited herein: K.S.A. 59-2103; 59-2104; 59-2277;
K.S.A 1989 Supp. 59-2278; K.S.A. 65-2423.

* * *

Dear Ms. Babcock:

As Attorney for the Board of Education for U.S.D. No. 259, you
request our opinion whether a judge entering an order
decreeing an adoption may validly order the new birth
certificate issued pursuant to K.S.A. 65-2423 to show a date
of birth different from the child's true birth date. You
inform us that the particular situation at issue involved a
child born in 1976:

"The new birth certificate shall show that he was born on January 7, 1980, even though this is a variance from his actual birth date. The child is an exceptional child within the meaning of K.S.A. §§ 72-962 et seq. The changed birth date, if utilized by the public schools, would distort the child's performance results in norm-referenced testing and developmental scales. A potential outcome is loss of needed educational program and related services."

An adoption of a child is initiated by filing a petition which is required to include, among other information, the date of the child's birth, if known. K.S.A. 59-2277. Subsequently there is a hearing of the petition in which the court is required to consider an assessment of the adoptive parents and all evidence offered by any interested party. K.S.A. 1989 Supp. 59-2278(f). "If the court is of the opinion that the adoption should be made, it shall make a final order of adoption and shall deliver the child to the petitioner, if this has not already been done." K.S.A. 1989 Supp. 59-2278(f) (emphasis added).

The statutory authority of the court in an adoption proceeding is clearly to make a final order of adoption. The preliminary inquiry is therefore: What is an adoption?

Adoption is the act by which relations of paternity and affiliation are recognized as legally existing between persons not so related by nature. Ellis v. Coal Co., 100 Kan. 187 (1917). In more contemporary language, the adoption of a child creates a status - the domestic relation of parent and child. At the conclusion of the adoption proceeding, all the legal incidents of the natural relation of parent and child attach to the new status, and the child becomes entitled to the same rights of persons and property as if it were the child by birth of the person adopting it. Browning v. Tarwater, 215 Kan. 501 (1974). The status of the child is changed and it no longer remains the child of its natural parents, but becomes the child of another, and its relation to its natural parents ceases. Jones v. Jones, 215 Kan. 102 (1974).

Adoptions and the legal consequences of adoption are controlled by statute. In re Estate of Fortney, 5 Kan.App.2d 14 (1980). The statutory effects on the child

of the new status created by the adoption are set forth in K.S.A. 59-2103, and include the assumption of a new surname, and, in the discretion of the court, the assumption of a new given name for the child. The other statutory effect is that an adopted child is entitled to the same personal and property rights as a natural child of the adoptive parent.

Upon a final order of adoption, the district court is required to report the adoption to the state registrar of vital statistics. K.S.A. 59-2104. By reporting "the adoption", the court is reporting to the state registrar of vital statistics the statutory creation of a new adoptive status and the change of name(s) as an effect of the new status. Upon receipt of a certified order of adoption, the state registrar is required to prepare a supplementary birth certificate in the new name of the adopted person. K.S.A. 65-2423.

Nothing within the adoption statutory scheme provides for an alteration of the adoptive child's birth date, and a court has no right to enlarge the scope of the statute or to amend it by judicial interpretation. Coe v. Security National Ins. Co., 228 Kan. 624 (1980). When the language of a statute is clear and unambiguous, the court must give effect to the expressed legislative intent rather than make a determination as to what the law should or should not be. White v. VinZant, 13 Kan.App.2d 467 (1989).

In conclusion, based on the above analysis we can find no statutory authority for a district court judge to alter the birth date of a child pursuant to an adoption.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Camille Nohe
Assistant Attorney General