

Opinion No. 46-4946

August 29, 1946

BY: C. C. McCULLOH, Attorney General

TO: Miss Billy Tober State Registrar of Vital Statistics Department of Public Health
Santa Fe, New Mexico

{*268} This office is in receipt of your letter dated August 28, 1946, wherein an interpretation is sought as to the provisions of Chapter 94 of the Session Laws of 1945, which act provides a method of court procedure to establish date of birth, place of birth and parentage.

I shall set forth each one of your questions and the answers thereto in the manner that you have asked them.

1. Is there a conflict between Section 1, which reads "may petition **any court of record** of the county in which he resides . . ." and Section 2, which mentions the district court specifically?

In my opinion, there is no conflict as it is evident to me that the Legislature intended that the petition be filed in the District Court and the hearing had before the District Judge. The only other possible court of record in a county would {*269} be the probate court, but as Section 1 provides for the serving of the District Attorney ten days previous to hearing, the transcribing of the oral testimony and Section 2 provides "that no judgment or decree shall be entered by the district court . . .", it is apparent to me that the Legislature intended to bestow jurisdiction in such matters on the District Court alone. As a practical matter the District Court is the only court of record in the county having adequate facilities to carry out the provisions of this act, as it is the only court of record in a county having a reporter who can record and transcribe oral testimony.

2. In your opinion, does the above quoted law from Section 2 mean that the petitioner shall write or contact the state of his birth to ascertain if his birth is of record and upon so doing has he "made due and diligent effort to secure a birth certificate from the proper authorities in the state in which he claims to have been born", or does this mean that the petitioner shall attempt to file a birth certificate according to the standards in use in the state of his birth, and then, if unable to meet their requirements, he shall have recourse to the courts in New Mexico to establish a birth record?

As to what would constitute "due and diligent effort" in each case rests with the sound discretion of the District Court. However, it is my opinion that a petitioner should make a bona fide effort to file a birth certificate according to the standards in use in the state of his birth. By so doing, he would unquestionably be entitled to recourse in the courts of New Mexico under this act in case his efforts were without success.

3. Who shall issue certified copies of these court orders?

4. Is a court order establishing date and place of birth and parentage to be considered a birth **certificate**?

In view of the fact the answers to questions 3 and 4 are closely related, I shall discuss them in one answer.

Sections 3 and 4 of Chapter 94, Laws of 1945, read as follows:

"The order or a certified copy thereof shall be recorded in the office of the county clerk of the county and shall be filed in the office of the county clerk of the county, and shall be filed in the office of the State Department of Public Health."

"The order, the record thereof, and certified copies of the order or of the records shall be evidence of the truth of their contents and be admissible as proof at all times and places the same as certificates of birth as provided by law."

In my opinion, either the county clerk or the office of the State Department of Public Health may issue certified copies of these court orders. As you will note, Section 3 provides that the original or a certified copy thereof shall be recorded in the office of the county clerk. Therefore, the original order may be filed with the Health Department, although as a practical matter it is quite likely the original would be filed in the county clerk's office. It is quite true Section 11, Chapter 39 of the Laws of 1937, as amended, provides that certified copies of birth and death records shall be made only from the **original** certificates and not from copies.

It is my opinion, however, that a court order establishing a party's date and place of birth is not a birth certificate and thus Section 11, Chapter 39, Laws of 1937, as amended, would not apply.

5. Does Chapter 94, Session Laws of 1945, apply only to natural born citizens of the United States or could it apply to any alien or naturalized citizen?

Answer to your fifth and last question is contained in the first {270} line of the aforementioned act, which reads as follows: "**Any** person born or residing in this state --" It is thus obvious the act applies to natural born citizens of the United States, aliens and naturalized citizens alike.

Trusting the foregoing satisfies your inquiry, I am

By ROBERT V. WOLLARD,

Asst. Atty. General