

## Opinion No. 49-5212

April 26, 1949

**BY:** JOE L. MARTINEZ, Attorney General

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

{\*36} I am writing in reply to your letter of April 1, 1949, regarding the right to inspect death certificates. {\*37} It is our understanding that the right to inspect has been demanded by a Retail Credit Company which examines death certificates for various insurance companies carrying policies on the deceased. The second demand has been made by a newspaper editor who believes that he is entitled to inspect both birth and death certificates for the purposes of publicizing the data contained therein. The editor bases his contention on Public Law No. 130, Laws of 1947, which provides that:

"Every citizen of this state has a right to inspect any public records of this state except records pertaining to physical or mental examinations and medical treatment of persons confined to any institution and **except as otherwise provided by law.**"

The same act further provides:

"All officers having the custody of any state, county, school, city or town records in this state shall furnish proper and reasonable opportunities for the inspection and examination of all the records requested of their respective offices and reasonable facilities for making memoranda abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them **for any lawful purpose.**"

Section 71-414 of the New Mexico Statutes Annotated, 1941 Compilation (Supplement) provides that:

"Certificates of births and deaths shall not be open to the general inspection of the public, except in the presence of the legal custodian of such records, and under such restrictions as the state board may by regulation prescribe to prevent mutilation, alteration or injury thereof, or **wrongful or improper use of the information contained therein**".

It is believed that each of the persons demanding the right to inspect fall in different classes. If the Retail Credit Association should submit at the time of its demand for inspection a letter or other authorization showing its interest in the facts contained in the death certificate, then the employee of such organization should have access to the record. The information contained in the death certificate is important and essential to the insurance company. The newspaper editor falls into a different category. The birth and death certificates may be inspected only for a lawful purpose and no wrongful or improper use of the information contained therein may be made. The primary purpose

of birth and death certificates is for statistical purposes and contains information regarding individuals and indirectly their families which should not be made available for promiscuous use. The individual seeking an inspection of such records should show that the information is sought for some legitimate and specific purpose. It will not suffice that it is for the gratification of mere curiosity or newspaper publicity. What is a sufficient reason to justify examination will depend upon the particular circumstances of each case. The Bureau of Public Health differs in many respects from other state agencies. Because of the nature of its duties it becomes the repository of records concerning the most intimate affairs of the individuals and their families and among such records may be found matters of no public interest but which might, if disclosed, be used for sinister, unworthy, or ulterior motives. Illigitimacy and alcoholic or paretic death may be a fact, but no public official should be required to make it a published fact.