

**Opinion No. 43-4360**

August 7, 1943

**BY:** EDWARD P. CHASE, Attorney General

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

In your letter dated August 6, 1943 you refer to Section 8, Chapter 132, Laws of 1943, which requires District Health Officers to remove from the office of each county clerk in this state all copies of birth certificates which show on their face that the person whose birth is certified therein is illegitimate, etc.

You state that certain county clerks refused to surrender any records on file in their offices without an order from the court. You are wondering whether a court order is necessary and, if so, how it should be obtained.

Section 8 of Chapter 132, Laws of 1943 provides as follows:

"The District Health Officers in this State be, and they hereby are authorized and directed within 90 days after the effective date of this act to remove from the office of each County Clerk in this state, all copies of birth certificates which show on their face that the person whose birth is certified therein is illegitimate or born out of wedlock, or in which the name of the father of such person is not shown, or is shown to be unknown, and upon the removal of such certificates the District Health Officer shall immediately forward the same to the State Director of Public Health."

This law amends Section 11, Chapter 39, Laws of 1937.

The original law required copies of all birth certificates to be filed and recorded in the county clerks office. Under the 1943 amendment an exception is made as to copies of birth certificates of persons born out of wedlock, etc. and as to them a new system of filing and recording with the State Department is set up.

I know of no reason why the county clerks should not comply with the 1943 law without a court order. It is suggested that you take this matter up with the respective District Attorneys of counties in which the clerks have raised the question and request the District Attorneys to assist you in carrying out the provisions of the 1943 law.

By C. C. McCULLOH,

First Asst. Atty. General