

1744.

RECORDS, BIRTHS AND DEATHS, REPORTED BY LOCAL REGISTRAR OF VITAL STATISTICS — PROBATE JUDGE MUST RECORD AND FILE — NO AUTHORITY TO CHANGE SUCH RECORDS — WHERE ERROR, MAY AMEND TO CONFORM TO FACTS IN ORIGINAL INSTRUMENT — MAY RECORD ONLY SUCH INFORMATION AS TRANSMITTED—NO AUTHORITY OR DUTY TO SUPPLY MISSING BIRTH OR DEATH CERTIFICATE OR SUPPLEMENTAL INFORMATION TO INCOMPLETE CERTIFICATE.

SYLLABUS:

1. *Under Section 10501-15, General Code, the probate judge must keep a record of all births and deaths reported by the local registrar of vital statistics.*

2. *The probate judge, after having accurately recorded a birth or death certificate, is without authority to change his records. However, when an instrument has been erroneously recorded by such probate judge or his predecessor, he may, by amendment showing the purpose of such correction, correct his records to conform to the facts contained in the original instrument.*

3. *The probate judge can record only such information as has been duly transmitted to him according to law, and has no authority or duty to supply a missing birth or death certificate or to supply supplemental information to an incomplete certificate.*

Columbus, Ohio, January 19, 1940.

Hon. Forrest D. Pfalzgraf, Prosecuting Attorney,
Woodsfield, Ohio.

Dear Sir:

Receipt is hereby acknowledged of your recent request for an opinion which reads as follows:

“I desire to submit, on behalf of the Probate Court of this county, the following requests for information.

There were records of births and deaths kept in the Probate Judge's office prior to 1908. After 1908, reports were made to

the Health Board and reported to the Department of Vital Statistics at Columbus, Ohio. Since 1922, reports have been made to the Clerk of the local health board, but no copy furnished to the Probate Judge's office.

We would greatly appreciate your opinion on the following questions:

1. Should there be a record of births and deaths kept in the Probate Judge's office under the present law?

2. What procedure is necessary to authorize the probate Judge to correct a wrong record, or to supply a missing record, or to supply supplementary information to an incomplete record?"

Section 1261-32, General Code, reads in part as follows:

"The district health commissioner shall be a deputy of the state registrar of vital statistics and shall under his direction enforce all laws governing the registration of births and deaths. Each local registrar of vital statistics shall on or before the fifth day of each month transmit to the health commissioner of the district having jurisdiction, all certificates of births or deaths received by such registrar during the preceding month, and a copy of all such certificates of births and deaths to the probate judge of the county in which such local registrar resides. The health commissioner shall within five days transmit such certificates to the state registrar of vital statistics. * * * "

Section 10501-15, General Code, reads in part as follows:

"The following books shall be kept by the probate court:

* * *

13. A permanent record of all births and deaths occurring within the county, reported as provided by law. Such record shall be kept in such form and manner as may be designated by the state registrar of vital statistics."

A reading of the two above sections makes it at once apparent that the local registrar of vital statistics is required, under the terms of the former, to transmit monthly to the probate judge a copy of all birth and death certificates, which copies shall be kept in a permanent record in the form and manner designated by the state registrar of vital statistics in the probate court of the county where such births and/or deaths occurred.

I come now to the second part of your inquiry which is directed to the authority of a probate judge to correct a wrong record, supply a missing record, or supply supplemental information to an incomplete record.

The question of whether or not a public officer has authority to correct a record which he has accurately recorded is considered in 35 O. J., page 93, wherein it is stated:

"It is incompetent for a public officer to undo what he has once done; when he has done his duties, he is *functus officio* and has lost his power over the subject. It follows then that a public officer has no authority to change an instrument that has been filed with him."

It has been held that when a defective or improperly executed instrument is accurately recorded, the recorder is thereafter without authority to change or alter his records to conform to any correction which may have been made in the instrument subsequent to the time it was recorded in its original form. (See *Youtz v. Julliard*, 10 O. D. Rep., 298.)

It would naturally follow, therefore, that a probate judge, after having accurately recorded a birth or death certificate duly transmitted to him, would be powerless to change such record.

Your second question would also seem to require a consideration of the right of a public officer to correct an erroneous record to conform to the original instrument left with him for record. This question was considered by the then Attorney General in 1934. In an opinion rendered by him with respect thereto (O. A. G., 1934, page 1394), it was stated:

"Even though county recorders come within the general rule that county officers have only such powers as are given them expressly or by implication, by statute, and in view of the absence of statutory authority to correct records it must be borne in mind that to record an instrument is to have an exact copy of the same entered into the records of the office designated by law, and that the statute specifically enjoins upon a recorder the duty to record instruments which are presented to him for that purpose.

It would appear, therefore, that if through oversight or mistake a recorder makes an incorrect record, it is his duty as such officer, whenever he discovers such mistake to correct it in the record, so that the record shall speak the facts correctly."

In connection herewith, your attention is likewise directed to Section 10501-8, General Code, which reads as follows:

"When a probate judge, whether elected or appointed, enters upon the discharge of his duties, he shall make, in the respective books of his office, the proper records, entries and indexes omitted by his predecessor or predecessors in office. When so made, they shall have the same validity and effect as though they had been made at the proper time, as prescribed by law, and by the officer whose duty it was to make them, and such probate judge shall sign all entries and records made by him as though such entries, proceedings and records had been commenced, prosecuted, determined and made by or before him."

Since the probate judge acts as a recording officer for the purpose of recording birth and death certificates, it would appear, therefore, that when he or his predecessor has made an erroneous or incomplete record of a birth or death certificate previously submitted to him by the local registrar of vital statistics, he may alter or complete such record according to the facts contained in such certificate.

It would seem that the proper way to make the records speak the facts correctly would be by an amendment showing the purpose of the correction rather than by erasures or interlineations.

With respect to the authority of a probate judge to supply a missing record or supplemental information to an incomplete record, it is an established principle of law that public officers have only such powers and duties as are expressly delegated to them by statute and such as are necessarily implied therefrom. As previously pointed out, it is the duty of the probate judge, under Section 10501-15, *supra*, to keep a record of all births and deaths occurring within the county *reported as provided by law*.

Section 1261-32, General Code, *supra*, provides that copies of such certificates shall be reported to the probate judge by the local registrar. Nowhere do we find authority conferred upon any one other than the local registrar to transmit birth and death certificates to the probate judge. Obviously, therefore, the probate judge can record only such birth and death certificates as have been transmitted to him by the local registrar, and cannot record information on births and deaths coming from any other source. If the local registrar transmits to the court an incomplete or incorrect certificate, it is the duty of the judge to record the information contained therein, incomplete, incorrect, or otherwise. However, if the local registrar transmits to the probate judge a new birth or death certificate containing corrected or supplemental information, it can safely be said that the probate judge will be required, under the provisions of Section 10501-15, *supra*, to record such supplemental certificate.

Answering your question specifically, it is my opinion that:

1. Under Section 10501-15, General Code, the probate judge must keep a record of all births and deaths reported by the local registrar of vital statistics.
2. The probate judge, after having accurately recorded a birth or death certificate, is without authority to change his records. However,

when an instrument has been erroneously recorded by such probate judge or his predecessor, he may, by amendment showing the purpose of such correction, correct his records to conform to the facts contained in the original instrument.

3. The probate judge can record only such information as has been duly transmitted to him according to law, and has no authority or duty to supply a missing birth or death certificate or to supply supplemental information to an incomplete certificate.

Respectfully,

THOMAS J. HERBERT,
Attorney General.