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BIRTH, DEATH OR STILLBIRTH—EXACT RECORD—ISSUED BY LOCAL REGISTRAR OF VITAL STATISTICS—GENERAL HEALTH DISTRICT—FEE CHARGED—FIFTY CENTS—LOCAL REGISTRAR ENTITLED TO RETAIN FEE—NO BAR IF REGISTRAR IS A REGULAR SALARIED EMPLOYEE OF GENERAL HEALTH DISTRICT—SECTION 1261-66, G. C.

SYLLABUS:

When an exact copy of any record of birth, death, or stillbirth is issued by a local registrar of vital statistics of a general health district for which a fee of fifty cents is received, such local registrar is entitled to retain such fee under Section 1261-66, General Code, regardless of the fact that such local registrar is a regular salaried employe of a general health district.

Columbus, Ohio, November 29, 1951

Dr. John D. Porterfield, Director of Health,
Columbus, Ohio

Dear Sir:

I have your request for my opinion, reading as follows:

“The 99th General Assembly of Ohio enacted House Bill No. 42 which eliminates township and village primary registration districts and creates in lieu thereof new primary registration districts with boundaries coterminous with the boundaries of general health districts which are provided by Section 1261-16 of the General Code of Ohio.

“In view of the fact the provisions of House Bill No. 42 do not amend Section 1261-66 of the General Code of Ohio, the question has arisen as to the disposition of fees received by local registrars of vital statistics of general health registration districts for the issuance of certifications of birth and exact copies of birth, stillbirth, and death certificates. Since the question is of statewide interest, we respectfully request your consideration of an opinion in answer to the following question:

‘When a certification of birth or an exact copy of a birth, stillbirth, or death certificate is issued by a local registrar of vital statistics of a general health district, for which a fee of fifty cents is received, what disposition shall be made of such fees received by the local registrars of such general health districts?’ ”

The legislature through the provisions of Section 1261-44 et seq. of the General Code, has created a state system of registration of births, deaths and other vital statistics, consisting of a central division of vital statistics in the Department of Health and primary registration districts. Prior to the amendment of Section 1261-46, General Code by the enactment of House Bill No. 42, of the 99th General Assembly, to which you refer, that section provided:

“The state shall be divided into registration districts as follows: Each city, each incorporated village, and all the area of each township which is not included in an incorporated municipality, shall constitute a primary registration district, provided that the director of health may combine two or more primary registration districts, and may establish any state hospital, or other public institution, as a primary registration district.”

Section 1261-47, General Code, before amendment read as follows:

“In villages the village clerk, and in townships the township clerk, shall be the local registrar. In cities the board of health of the city health district, on the recommendation of the health commissioner, shall appoint the local registrar. When a state hospital or other public institution has been made a primary registration district, the superintendent, or other person in charge thereof, shall be the local registrar of such district. When two or more primary registration districts have been combined into one district, the director of health shall designate the local registrar who is to act as registrar of the combined district.

“With the approval of the director of health each local registrar shall appoint a deputy registrar or deputy registrars who, in case of the absence, illness or disability of the local registrar, shall act in his stead. Acceptance of appointment as deputy registrar shall be in writing and shall be filed with the director of health. No funeral director or embalmer shall serve either as a local registrar or as a deputy registrar.

“In a city registration district all the records of vital statistics shall be kept in the office of the board of health of the city health district. In a general health district all the records of vital statistics shall be kept at the office of the board of health.”

It will be seen that under the provisions of Section 1261-47, the legislature expressly designated the person who was to be the local registrar in the village primary registration districts and in the township primary registration districts as set up by Section 1261-46. In a township registration district the township clerk was designated as the local registrar, in a village registration district the village clerk was named. The duties at-

tendant on a local registrar were in addition to the duties assumed under the offices of township clerk or village clerk. In the city registration districts on the other hand the board of health of the city health district, on the recommendation of the health commissioner, was required to appoint the local registrar and by these provisions could create a full time office of local registrar, the registrar becoming a salaried employe.

Under Section 1261-66, General Code, the local registrars, with the exception of the local registrar of a city registration district who is a salaried employe, are allowed to receive a fee of fifty cents for supplying an applicant with an exact copy of any record of birth, stillbirth, or death which the registrar may have in his possession. This section provides:

“The director of health, or person authorized by him, shall upon request and upon the payment of a fee of fifty cents supply to any applicant a certified copy of the original certificate of any birth, death, or stillbirth, registered according to law. Such certified copy of such original certificate of birth, death or stillbirth shall be prima facie evidence in all courts and places of the facts therein stated. Unless a certified copy of an original certificate of birth is specifically requested, the director of health or person authorized by him, or any local registrar of vital statistics, or local commissioner of health, or the probate judge, shall upon the payment of a fee of fifty cents, issue a certification of birth which shall contain only the name, sex, date of birth and place of birth of the person to whom it relates and further shall attest the fact that such person’s birth has been registered according to law. Such certification of birth shall be prima facie evidence in all courts and places of the facts therein stated. For a search of the files and records when no certified copy is made, or certification of birth issued, the director of health, or person authorized to act for him, shall receive a fee of fifty cents from the applicant for each hour or fractional part of an hour required for such search. The United States bureau of the census, the United States social security board, and other federal agencies may obtain, without expense to the state, transcripts of, or information from, birth, stillbirth and death certificates without payment of fees herein prescribed. The director of health shall keep a correct account of all fees received by the department of health under the provisions of this act and shall pay the same into the state treasury as provided by law.

“The local registrar shall, upon request, supply to any applicant an exact copy of any record of birth, death, or stillbirth, which he may have in his possession, for which he may receive a fee of fifty cents from the applicant. Provided, however, that

where the local registrar is a regular salaried employe of a city health district, said fee shall go to the general fund of the city."
(Emphasis added.)

It is clear that one of the purposes of Section 1261-66, is to provide a method of compensating local registrars when their duties are assumed in addition to other full-time employment. If, however, in city registration districts, the local registrar is a salaried employe, such salary is his sole source of remuneration and the registrar is not entitled to receive fees for his services in addition thereto.

As above indicated and as stated in your letter, Sections 1261-46 and 1261-47, were amended by the legislature effective July 30, 1951. Section 1261-46 now reads:

"The state shall be divided into registration districts as follows: Each health district created by the provisions of section 1261-16 of the General Code shall constitute a primary registration district, provided that the director of health may combine two or more primary registration districts, and may establish any state hospital, or other public institution, as a primary registration district."

Section 1261-16 to which Section 1261-46 refers, makes the following provisions:

"For the purposes of local health administration the state shall be divided into health districts. Each city shall constitute a health district and for the purpose of this act (G. C. Sec. 1261-16 et seq.) shall be known as and hereinafter referred to as a city health district. The townships and villages in each county shall be combined into a health district and for the purposes of this act shall be known as and hereinafter referred to as a general health district. As hereinafter provided for, there may be a union of two or more contiguous general health districts, not to exceed five, or a union of a general health district and a city health district located within such district."

Section 1261-47, as amended, provides as follows:

"In a primary registration district the board of health of the health district, on the recommendation of the health commissioner, shall appoint the local registrar. When a state hospital or other public institution has been made a primary registration district, the superintendent, or other person in charge thereof, shall be the local registrar of such district. When two or more primary registration districts have been combined into one district, the department of health shall designate the local registrar who is to act as registrar of the combined district.

“With the approval of the director of health each local registrar shall appoint a deputy registrar or deputy registrars who, in case of the absence, illness or disability of the local registrar, shall act in his stead. Acceptance of appointment as deputy registrar shall be in writing and shall be filed with the director of health. No funeral director or embalmer shall serve either as a local registrar or as a deputy registrar. In a city registration district all the records of vital statistics shall be kept in the office of the board of health of the city health district. In a general health district all the records of vital statistics shall be kept at the office of the board of health.”

The legislature did not, however, amend Section 1261-66, General Code; its provisions remain as set out above.

By the amendment of Section 1261-47, the appointment of the local registrar of a newly created county primary registration district, is left in the board of health of such district, on the recommendation of the health commissioner, and the board of health has the power to create a full time office of local registrar to be filled by a salaried employe. In other words, the provisions for appointing the local registrar of a city registration district, and the appointment of the local registrar of a county registration district are the same by force of these latest amendments. The question, therefore, arises that if in a county primary registration district the local registrar is a salaried employe, may such registrar retain the fifty cent fee for the issuance of exact copies of any record of birth, death or stillbirth they may have in their possession, as authorized by Section 1261-66, in addition to their regular salary or as is expressly provided in the case of salaried registrars of city registration districts, are they entitled only to their regular salary.

The language in Section 1261-66 excepting salaried registrars of city registration districts from the provisions allowing local registrars to receive a fifty cent fee for the issuance of an exact copy of any record of birth, death or stillbirth, is clearly not broad enough to embrace the salaried registrars of other than city registration districts. It is therefore left for our determination whether Section 1261-66 has been amended by implication to allow retention of the fees authorized by this section, only to those local registrars, whether of a city or county registration district, who are not salaried employes.

On the face of it, there would seem to be no reason for distinguishing between local registrars of a city registration district and local registrars

of county registration districts and that if in the one case a salaried registrar is entitled to be compensated only by his salary, consistency would require that the same treatment be accorded the local registrar of a county registration district.

It is another matter, however, to hold that Section 1261-66, General Code, has been amended by implication, with the amendments of Section 1261-46 and 1261-47, to reach such a result. I cannot find it within the authority of my office to infer an amendment to an existing law on the basis of a supposed legislative intent in no way expressed, however proper an amendment it might seem to be.

In referring to the occurrence of amendments by implication, the rule is stated in Volume 37, Ohio Jurisprudence, Section 108, p. 379, as follows :

“* * * Amendments by implication occur, however, only when they result from the necessity of giving effect to later legislation. Such amendments are not favored. * * *”

Henderson v. City of Cincinnati, 81 Ohio St., 27, is cited as authority for the rule as stated in Ohio Jurisprudence. See also In re Harry W. Morgan, 1940, 18 Ohio Opinions, 403.

Guided by this rule, I can but hold that the amendment of Section 1261-46 and 1261-47, General Code, in no way affected Section 1261-66, General Code, and that local registrars who are salaried employes of a general health district, county registration district, are entitled to receive fees for the issuance of an exact copy of any record of birth, death or stillbirth they may have in their possession under authority of Section 1261-66. The board of health of a general health district can take into consideration the right to receive such fees in fixing the salary of the local registrar.

In specific answer to your question, therefore, it is my opinion that when an exact copy of any record of birth, death, or stillbirth is issued by a local registrar of vital statistics of a general health district for which a fee of fifty cents is received, such local registrar is entitled to retain such fee under Section 1261-66, General Code, regardless of the fact that such local registrar is a regular salaried employe of a general health district.

Respectfully,

C. WILLIAM O'NEILL
Attorney General