

1854.

BIRTHS AND DEATHS, CERTIFIED COPIES OF RECORDS—STATE DEPARTMENT OF HEALTH—UNDER SECTION 231 G. C. SHOULD BE SIGNED BY DIRECTOR OF HEALTH — PROVISION MAY BE MADE TO SIGN AND CERTIFY SUCH RECORDS BY CHIEF, DIVISION OF AUDITS AND STATISTICS OR, FACSIMILE OF DIRECTOR'S SIGNATURE PRINTED OR STENCILED ATTACHED BY STAMP—COUNTER-SIGNED—SEAL—SECTION 154-18 G. C.

SYLLABUS:

Certified copies of records of births and deaths furnished by the State Department of Health as provided by Section 231, General Code, should be signed and certified to by the Director of Health himself, or provision may be made by administrative order of the Director of Health, properly journalized, for the signing and certification of such copies by the Chief of the Division of Audits and Statistics or by means of the placing of the Director's facsimile or printed or stenciled signature thereto attached by means of a stamp, and countersigned by the Chief of the Division or other employe of the department. The seal of the Department of Health should of course be affixed to such authenticated copies, as provided by Section 154-18, General Code.

Columbus, Ohio, February 15, 1940.

R. H. Markwith, M. D., Director of Health,
Columbus, Ohio.

Dear Dr. Markwith:

This will acknowledge receipt of your request for my opinion, which reads as follows:

"I shall be glad to have your opinion in regard to the following matter:

In 1908 (O. L. 99, p. 296), the General Assembly established in the office of the Secretary of State a central bureau of vital statistics for the purpose of effecting a system of registration of births and deaths. Certain duties were assigned to the Secretary of State, but the bureau was to be administered by a state registrar of vital statistics.

In 1921, the Administrative Code (Section 154-43) transferred to the Department of Health 'all powers and duties vested by law in the State Department of Health, * * * and also those vested in the Secretary of State and the state registrar of vital statistics with respect to the registration of vital statistics as provided in sections one hundred and ninety-seven to two hundred and thirty-four, both inclusive, of the General Code.'

From 1921 to the present time, this activity of the Department of Health has functioned as a Division of Vital Statistics under the immediate supervision of a chief of division and the general supervision of the Director of Health.

Under a recent action of the Public Health Council, taken pursuant to authority granted in paragraph (d), Section 1235 of the General Code, there was established a Division of Audits and Statistics to which was assigned the function of birth and death registration.

Query: (1) By whom should certified copies of birth and death certificates, issued in compliance with section 231, General Code, be signed? (2) If the certified copies are to be signed by the Director of Health, as the administrative officer of the Department of Health, would it be permissible to use a facsimile signature and be countersigned by an employe of the Department of Health under authority of the Director of Health?

I attach the forms previously used for certified copies by the chief of the division of vital statistics. Your early attention to this request for an opinion will be appreciated."

The Act of the General Assembly of 1908 (99 O. L., 296) by the terms of which there was established in the Office of the Secretary of State a state system of registration of births and deaths to be administered by the Secretary of State and to consist of a Central Bureau to be maintained at the capital of the state and registration districts in each city, village and township in the state, appears in the General Code of Ohio as Sections 197 to 234, inclusive, of the General Code.

As originally enacted, this aforesaid Act provided that the Secretary of State should appoint a "Registrar of Vital Statistics" for a term of four years, commencing on the first day of January after his appointment. It was provided with respect thereto, that the said Registrar of Vital Statistics should be a registered physician and a competent vital statistician and should have immediate direction of the central Bureau of Vital Statistics. This provision with respect to the appointment, qualifications and duties of the Registrar of Vital Statistics in the Office of the Secretary of State, appeared in the General Code of the State of Ohio, as Section 199 until 1921, when,

upon the enactment of the so-called Administrative Code (109 O. L., 105), said Section 199, General Code, was repealed and the powers and duties which theretofore had vested in the Secretary of State and the State Registrar of Vital Statistics as provided in Sections 197 to 234, both inclusive, of the General Code, were transferred to the "Department of Health" which was thereupon created. (Section 154-43, General Code). At the same time by the express provisions of Section 154-26, General Code, which was a part of the said so-called Administrative Code, the office of State Registrar of Vital Statistics was abolished.

By the terms of the aforesaid Act of the Legislature known as the Administrative Code, codified as Sections 154-1 et seq., of the General Code of Ohio, a number of administrative departments of state government were created each to be administered by a director, among which was the "Department of Health," to be administered by a "Director of Health" (Section 154-3, General Code). It was therein provided in Section 154-8, General Code, that:

"With the approval of the Governor, the Director of each department shall establish divisions within his department and distribute the work of said department among such divisions."

In pursuance of the authority thereby extended, there was created in the Department of Health, a Division of Vital Statistics and the position created of Chief of the said division who thereafter functioned with respect to the registration of births and deaths, the preservation of records thereof and the issuance of certified copies of such records as provided by Section 231, General Code, the same as had the Registrar of Vital Statistics in the Office of the Secretary of State prior to the abolition of that office.

In House Bill No. 301, of the 93rd General Assembly, Section 1235, General Code, relating to the powers and duties of the Public Health Council, was amended. As so amended, it provided among other things as follows:

"It shall be the duty of the Public Health Council, and it shall have the power * * (d) to prescribe by regulations the number and functions of divisions and bureaus and the qualifications of chiefs of the divisions and bureaus within the State Department of Health. * * "

In pursuance of the power extended to the Public Health Council by paragraph (d) of Section 1235, General Code, as amended, the Public

Health Council on January 14, 1940, adopted a resolution prescribing the number and functions of divisions and the qualifications of chiefs of divisions within the State Department of Health. In so far as is pertinent to your inquiry, this regulation reads as follows:

“There is hereby created within the Department of Health, the following eight (8) divisions: Adult Hygiene; Audits and Statistics; Child Hygiene; Dental; Engineering; Laboratory; Legal; and Nursing.

The functions of these divisions for the purpose of administration, supervision and control, shall be assigned as follows:

* * *

* * *

AUDITS AND STATISTICS DIVISION: Finance; Reports; Statistics; Birth and Death Registration; Mechanical Tabulation.”

Although no mention is expressly made in the above regulations, either with respect to the functions of the Audits and Statistics Division or any other Division, of the duty of the State Department of Health which rests upon it by virtue of Section 231 of the General Code, with respect to the furnishing of certified copies of the records of births and deaths on file with said department, it is my opinion that the function of “birth and death registration” assigned to the Division of Audits and Statistics carries with it the function or duty to furnish certified copies of such records as provided by law. Section 231, General Code, which was in existence prior to the adoption of the Administrative Code, in 1921, by the terms of which the office of State Registrar of Vital Statistics was abolished and the duties devolving upon that office were assigned to the State Department of Health, and still exists in the same form, reads in part as follows:

“The state registrar shall furnish therefore a certified copy of the record of a birth or death registered under provisions of this chapter relating to vital statistics, for which he shall receive a fee of fifty cents from the applicant. Such copy, when properly certified by the state registrar to be a true copy thereof, shall be prima facie evidence in all courts and places of the facts therein stated. * * *”

Having determined that the duty to furnish certified copies of records of births and deaths, which formerly was imposed upon the State Registrar of Vital Statistics by virtue of said Section 231, General Code, now rests with the Division of Audits and Statistics in the State Department of Health, it would seem to follow that such copies might properly bear the certification

of the chief of the division and that when such copies are signed and properly certified by the chief of the division and the seal of the department affixed thereto, they would be fully as authoritative and potent for all purposes as were such copies formerly when signed and certified to by the State Registrar of Vital Statistics prior to the abolition of that office, in literal compliance with the statute.

However, mindful of the attitude some trial courts have taken with respect to similar questions as exemplified in the case of *State ex rel. The State Fire Marshall v. Blickensderfer*, 25 O. N. P., (N. S.) 389, and of the decision of the Supreme Court in *Industrial Commission of Ohio v. Snyder*, 113 O. S., 405, and of the Court of Appeals in *Swartz v. Board of Education*, 18 O. App., 17, it would seem that some affirmative action should be taken by an administrative department of the state through its executive head authorizing and empowering the head of the division or an employe of the department to issue valid orders and authenticated copies of records within the department, in order to properly validate them.

Section 154-24, General Code, provides in part, as follows:

“Whenever rights, powers or duties which have heretofore been vested in or exercised by any officer, board, commission, institution or department, or any deputy, inspector or subordinate officer thereof, are, by this chapter, transferred, either in whole or in part, to or vested in a department created by this chapter, or any other department, office or institution, such rights, powers and duties shall be vested in, and shall be exercised by the department, office or institution to which the same are hereby transferred, and not otherwise; * * ”

Reading the above statute with Section 154-43, General Code, which provides inter alia, “The Department of Health shall have all powers and perform all duties vested by law in * * the State Registrar of Vital Statistics with respect to the registration of vital statistics as provided in Section 197 to 234, both inclusive, of the General Code,” it is clear that the duties and powers there spoken of were lodged specifically in the “Department of Health” and not in any division or employe thereof, and that if these duties are to be performed by the head of a division or an employe of the department, the authority to do so should be extended by executive order or in some other lawful manner.

Inasmuch as the Public Health Council in creating the several divisions in the Department of Health and assigning to them certain functions

by authority of amended Section 1235, General Code, as noted above, did not see fit to expressly assign to any division the duty of preparing and furnishing certified copies of records of births and deaths on file with the department, except as that duty may be impliedly included in the function "birth and death registration" assigned to the Division of Audits and Statistics, and the law as it now exists makes no express provision with respect thereto, it is, in my opinion, the duty of the Director of Health, who is by law constituted the administrative and executive officer of the Department of Health, to make such administrative orders with respect to the issuance of such certified copies as he may in his discretion think proper.

He may, if he sees fit, provide by such administrative order which when made should be recorded in his journal, that such certifications may be made by the Chief of the Division of Audits and Statistics, or that such certification should be made over the personal signature of the director of the department or his facsimile or printed or stenciled signature placed by means of a stamp and countersigned or attested by the Chief of the Division or other employe of the department.

It is my opinion, in specific answer to the question submitted that certified copies of records of births and deaths furnished by the State Department of Health as provided by Section 231, General Code, should be signed and certified to by the Director of Health himself, or provision may be made by administrative order of the Director of Health, properly journalized, for the signing and certification of such copies by the Chief of the Division of Audits and Statistics or by means of the placing of the Director's facsimile or printed or stenciled signature thereto attached by means of a stamp, and countersigned by the Chief of the Division or other employe of the department. The seal of the Department of Health should of course be affixed to such authenticated copies, as provided by Section 154-18, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.