

1101

BIRTHS OCCURRING IN OHIO—LISTS—RECORDED, DIVISION OF VITAL STATISTICS—DIRECTOR OF HEALTH AUTHORIZED TO PREPARE SUCH LISTS—SECTION 1261-66 G. C.

SYLLABUS:

Section 1261-66, General Code, authorizes the Director of Health to prepare lists of births occurring in Ohio, and of record in the Division of Vital Statistics.

Columbus, Ohio, July 23, 1946

Roger E. Heering, M.D., Director, Department of Health  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads:

“The Department of Health receives from commercial and other organizations and individuals many requests for lists of births that occur in Ohio and are of record in our Division of Vital Statistics. There is no *specific* provision in the vital statistics law (G. C., Section 1261-44 et seq.) for furnishing such lists.

Please inform us if such lists may be furnished under the following provision found in Section 1261-66, General Code:

‘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.’

If this is permissible, a person would be assigned to make the lists of births, a cost price fixed, and the proceeds paid into the State Treasury, as provided by law.”

The only pertinent statute is Section 1261-66, General Code, which reads in part, as follows:

“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 still-birth 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 request and upon the payment of a fee of twenty-five cents, issue a certification of birth which shall contain only the name, sex, color, 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. \* \* \*

Therefore, unless the language of Section 1261-66, General Code, quoted above, provides the authority for preparation of lists of births of record in your department, no authority for the preparation of such lists exists, for state departments and public officials have only such powers and authority as are specifically granted by law, and such implied powers and authority as are necessary to give effect to those specifically granted, and I find no other statute which specifically makes it the duty or grants the authority to prepare such lists.

Considering, then, the language of said section, I note, first, that the Director of Health shall upon request and the payment of a fee of fifty cents "supply to any applicant a certified copy of the original certificate of any birth"; secondly, unless such a certificate is specifically requested he "shall upon request and upon the payment of a fee of twenty-five cents, issue a certificate of birth \* \* \*". It is, of course, obvious that the "lists" of births referred to in your inquiry will not consist of either certified copies of original birth certificates or certifications of birth. However, following these provisions, appears the language:

"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 question whether this language requires a charge of fifty cents per hour where a request for a certified copy of a certificate of birth is requested and a search of the files and records fails to disclose a recordation of the birth from which such information may be taken, is not presented by your inquiry. It may be argued that the intent of the legislature was to provide for such a situation but, nevertheless, it appears that it would not be doing violence to the language which the legislature did use by construing it to cover the making of lists of births. It may have been the intent of the lawmakers to cover both instances. In any event, I find no language in the statute which precludes the conclusion that lists of birth may be prepared under the authority of this section.

Therefore, in specific answer to your inquiry, you are advised that in my opinion Section 1261-66, General Code, authorizes the Director of Health to prepare lists of births occurring in Ohio, and of record in the Division of Vital Statistics.

Respectfully,

HUGH S. JENKINS,  
Attorney General