

DEPARTMENT OF JUSTICE

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AUG 6 1986

DEPT. OF JUSTICE

ROBERT M. SPIRE
Attorney General
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Deputy Attorney General

DATE: August 4, 1986

SUBJECT: Request by Press for Access to a Birth Certificate

REQUESTED BY: Gregg F. Wright, M.D., M.Ed.
Director of Health, Department of Health

WRITTEN BY: Robert M. Spire, Attorney General
Marilyn B. Hutchinson, Assistant Attorney General

On July 21, 1986, you received a request from a reporter of a newspaper for a copy of the birth certificate of a certain person not related to the reporter in any way. The reporter wants to prove or disprove a rumor that a public figure is the father of such person and, if so, to make that the basis of a newspaper story.

So far you have denied the request on the basis that it is not a proper purpose as required by Neb.Rev.Stat. §71-612 and as defined by the Department of Health in 174 NAC 3. You have been awaiting our response to your request regarding access of the press to a death certificate.

That response went to you as Attorney General Opinion No. 86058 on July 30, 1986. Since both death certificates and birth certificates are covered by the same statutes and regulation, our conclusion is the same. That is that the Department has no authority to disclose the record to the person requesting it where the purpose is not one coming within those for which access is authorized by Neb.Rev.Stat. §71-612 and 174 NAC 3.

You say the reporter has argued that "proper purpose" does not apply to requests from the news media on the basis of the First Amendment to the U.S. Constitution.

The press is a part of the public and may have the same access to a birth certificate which the general public may have. Thus, there is no absolute bar to the press from such public record. If a proper purpose as defined in Neb.Rev.Stat. §71-612 or in 174 NAC 3 is shown by the requesting party, the Department has no discretion to withhold the record from such party because that party is a reporter of a newspaper.

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Gregg F. Wright, M.D., M.Ed.
August 4, 1986
Page -2-

The First Amendment does not give anyone an absolute right. See, Virginia Pharmacy Bd. v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748 (1976) and Central Hudson Gas & Electric Corp. v. Public Service Commission, 447 U.S. 557 (1980). Such right must be balanced with other rights. As we suggested in our prior opinion, above, the rule-making process is an appropriate forum for exploring such countervailing interests.

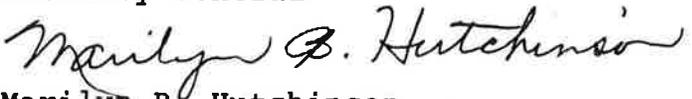
In our opinion about death certificates, above, we discussed cases cited by the newspaper editor. The courts balancing such rights in two of those cases stated that a right to privacy does not survive death so it was not an interest given consideration. However, such a right may be very important to the subject of a birth certificate. On the other hand, the interest of the state in limiting access to death certificates to encourage accurate reporting of the cause of death to facilitate research to reduce morbidity and mortality would not be relevant with respect to a birth certificate.

You have also asked whether you have authority under Neb.Rev.Stat. §84-712.06 (Reissue 1981) to provide to the public a portion of a death certificate or a birth certificate. We have concluded you do as discussed below.

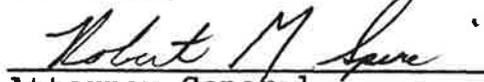
You have authority under Neb.Rev.Stat. §71-612 to disclose vital records to certain persons doing research to decrease morbidity and mortality. As provided in Neb.Rev.Stat. §71-3402 (Reissue 1981), you must not reveal the identity of any person whose condition or treatment is being studied. It follows that you can only provide portions of vital records to such researchers. If there are other proper purposes for which a portion of a vital record of a particular person may be disclosed, such purposes should be set out in amendments to 174 NAC 3. Where the death certificate or birth certificate of a particular person is requested by one not entitled to the complete certificate, it would be impossible to provide any portion of the death certificate or birth certificate without identifying it with that person.

Sincerely yours,

ROBERT M. SPIRE
Attorney General


Marilyn B. Hutchinson
Assistant Attorney General

MBH/bae
APPROVED:


Attorney General