



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**PRICE DANIEL  
ATTORNEY GENERAL**

**April 20, 1949**

Hon. Geo. W. Cox, M. D.  
State Health Officer  
Department of Health  
Austin, Texas

Opinion No. V-811

Re: Authority of a step-  
father to file amend-  
ed birth certificate.

Dear Sir:

You submit the following questions:

"A child was born in wedlock on January 28, 1941. Two years later the natural parents were divorced and the other subsequently remarried.

"Under the provisions of the last three paragraphs of Subsection 26, Rule 47a, Article 4477, V.C.S., does the second husband of the mother have the right to file an amended birth record showing himself to be the father of the child, and further showing the surname of the second husband as the surname of the child?

"Further, do these statutory provisions contemplate the filing of an amended birth record in only those cases where a child is born to an unmarried mother who subsequent to the birth marries the natural father of the child?"

The last three paragraphs of the statute referred to in your inquiry read as follows:

"Upon the marriage of a mother of a child, or children, her husband may file with the Local Registrar the certificate of marriage, to which may be attached a birth certificate for each child showing the father's name and other data referring to him as the father of the child or children.

"And provided that if the husband is deceased, divorced, or permanently or temporarily outside the limits of the United States, or when the husband's whereabouts are not known, the mother shall have all the rights granted the husband in filing said certificate or certificates.

"When the Local Registrar is satisfied that the marriage has occurred and that the statements made on the birth certificate are true and correct, he shall place his file date and signature on the certificate and forward it to the State Bureau of Vital Statistics. The State Registrar shall attach the certificate as a correction to the certificate of the natural birth of the child; and provided further, that neither the State Registrar nor a Local Registrar shall, except where ordered by a court of competent jurisdiction, make a certificate of, or furnish any information to any person as to the birth certificate of an illegitimate child, but shall issue a certified copy of the birth certificate filed after the marriage of the mother of the child."

The quoted paragraphs pertain to the right of a husband who marries the mother of an illegitimate child or children to file a certificate of his marriage to the mother and attach a delayed birth certificate of each child showing the natural father's name and other data referring to the natural father as the father of the child or children. The registrar must be satisfied that the marriage has occurred and that the statements made on the birth certificate are true, and may not change a birth certificate of a child born in wedlock and filed by its natural father.

We are of the opinion that a birth certificate of a child born in lawful wedlock to natural parents, duly filed in the office of the State Registrar, may not be amended by a step-father to show, contrary to a birth certificate filed by the natural father, that he, in fact, is the father of the child. The stepfather may adopt the child and amend its birth certificate to show a new surname the same as the adopting parents. Article 5929 V.C.S. provides for the

changing of the name of a minor. Under the case of Pintor v. Martinez, 202 S.W.2d 333 (Tex. Civ. App. 1947, error ref. n.r.e.) the changing of the name probably could be coupled with the adoption proceedings. See also opinion 0-5950, a copy of which is enclosed.

It would appear as if the last three paragraphs of Subsection 26, Rule 47a of Art. 4477 were inserted as an afterthought prior to the adoption of this amended section. The only meaning they can possibly have, in addition to what is set out above, is that upon marriage of the mother of a child (obviously illegitimate at the time) the husband (and in certain specified cases, the mother) may file, with the certificate of marriage, a certificate showing the husband to be the father of the child. This certificate is attached to the certificate of the natural birth of the child as a correction of that original certificate.

SUMMARY

Where a child was born in wedlock and its birth certificate was filed by its natural parents who were divorced after its birth, the second husband of the mother may not file an amended birth certificate showing himself to be the father of the child. He may adopt such child and change its name to that of the adopting parents as provided in Rule 47a, subsection 26, Art. 4477, V.C.S.

The above statute contemplates the filing of an amended birth certificate in those cases in which a child is born to an unmarried mother who subsequently marries the natural father of the child.

Very truly yours,

APPROVED:

*Joe R. Greenhill*

FIRST ASSISTANT  
ATTORNEY GENERAL

WTW:jrb:wb  
Encl.

ATTORNEY GENERAL OF TEXAS

By

*W. T. Williams*  
W. T. Williams  
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