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Opinion Committee Texas Department of Health

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I.D. # 38797

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**RQ-893**

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May 2, 1996

The Honorable Dan Morales  
Attorney General of Texas  
P.O. Box 12548  
Austin, Texas 78711

Post-It* Fax Note	7671	Date	5/3/96	# of pages	2
To	Opinion Committee	From	KIM WOLFE		
Co./Dept.		Co.	TDH		
Phone #	463-2110	Phone #	458-7236		
Fax #	472-6538	Fax #	458-7290		

Attention: Opinion Committee

Dear General Morales:

The Texas Department of Health (TDH) has received a request for a supplementary birth certificate to be issued in the name of a child born in Texas and subsequently adopted in Pennsylvania by two women.

According to section 192.006(c) of the Texas Health and Safety Code (Vernon 1992), a supplementary birth certificate may be filed when a person is adopted under the laws of any state. Such supplementary birth certificate "must be in the names of the adoptive parents." Tex. Health & Safety Code Ann. §192.008(a) (Vernon 1992). Since the Pennsylvania court orders name two women as the child's adoptive parents, these statutes appear to indicate that a supplementary birth certificate should be issued showing the two women as the child's parents. For such a birth certificate to be issued the birth certificate form would have to be modified. While TDH has the authority to prescribe the exact form and contents of the birth certificate under section 192.002 of the Texas Health and Safety Code, the issuance of a birth certificate showing two women as the parents would directly contradict an Attorney General's opinion from 1939 that has never been overruled or withdrawn.

The Attorney General held that "the birth certificate of the Texas Department of Health for an adopted child may not reveal two mothers, even though the report of adoption from a district court names two single women as having adopted a minor child." Op. Tex. Att'y Gen. No. O-532 (1939). This holding was based on the fact that joint adoption was only valid by a husband and wife. The only joint adoptions allowed today are those by a married couple. See, Tex. Family Code §§162.001 (a) and 162.002(a) (Vernon Supp. 1996). Thus, the foundation of opinion number O-532 is still valid as to in-state adoptions.

General Morales  
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However, the child in question was adopted under the laws of Pennsylvania and that adoption is to be honored according to section 192.006(c) of the Texas Health and Safety Code and according to the Full Faith and Credit Clause of the United States Constitution, Art. 4, §1. Therefore, TDH seeks an answer to two questions.

1. Is TDH required by Full Faith and Credit and the Health and Safety Code to issue a supplementary birth certificate showing two persons of the same sex as the adoptive parents when the adoption occurs under the laws of another state?
2. If TDH is not required to issue such a birth certificate under Full Faith and Credit, is it within the discretion of TDH to issue such a birth certificate or is Opinion No. O-532 controlling as to out-of-state adoptions?

If you have any questions, please have a member of your staff contact James M. Churchill, Attorney, at 458-7236. Thank you for your assistance. We look forward to hearing your decision.

Sincerely,



David R. Smith, M.D.  
Commissioner of Health