

OFFICIAL OPINION NO. 69-65, Certified copy of adoption orders may be furnished Vital Statistics Department without Court Order. Such may also be furnished an adopted child who has reached adulthood. SDCL 1967 25-6-14; 2506-15

STATE OF SOUTH DAKOTA
OFFICE OF
THE ATTORNEY GENERAL

July 14, 1969

Dr. G. J. Van Heuvelen
State Health Officer
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 69-65

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Dear Dr. Van Heuvelen:

You have requested my official opinion based upon this factual situation:

"In many instances persons born and adopted prior to 1939 have never seen or required a copy of their birth records. However, as birth records are becoming more and more important because of our complex society, many inquiries are being made to this department of government, such applicants are finding that such record is not filed with the Vital Statistics Division of the Department of Health, as such filing of the order of adoption with such division was not required prior to the enactment of Chapter 13 of the Session Laws of 1937, which was incorporated into the 1939 Code as SDC 14.0406.

"As the vital statistics division cannot prepare a new record pursuant to adoption until such division receives a certified copy of the order from the clerk of courts, this office requests the clerk of court, where such adoption occurred, to furnish such certified copy of the order in order to prepare the new birth record pursuant to adoption.

"Most clerks of court will cooperate and furnish such certified copy of the order of adoption. Some will not on the grounds such would be violative of SDC 1960 Supp. 55.3716 (SDCL 1967 25-6-15),"

Based upon such factual background, you have submitted these questions:

"1. Is the Division of Vital Statistics entitled to receive certified copies of adoption orders made and entered by the Court, when the statutes did not require forwarding of such certified copy of such order of adoption, without receiving an order of a court of competent jurisdiction entering its order requiring the filing of such certified copy of the Order with Director of Vital Statistics?

"2. If such Court Order is required to obtain a certified copy of such Order for the Division of Public Health Certificates, who is responsible to obtain such order? (The adopted individual, the clerk of courts, or this department.)

"3. May the adopted person or the adoptive parents receive certified copies of such Order of Adoption without a court order?"

The practice of adoption of children is old. Procedures for adoption in Dakota Territory appears in the Civil Code of 1877. The requirements that every person have a birth certificate, and the importance of birth certificates is but of a modern imposition. Thus, until the amendment of SDC 14.0406 by Chapter 54 of the Session Laws of 1947, such adoption orders did not have to state the adoptive name of such child, date and place of birth, sex, color and race of such adoptive child and of the adoptive parents. The issuance of a new birth certificate in the adoptive name was not authorized until the enactment of Sec. 12 of Chapter 168 of the Session Laws of 1939. It was Section 11 of such 1939 enactment which provided the confidential nature of adoption records. Such statute is SDC 1960 Supp. 55.3716 (SDCL 1967 25-6-15). It was not until Chapter 13 of the Session Laws of 1937 amended Section 208 of the South Dakota Code of 1919 that clerks of courts were required to furnish a certified copy of the Order of Adoption to the Director of Vital Statistics.

You are making inquiry as to those adoptions which occurred prior to the statutory requirement of filing a certified copy of such adoption order in your office. Such adoption orders were in existence prior to the Legislature denominating such to be of a confidential nature.

SDC 1960 Supp. 55.3716 (SDCL 1967 25-6-15) in my opinion is required because of the provision that a birth certificate can be based upon an adoption, rather than the natural processes of birth. Making such records confidential has as a fundamental purpose of guarding such personal matters as appears in such adoption records from the scrutiny of the curious. The statute itself provides for inspection by designated persons without an Order of the Court. The people so designated as entitled to inspect such records are not idle curiosity seekers, but rather persons who are interested in and who have legitimate right to inspect such records.

There seems no question that such statute providing the confidential nature of such records did not repeal the earlier enacted statute (SDC 14.0406, as amended (SDCL 1967 25-6-14), and each clerk of courts must furnish a certified copy of such Order of Adoption to the Division of Public Health Statistics.

In conformity to the general rule of statutory construction, it may be argued that SDC 1960 Supp. 55.3716 should be interpreted as being prospective in nature. We do not have to reach this point for there can be no question that prior to 1939 adoption records were not confidential, the time when such adoption orders in question were executed and filed as a record of the county court. Adoption orders executed after 1939, insofar as your department is concerned, are not confidential. Certified copies must be filed with the Director of Vital Statistics, of every adoption order executed since the effective date of the 1937 Act.

It would result in an anomaly to hold that all adoption orders executed since 1937 must be furnished to the Director of Vital Statistics, but that all adoption orders executed prior thereto cannot be furnished to the Director of Vital Statistics, who has the duty of issuing birth certificates based upon the adoption records, because the 1939 statute did not name such official division of a department of state government as within the select group that could inspect and copy adoption records without a court order.

The Director of Vital Statistics, in seeking such certified copy of an adoption order, is not an idle curiosity seeker. He is interested in such record as the same is required to be in his office before he can perform an important function of his office-the issuance of birth certificates based upon an adoption record.

Question No.1 is answered YES.

Because of the answer given to Question No.1, Question No.2 is academic and need not be answered.

SDC 1960 Supp. 55.3716 (SDCL 1967 25-6-15) provides that the files and records of the court in an adoption proceedings are open to inspection or copy by the adopted child when he reaches his maturity, without a court order. As to an adult adoptee, such records are no different than any non-confidential records in the office of the clerk of courts. Inferentially, SDC 1960 Supp. 12.1406(23), (SDCL 1967 16-10-8) in authorizing certified copies of adoption papers to be furnished to servicemen or veterans, without charge, is authority to furnish a certified copy of such record to a non-veteran at the specified charge. Certainly the allowance of fees to the clerk of courts for furnishing certified copies of records in his office implies the right to furnish such certified copies of all "non-confidential" records in his office.

The statute tells us that an adopted child, upon reaching majority, may inspect and copy the Order of Adoption. Logic must tell us that upon tender of the proper fee, the clerk of courts may, without a court order, furnish a certified copy of the order of adoption to such adult adopted child.

Question No.3 is answered YES insofar as an adopted child which has reached adulthood. It must be answered NO during the time such adopted child is a minor.

Respectfully submitted,

Gordon Mydland
Attorney General