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1. RECORDS, PUBLIC — BIRTHS AND DEATHS — CENTRAL BUREAU OF VITAL STATISTICS—PUBLIC HAS RIGHT OF INSPECTION—LIMITATION — SAFETY OF RECORDS NOT ENDANGERED, NO INTERFERENCE WITH OFFICIAL DUTIES OF CUSTODIAN.
2. WHERE BUREAU SEARCHES RECORD OR FURNISHES CERTIFIED COPY FOR GOVERNMENTAL AGENCY, FEE SHALL BE PAID—SECTIONS 231, 280 G. C.

SYLLABUS:

1. *The records of births and deaths kept by the central bureau of vital statistics are public records. As such, the public has the right of inspection of these records, subject only to the limitation that such inspection does not endanger the safety of the records or interfere with the discharge by the custodian of his official duties in connection with the same.*

2. *If any governmental agency requests a certified copy of such record or requests the bureau to make a search of the record, the fee prescribed by Section 231, General Code, shall be paid by such agency, under the authority of Section 280, General Code.*

Columbus, Ohio, August 8, 1940.

Honorable R. H. Markwith,
Director, Department of Health,
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your letter of recent date in which you request my opinion upon the following:

“By authority of Section 154-43, of the General Code, the Director of Health is the custodian of the vital statistics records of the state. These records consist of approximately six million original birth and death certificates which have accumulated since December 20, 1908, when the state system of registration was inaugurated. These original certificates are bound into books and have been indexed. The index cards have not been properly cared for because of failure to get the necessary appropriations.

Section 231, General Code, provides that a certified copy of a birth or death certificate shall be furnished an applicant, for which a fee of fifty cents shall be collected. This section further provides that where a search of the records is made, without a certified copy being issued, a charge of fifty cents for each hour or fraction thereof shall be made. Since its inception, the bureau of vital statistics has followed this provision of law by having this work done by its employes, on the assumption that, although, these are in a sense public records, their nature is such that it was inadvisable and impracticable to allow the public personal access to them. The small fine provided for the mutilation, alteration or destruction of one of these certificates will not replace the original or restore it to its status as a public record.

With the advent of industrial compensation, social security, old age pensions, dependent children and numerous other governmental activities, the demand for factual information that can be secured from these records has increased to such extent that additional personnel has been assigned to this work. Also, there has come a demand from governmental agencies, voluntary organizations and individuals that they be given free access to these records to secure copies of certificates or information for their own uses and by their own personnel. The suggestion has also been made by certain governmental agencies that information required by them should be furnished by this department without expense to the agency.

I shall appreciate your opinion on the following points:

1. Do the accumulated certificates of births and deaths, as filed under the provisions of sections 197 to 234, both inclusive, of the General Code, become public records to the extent that the official custodian of such records

must permit free access to them by any person who may apply for such permission?

2. Has the custodian of the vital statistics records the legal right to require that information from these records be secured through the agency of the department of health and at the price specified in section 231, General Code?

3. Does a governmental or other agency stand in a different relationship than an individual in the matter of securing information or copies of certificates of births or deaths?"

Section 154-43, General Code, setting forth the powers and duties of the department of health, provides:

"The department of health shall have all powers and perform all duties vested by law in the state department of health, the commissioner of health, the public health council, or in the commissioner of health and the public health council acting jointly or otherwise, and the state inspector of plumbing; and also those vested in the secretary of state and the state registrar of vital statistics with respect to the registration of vital statistics as provided in Sections 197 to 234, both inclusive, of the General Code."

Section 197, General Code, creating a state system of vital statistics, provides:

"A state system of registration of births and deaths is hereby established, which shall consist of a central bureau of vital statistics and primary registration districts. The central bureau shall be maintained at the capitol of the state. Each city, village and township shall constitute a primary registration district. The secretary of state shall have charge of such system, and general supervision of the central bureau."

Section 231, General Code, setting forth the fees to be charged by the central bureau of vital statistics for certified copies and searches of the records, provides:

"The state registrar shall furnish any applicant therefor a certified copy of the record of a birth or death registered under provisions of this chapter relating to vital statistics, for which he shall receive a fee of fifty cents, from the applicant. Such copy, when properly certified by the state registrar to be a true copy thereof, 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, the state registrars shall receive a fee of fifty cents from the applicant for each hour or fractional hour of

time of search: Provided that the United States Census Bureau may obtain without cost to the state, transcripts of births and deaths without payment of the fees herein prescribed."

Section 280, General Code, concerning department accounts, provides:

"All service rendered and property transferred from one institution, department, improvement, or public service industry, to another, shall be paid for at its full value. No institution, department, improvement, or public service industry, shall receive financial benefit from an appropriation made or fund created for the support of another. When an appropriation account is closed, an unexpended balance shall revert to the fund from which the appropriation was made."

The instant questions presented require a consideration of the subject of public records. It is, therefore, first necessary to determine whether the records herein involved are in legal contemplation public records. The court in the case of *Wells vs. Lewis*, 12 O. C. D. (N. P.) 170, at page 173, defines public records as "memoranda made by a public officer authorized to perform that function or a writing properly filed in a public office intended to serve as evidence of something written, said or done".

From this definition of a public record, it is quite apparent that the records here involved fall within its purview since it is a record required by law to be kept by a public officer in the course of his official duties, and is further intended to serve as a record of some event, namely, a birth or death. Section 231, *supra*, expressly provides concerning the use and effect of a certified copy of a record of birth or death when it states:

" * * * Such copy, when properly certified by the state registrar to be a true copy thereof, shall be prima facie evidence in all courts and places of the facts therein stated. * * * "

To further substantiate the conclusion that these records are public records, Section 231, *supra*, expressly provides that certified copies of the records of birth or death shall be furnished any applicant therefor.

Having concluded that the records are public records, the question next presented in relation thereto is the public's right of access and inspection of such records. This question was for consideration by the court in the case of *Nowack vs. Auditor General*, 243 Mich 200, wherein the court states at page 203 of the opinion:

"In the absence of any statutory grant of inspection, the

question in issue must be determined by a consideration of the general common law principles relative to the right of citizens to inspect public documents and records. If there be any rule of the English common law that denies the public the right of access to public records, it is repugnant to the spirit of our democratic institutions. Ours is a government of the people. Every citizen rules. In Michigan the people elect by popular vote an auditor general. They prescribe his duties and pay his salary. He is required to keep a true account of the expenditure of all public moneys, and is answerable to the people for the faithful discharge of his duties. He is their servant. His official books and records are theirs. Undoubtedly it would be a great surprise to the citizens and taxpayers of Michigan to learn that the law denied them access to their own books, for the purpose of seeing how their money was being expended and how their business was being conducted. There is no such law and never was either in this country or in England. Mr. Justice Morse was right in saying: 'I do not think that any common law ever obtained in this free government that would deny to the people thereof the right of free access to, and public inspection of, public records.' *Burton v. Tuite*, 78 Mich, 374, 7 L. R. A. 73, 44 N. W. 285.

There is no question as to the common-law right of the people at large to inspect public documents and records. The right is based on the interest which citizens necessarily have in the matter to which the records relate."

From the excerpt taken from the *Nowack* case, *supra*, it would appear that the public has a common law right of access and inspection of public records. When a public record is created the public's right of access and inspection are an incident to and a part of its creation, unless such right of access and inspection is expressly or by clear implication, excluded.

In the case of *Wells vs: Lewis*, *supra*, it is stated in the headnotes of that opinion:

"2. RIGHT OF INSPECTION NOT RESTRICTED TO PRIVATE INTERESTS. The right to inspect public records is not confined to persons having a private interest to be subserved by such inspection; and the inspection is not limited to such records and such parts of them as affect such interest.

3. INSPECTION — OFFICIALS TRUSTEES OF PEOPLE. Public records are the people's records. The officials in whose custody they happen to be are mere trustees for the people, any one of whom may inspect such records at any time, subject only to the limitations that such inspection does not endanger the safety of the record, or unreasonably interfere with the discharge of the duties of the officer having custody of the same."

The trust concept alluded to in the headnotes in the case of *Wells vs.*

Lewis, *supra*, makes it clear that a public official having custody of a public record can exercise only such control over the record as is necessary and incident to the function of his office. That such official has no power by virtue of the authority of his office to deny to the people any of their common law rights therein.

It may now be properly considered as to whether a public official in charge of public records may exact a fee from persons desiring access and inspection of the records in his custody. Under the provisions of Section 231, *supra*, a fee for certified copies of the record and for a search of the record is authorized. The logical purport and intent of the provisions of Section 231, *supra*, is to provide compensation for the custodian of the records for the work that must necessarily be expended by him when called upon by an applicant to furnish a certified copy of the record, or to make a search. However, when this special service is not requested by an applicant and the person desiring the information from the records makes his own search, the custodian of the record has no authority to demand a fee as no special service has been rendered that would authorize the fee.

It may be contended that since Section 231, *supra*, expressly exempts the United States Census Bureau from the fees therein prescribed that by implication the fee is to apply to all other applicants. Since the fee is to apply to all other applicants the custodian is authorized to make the search to the exclusion of the applicants, thus in effect denying to the applicants all right of access and inspection.

Such a position is untenable for it is obvious that the Legislature had only one thought in mind when it exempted the United State Census Bureau from the prescribed fee, and that was to cause a creature of its own creation to more closely cooperate with the Federal Government in compiling vital statistics for the nation. It should be noted that the Legislature did not grant to the United States Census Bureau the right of access and inspection, but only exempted that Bureau from the payment of the prescribed fees. It must, therefore, be concluded that the Legislature did not intend to divest from the people any of their common law rights when it expressly exempted the United States Census Bureau from the statutory fees prescribed for the Department of Vital Statistics.

It would appear that Section 280, *supra*, provides the answer to your third question. When the central bureau of vital statistics furnishes a

certified copy of the record or makes a search of the record, for any other state department or agency, such work performed by the bureau clearly comes within the purview of the term "service rendered" as used in Section 280, supra. As therein provided such service rendered should be paid for at its full value. Since the legislature in the enactment of Section 280, supra, has set forth a specific fee for such service rendered by the central bureau of vital statistics, it must be concluded that the full value of the service rendered is the statutory fee.

In specific answer to your inquiry, it is my opinion that:

1. The records of births and deaths kept by the central bureau of vital statistics are public records. As such, the public has the right of inspection of these records, subject only to the limitation that such inspection does not endanger the safety of the records or interfere with the discharge by the custodian of his official duties in connection with the same.

2. If any governmental agency requests a certified copy of such record or requests the bureau to make a search of the record, the fee prescribed by Section 231, General Code, shall be paid by such agency, under the authority of Section 280, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.