



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

September 21, 1951

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

Opinion No. V-1290

Re: Fee for recording
vital statistics
in cities which by
ordinance require
recordation with a
city registrar.

Dear Dr. Cox:

Your request for an opinion presents the following question:

"Under the provisions of Rule 53a, Art. 4477, R.C.S., as amended, is the county liable for the payment of the 50 cent fee for the registration of each certificate of birth, death, and still-birth occurring in a city not required by Rule 53a to file copies of such records in the office of the county clerk?"

Rule 36a of Article 4477, V.C.S., as amended by House Bill 243, Acts 52nd Leg., R.S. 1951, ch. 87, p. 145, is as follows:

"For the purposes of this Act the State shall be divided into primary registration districts as follows: Each justice of the peace precinct and each incorporated town of two thousand, five hundred (2,500) or more population, according to the last United States Census, shall constitute a primary registration district, provided the State Board of Health may combine two (2) or more registration districts, or may divide a primary registration district into two (2) or more parts, so as to facilitate registration, and in the justice of the peace precinct, the justice of the peace shall be local registrar, and in cities of two thousand, five hundred (2,500) or more, according to the last United States Census, the

city clerk or city secretary shall be the local registrar of births and deaths.

"It is hereby declared to be the duty of the justice of the peace in the justice of the peace precinct, and the city clerk or city secretary in the city of two thousand, five hundred (2,500) or more population to secure a complete record of each birth, death, and stillbirth that occurs within their respective jurisdictions."

Rule 53a of Article 4477, as amended by House Bill 243, supra, provides:

"That each local registrar shall be paid the sum of Fifty Cents (50¢) for each birth, death and stillbirth certificate properly and completely made out and registered with him, and correctly recorded and promptly returned by him to the State Bureau of Vital Statistics, as required by this Act, unless such local registrar shall be acting as registrar in an incorporated city where the compensation of the registrar is otherwise fixed by city ordinance.

"The State Registrar shall annually certify to the county commissioners court or county auditor, as the case may be, the number of birth, death and stillbirth certificates filed by each local registrar at the rate fixed herein, and provided that the State Registrar may render such statements monthly or quarterly, at the discretion of the State Board of Health, and the commissioners court or county auditor, as the case may be, shall audit such statement and the county treasurer shall pay such fees as are approved by the commissioners court or the county auditor, at the time such statement is issued.

"And provided further, that the justice of the peace, city clerk or secre-

tary, and the appointed local registrar shall submit to the commissioners court or county auditor, as the case may be, a true and accurate copy of each birth, death, and stillbirth certificate filed with him, and such copies shall bear his file date and signature and shall be deposited in the county clerk's office, provided, however, that this provision shall not apply to cities having an ordinance requiring that true and accurate copies of each birth, death, and stillbirth certificate be permanently filed in the office of the city registrar. The county clerk shall be paid for indexing and preserving such records, such compensation as may be agreed upon by the commissioners' court." (Emphasis added throughout.)

The change effected in Rule 36a by House Bill 243 was that the words "and have same recorded in the County Clerk's office in their respective cities on or before the tenth of the following month" were deleted. As to Rule 53a, the following words were added by the amendment: "provided, however, that this provision shall not apply to cities having an ordinance requiring that true and correct copies of each birth, death and stillbirth certificate be permanently filed in the office of the city registrar."

Prior to this amendment, it was well settled that the county paid the fifty-cent fee to city clerks or registrars unless the city provided special recompense for this added duty. City of Taylor v. Hodges, 143 Tex. 441, 186 S.W. 2d 61 (1945); Att'y Gen. Ops. 0-2308 (1940), 0-3874 (1941), and 0-4583 (1942).

Rule 53a, as amended, has two principal provisions. The first provision sets the recording fee and provides the method for payment, and the second provision requires the certificates to be deposited with the county clerk and provides the method for paying him.

The proviso in question, ". . . provided, however, that this provision shall not apply to cities having an ordinance requiring that true and accurate

copies of each birth, death, and stillbirth certificate be permanently filed in the office of the city registrar. . . .", is in the middle of the paragraph dealing exclusively with the latter requirement. Therefore, "this provision", since it is singular, and in the middle of the paragraph dealing with the method and place of filing records can only be construed as applying to the manner and place of registration, and not to the fee or manner of its payment, which is a prior provision. In Stevens v. Haile, 162 S.W. 1025, 1028 (Tex. Civ. App. 1914), the word "this" was defined as "a demonstrative adjective, used to point out with particularity a person or thing present in place or thought." The thing present in thought is the manner and place of registration.

That the Legislature intended to repeal only the duplicate recording provision by the provision in question is also evidenced by the caption, the only pertinent part being as follows, ". . . repealing provisions requiring duplicate recording of births, deaths, and stillbirths at the local level . . ." This is a narrow and restrictive title, and if the body of the act were construed as repealing the fee provisions for cities with local registration ordinances, so much of the body of the act as provides for the repeal of fees would be in violation of Article III, Section 35, of the Texas Constitution and therefore invalid. Arnold v. Leonard, 114 Tex. 535, 273 S.W. 799 (1925); Gulf Insurance Co. v. James, 143 Tex. 424, 185 S.W. 2d 966 (1945); Att'y Gen. Op. V-1253 (1951). However, we do not construe the body of the Act as an attempt to repeal the fee provisions, but merely a repeal of the duplicate recording provision.

SUMMARY

A county is liable for the payment of the fifty cent fee for the registration of each certificate of birth, death, or stillbirth occurring in a city not required to file copies of such records in the office of the County Clerk, unless specific compensation has been provided by city ordinance for the local registrar

Hon. George W. Cox, M.D., page 5 (V-1290)

for rendering such services. Rules
36a and 53a, Article 4477, V.C.S.;
City of Taylor v. Hodges, 143 Tex.
441, 186 S.W. 2d 61 (1945).

APPROVED:

J. C. Davis, Jr.
County Affairs Division


Jesse P. Luton, Jr.
Reviewing Assistant

Everett Hutchinson
Executive Assistant

BW:t:awo

Yours very truly,

PRICE DANIEL
Attorney General

By 
Burnell Waldrep
Assistant