

of 1943, may be read together and harmonized insofar as the clerk of the district court's duty to furnish to the registrar of vital statistics of the State Board of Health a certified copy of each final order of adoption is concerned. Forwarding to the State Registrar of Vital Statistics of the State Board of Health of such copy of final order of adoption is not a violation of Section 455, as amended by Chapter 112, Laws of 1945, since the State of Montana is not a "person" within the meaning of that statute.

August 17, 1946.

Dr. B. K. Kilbourne
Executive Secretary
State Board of Health
State Capitol
Helena, Montana

Dear Dr. Kilbourne:

You have stated that a clerk of a district court questions his power and his duty to comply with Section 24 of Chapter 44, Laws of 1943, in view of the provisions of Chapter 112, Laws of 1945; and you have asked my opinion on the subject.

Section 24, Chapter 44, Laws of 1943, requires the clerk of the district court to forward to the Registrar of Vital Statistics of the Board of Health a certified copy of the final order of adoption of any person born in Montana by the fifteenth day of the month following the adoption. The section then sets forth the duties of the state registrar in relation to such order of adoption, and provides safeguards for guaranteeing secrecy of the contents of the order. The section reads:

"In case of adoption of a person born in the State of Montana, it shall be the duty of the clerk of the district court to forward by the fifteenth of the following month a certified copy of the final order of adoption to the registrar of vital statistics of the state board of health. The state registrar upon receipt of the certified copy of the order of adoption shall prepare a substitute certificate in the new name of the adopted person, naming the true date and place of birth and sex of said adopted

Opinion No. 194.

**Vital Statistics—Adoption Records—
Clerk of Court—State Board of
Health.**

**Held: Section 455, Revised Codes of
Montana, 1935, as amended by
Chapter 112, Laws of 1945, and
Section 24 of Chapter 44, Laws**

person and statistical particulars of the foster parents in place of the natural parents. The state registrar shall strike out the words 'Attendant's Own Signature' on the substitute record and insert in their stead the words 'State Registrar' and sign as such, and all dates of recording are to be left as on the original. And the state registrar shall make such a substitute birth certificate if furnished with a certified copy of adoption for any birth certificate now in his custody. The state registrar shall send copies of the substitute record to the local registrar and to the county clerk and recorder, to be substituted for the copies of the original record in their possession. The local registrar and the county clerk and recorder shall forthwith enter the substitute record in their files and shall forward immediately to the state registrar the copies of the original birth record to be sealed with the original record in the files of the state registrar. Such sealed documents may be opened by the state registrar only upon the demand of the adopted person if of legal age, or by order of a court of competent jurisdiction. Upon receipt of a certified copy of a court order of annulment of adoption, the state registrar shall restore the original certificate to its original place in the files."

Chapter 112, Laws of 1945, amends Section 455, Revised Codes of Montana, 1935, and relates to the public records of officers which are open to public inspection; and the final paragraph of Section 1 makes this exception:

"No files in the office of the clerk of the district court relating to the adoption of children shall be open to examination or inspection by any person unless the person desiring to examine or inspect any such file shall first obtain written permission from the district judge, and no district judge shall grant any applicant permission to examine or inspect any such file in the office of clerk of district court unless such applicant shall set forth in his application good and sufficient cause for such examination or inspection."

Section 2 of Chapter 112 is the usual repealing clause—"All acts and parts

of acts in conflict herewith are hereby repealed"—but there is no specific repeal of any section of our law. Chapter 44, Laws of 1943, is not mentioned in Chapter 112, Laws of 1945. If Section 24 of Chapter 44, Laws of 1943, has been repealed by Chapter 112, Laws of 1945, then the repeal has been effected by implication.

But repeal by implication is not favored by our court. (*State ex rel. Dunn v. Ayers*, (1941) 112 Mont. 120, 113 Pac. (2d) 785.) The criterion by which to determine whether there is an implied repeal is whether there is an irreconcilable conflict between statutes. (*State v. Schnell* (1938) 107 Mont. 579, 88 Pac. (2d) 19.) Before an implied repeal is declared every effort must be made to reconcile the statutes in question and to render every provision of each effective, if possible. (*State ex rel. Browning v. Brandjord*, (1938) 106 Mont. 395, 81 Pac. (2d) 677.)

"Statutes in apparent conflict must be read together and harmonized, if possible. (*City of Butte v. Industrial Accident Board*, 52 Mont. 75, 156 Pac. 130.) This is an old, established rule of statutory construction in this jurisdiction, and we know of no jurisdiction where the rule is found to the contrary, and for that reason we think numerous citations unnecessary." (*State ex rel. Helena Allied Printing Council et al. v. Mitchel*, (1937) 105 Mont. 327, 336, 74 Pac. (2d) 417, 422.)

It appears to me the two statutes in question here can be harmonized without damage to logic or reason. The provision of Section 455, Revised Codes of Montana, 1935, as amended by Chapter 112, Laws of 1945, relating to adoption files not being open to public inspection, is an attempt to safeguard the privacy and happiness of persons involved in adoption proceedings. For obvious reasons neither the adopted child nor the foster parents consider it proper or necessary for the legal aspect of such a tender and personal relationship to be open to public scrutiny; and our legislative assembly has not been insensible to this fact. Both laws here in question evidence strongly the intent of the legislative assembly to guarantee the secrecy of such proceedings from the common gaze. Each

provides security and privacy for the adoption files.

Undoubtedly the clerk of court fears the transmittal of a certified copy of a final order of adoption to the registrar of vital statistics of the State Board of Health, as required by Section 24, Chapter 44, Laws of 1943, is a violation of the mandate of Section 455, as amended by Chapter 112, Laws of 1945, contained in the words: "No files . . . relation to . . . adoption . . . shall be open to examination or inspection by any person unless . . ." But I am disposed to conclude the State of Montana is not a person within the contemplation of Section 455, as amended. The Registrar of Vital Statistics of the State Board of Health is merely the agent and servant of the State of Montana for the purpose of receiving, recording, and safeguarding the information contained in the final order of adoption. It is the State of Montana, in reality, which receives and works with the order, and not the Registrar in his personal capacity.

There is a wide division of legal authority on the question of whether the state is included within the word "person." For purposes of certain liquor laws, revenue laws, and other fields the word has been construed to include the state, while there appears to be an equally large field in which the courts have said the state is excluded from the meaning of the word. (See Words and Phrases, Permanent Edition.) In considering whether the state was included in the word "person," the Supreme Judicial Court of Maine in 1901 quoted from the American and English Encyclopedia of Laws.

"The decision upon this question are not easily reconciled, but the better opinion seems to be that the word "person" does not, in its ordinary or legal signification, embrace the state or government." (Banton v. Griswold, 95 Me. 445, 50 Atl. 89.)

Since the legislative assembly did not repeal or mention Section 24, Chapter 44, Laws of 1943, in enacting Chapter 112, Laws of 1945,—and, further, since the same object of guaranteeing secrecy to adoption records seems to me to be apparent in both statutes—I conclude the State of Montana is not a "person," as that term is used in Chapter 112.

It is therefore my opinion Section 455, Revised Codes of Montana, 1935, as amended by Chapter 112, Laws of 1945, and Section 24 of Chapter 44, Laws of 1943, may be read together and harmonized insofar as the clerk of the district court's duty to furnish to the Registrar of Vital Statistics of the State Board of Health a certified copy of each final order of adoption is concerned. Forwarding to the State Registrar of Vital Statistics of the State Board of Health of such copy of final order of adoption is not a violation of Section 455, as amended by Chapter 112, Laws of 1945, since the State of Montana is not a "person" within the meaning of that statute. Nothing is herein expressed or intended to be expressed concerning any other provisions of the two statutes in question.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General