

VOLUME NO. 38

OPINION NO. 62

ADOPTION - Disclosure of original birth records to adopted person;

BIRTH - Disclosure of original birth records to adopted person;  
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES - Disclosure of original birth records to adopted person;  
ILLEGITIMATE CHILDREN - Disclosure of illegitimacy of birth to adopted person;  
VITAL STATISTICS - Birth certificates, disclosure of original birth records to adopted person;  
MONTANA CODE ANNOTATED - Sections 1-2-203, 50-15-206(1)(a), 50-15-304(2)(c).

HELD: Legitimately born adopted persons of legal age may have their sealed original birth records opened on demand pursuant to section 50-15-304(2)(c), MCA. Illegitimately born adopted persons may apply to the court for disclosure of their sealed original birth records pursuant to section 50-15-206(1)(a), MCA.

8 January 1980

Sandra R. Muckleston, Esq.  
Chief Legal Counsel  
Department of Health and  
Environmental Sciences  
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Dear Ms. Muckleston:

You have requested my opinion on the following question:

Is a court order required before an adopted person may be allowed access to his or her sealed original birth records?

Your question requires construction of section 50-15-206, MCA. That section provides, in part:

(1) Disclosure of illegitimacy of birth or information from which illegitimacy can be ascertained may be made only:

(a) upon an order of a court to determine personal or property rights. An adopted person of legal age may apply to the court for such an order.

The last sentence, concerning adopted persons, was added by the Forty-sixth Legislature last year.

The amending legislation, Senate Bill 137, as introduced, provided for disclosure of such information "upon request of an adopted person if of age." This proposed subsection was considered and specifically rejected by the Legislature. In its final form the bill allowed adopted persons to apply for court ordered disclosure. History of legislation may be resorted to in order to determine the intention of the Legislature. State ex rel. Normile v. Cooney, 100 Mont. 391, 398, 47 P.2d 637, 641 (1935). Since the Legislature chose to require adopted persons to petition the courts for disclosure of these records, rather than allowing direct disclosure on request, the legislative intent must have been to prohibit disclosure of such records to adopted persons except upon court order.

With section 50-15-206, MCA, so construed, an apparent conflict arises between the provisions of that section and section 50-15-304, MCA. The latter section provides in relevant part:

(2) The procedure for recording a substitute certificate of birth for a person born in Montana and adopted is as follows:

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(c) The department shall seal original birth records and open them only on demand of the adopted person if of legal age or on order of a court.

Hence, where section 50-15-304(2)(c), MCA, would allow an adopted, illegitimately born person access to his or her sealed original birth records upon demand, section 50-15-206(1)(a) specifically requires that such persons may gain access to any records which disclose illegitimacy of birth only upon application to a court. Within this limited area of access by adopted illegitimately born persons, the sections conflict.

The provisions of section 50-15-206(1)(a), MCA, must control this conflict. Sections 50-15-206 and 50-15-304, MCA, were enacted by the Legislature at the same time by chapter 197, 1967 Montana Laws. However, section 50-15-206(1)(a), MCA, was enacted as part of a 1979 amendment of that section. Section 1-2-203, MCA, provides in relevant part: "Where a

section or a part of a statute is amended, ...the new provisions are to be considered as having been enacted at the time of the amendment." Earlier statutes, to the extent of any repugnancy, are controlled by later statutes. State ex rel. Wiley v. District Court, 118 Mont. 50, 55, 164 P.2d 358, 361 (1945). As already discussed, the Legislature intended that adopted illegitimately born persons apply to the courts for disclosure of their original birth records. To that extent the provisions of the two sections are repugnant, and section 50-15-206(1)(a), MCA, the newer enactment, controls.

Another rule of statutory construction also supports my opinion that section 50-15-206(1)(a), MCA, controls. Where a specific statute conflicts with a general statute, the specific statute controls over the general to the extent of any repugnancy. State ex rel. Browman v. Wood, 168 Mont. 341, 346, 543 P.2d 184, 187 (1975). Under this rule of construction, the better view is that section 50-15-304, MCA, is a general statute dealing with the birth records of all adopted persons. Section 50-15-206(1)(a), MCA, is a more specific statute regulating disclosure of birth records of illegitimate adopted persons, which thus controls in cases where the statutes conflict.

In all instances where the statutes do not conflict, the provisions of section 50-15-304(2)(c), MCA, remain valid and have effect. Legitimately born adopted persons of legal age may therefore have their sealed original birth records opened pursuant to that section.

THEREFORE, IT IS MY OPINION:

Legitimately born adopted persons of legal age may have their sealed original birth records opened on demand pursuant to section 50-15-304(2)(c), MCA. Illegitimately born adopted persons may apply to the court for disclosure of their sealed original birth records pursuant to section 50-15-206(1)(a), MCA.

Very truly yours,

MIKE GREELY  
Attorney General