

1976 S.C. Op. Atty. Gen. 88 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4270, 1976 WL 22890

Office of the Attorney General

State of South Carolina

Opinion No. 4270

February 25, 1976

***1 THE SURNAME LISTED FOR A CHILD ON A CERTIFICATE OF BIRTH MUST BE THE SURNAME OF THE MOTHER'S LEGAL HUSBAND BARRING A CONTRARY PATERNITY DETERMINATION.**

To: Representative Ferdinand B. Stevenson
House of Representatives
State House
Columbia, South Carolina 29201

QUESTION PRESENTED:

The question presented is whether or not a Certificate of Birth may be issued to a child giving it the surname Rosen-McLaughlin which is a hyphenated combination of the mother's maiden name and the father's surname, respectively.

STATUTES, CASES, ETC., INVOLVED:

A letter from Assistant Attorney General Raymond Halford, dated April 18, 1972, and Chapter I, Section I, of the Department of Health, Education and Welfare's Hospital Handbook on Birth and Fetal Death Registration.

DISCUSSION OF THE ISSUES:

Mr. and Mrs. McLaughlin are expected a child to be born soon. They wish to give the child the surname, Rosen-McLaughlin, which is a hyphenated combination of the mother's maiden name and father's surname, respectively. The child is to be born at the Medical University of South Carolina, but an official there claimed that a birth certificate could not be issued to the child giving it a surname other than that of the father, pursuant to Section 5(d)(1) of the Rules and Regulations Governing Vital Statistics in South Carolina. The provision reads as follows:

If the mother was married either at the time of conception or birth, the name of the husband shall be entered on the certificate as the father of the child unless paternity has been determined otherwise by a court of competent jurisdiction.

Thus, this regulation, in actuality, requires only that if the mother is married, her husband's name must be entered on the Certificate of Birth as the father barring a contrary paternity determination.

On April 18, 1972, a letter was sent from the Attorney General's office giving the opinion that the mother's husband's surname must be entered on the Certificate of Birth as the child's surname even though the mother had resumed her maiden name. It is felt that this opinion sufficiently encompasses the question presented as to require the Certificate of Birth of the child of the McLaughlins to bear the surname, McLaughlin.

The Department of Health, Education and Welfare has compiled a set of rules for completing birth certificates which is followed by the Bureau of Vital Statistics and which supports the position taken in the Attorney General's letter. Rule 1 of Chapter I provides, 'For a child born to a married mother, enter the last name of the mother's husband.'

Mr. and Mrs. McLaughlin, if still desirous of giving their child the surname of Rosen-McLaughlin after the issuance of the birth certificate perhaps may do so by changing the child's name pursuant to Section 48-51 of the South Carolina Code of Laws of 1962, as amended, and Rule 11.5 of the Rules and Regulations of Vital Statistics. I offer no advice that this should be done, but merely mention this as a possible avenue for the accomplishment of that objective.

CONCLUSION:

*2 It is the opinion of this Office that the Certificate of Birth of the child of Mr. and Mrs. McLaughlin must bear the surname of the child as McLaughlin, that being the surname of the father, who is the mother's legal husband.

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