adopted by him pursuant to 32 U. S. C. A. Section 181 etc., supra, as entitled to have sold or issued to them pistols, are exempt from the provisions of Section 3 of the Uniform Fire Arms Act of Indiana of 1935, while such members are going to or from their place of assembly or target practice.

Such exemption from the provisions of said Act of such members is not subject to any administrative regulation which would tend to diminish or lessen the value or effect of such exemption.

OFFICIAL OPINION NO. 54

August 31, 1948.

Dr. L. E. Burney,
State Board of Health,
1098 West Michigan St.,
Indianapolis, Indiana.

Dear Dr. Burney:

I have your letter of July 22, 1948, as follows:

"Both the Division of Vital Records and my own office for some time have been receiving letters and telephone calls from various newspapers and commercial establishments manufacturing baby foods and supplies which question the constitutionality of Section 12, Chapter 154, Acts 1945 (Burns' Supp., Sec. 35-141).

"Their contention is that (a) this section, if properly interpreted, does not prohibit inspection of vital statistics records by newspaper reporters and agents of commercial firms, and that (b) if this statute does in fact contain such a prohibition, it is in violation of that section of both the Federal and State Constitution which forbids the enactment of any law abridging the freedom of speech or of the press.

"It has been our understanding that the above section makes these records generally confidential and that neither we nor the local health officers are authorized to allow their inspection. However, in view of the increasing interest in the question, I desire to
secure from you an official opinion interpreting the above section, and advising me as to its constitutionality."

I have also had a number of informal inquiries upon the same subject matter. Before taking up the section of the statute referred to in your letter, I wish to refer to the common law rules relating to the inspection of public records and records kept by public officials, and the statutory history in this state.

**The Common Law**

At common law the right of inspection of public records generally was limited to those who had an interest in the record or records sought to be inspected. In Volume 1, American Jurisprudence, at page 160, it is said:

“At common law there was no general or public right of inspection of public records, and in the absence of statute, the right of the public generally is limited.

* * *

In State *ex rel.* Colscott v. King, Auditor (1900), 154 Ind. 621, at page 625, it is said:

“The general rule which obtained at common law was that every person was entitled to an inspection of public records, by himself or agent, provided he had an interest in the matters to which such records related. Where, however, the inspection desired was merely to gratify idle curiosity, or motives which were purely speculative, the right of inspection under the common law, was denied. 20 Am. & Eng. Ency. of Law, pp. 521, 522, and authorities cited in footnote 2, p. 522.”

In 45 American Jurisprudence, Records and Recording Laws, Sec. 17, page 428, it is said:

“In this country, the person asking inspection must have an interest in the record or paper of which inspection is sought, and the inspection must be for a legitimate purpose, but interest as a citizen and taxpayer is sufficient in some instances. * * *”
In Ex parte Brown (1906), 166 Ind. 593, at p. 603, it is said:

"The unrestricted or unconditional right to make transcripts of our opinions and decisions which, as the petition shows, the West Publishing Company is asserting and threatening to exercise, cannot be recognized or sustained. The clerk of this court not only has the right, but it is his duty, to control by reasonable rules, to which all persons must yield obedience, the searching inspection and handling of the records, papers and documents of his office. This principle is fully recognized in State, ex rel. v. King (1900), 154 Ind. 621. Certainly no person unofficially can be accorded the unrestricted right or privilege of going into the office of the clerk and there, according to his own volition, copying the opinions and decisions of this court. Welling v. Merrill (1876), 52 Ind. 350, 355."

In the absence of statute, courts have in several instances liberalized the old common law rule in relation to records concerning taxation and expenditure of public funds, judicial records, statutes and ordinances, title records, and records which the public are by law required to take notice. The decisions of the various states are not harmonious (see Volume 53 Corpus Juris, Records, Section 40), but the matter is now frequently regulated by statute.

Control By Statute

The right of the state to grant the right of inspection of public records or to surround the privilege with restrictions and limitations as it deems proper is well recognized. In 53 Corpus Juris, Records, Section 41, it is said:

"A state has the power to grant by statute the right of inspection of public records to all persons, regardless of interest, or as to particular records, or to any person it may see proper for the purpose of transcribing particular records for such purposes as it may deem the public interest requires; and the legislature may surround the privilege of inspection with such restrictions and limitations as it deems necessary and
proper, where they apply to all persons and all are equally bound thereby. * * *"

The records of public health boards and departments are frequently the subject of legislation making them confidential or privileged matters, or permitting inspection only by those having a personal or property interest therein and limiting the inspection to the record or records in which the applicant has an interest. (See Appendix for laws of the various states.)

In 45 American Jurisprudence, Records, Section 26, page 433, it is said:

"Public health laws frequently provide that the records of the health departments organized and functioning thereunder shall not be open to inspection by the public or by any person other than those that may be authorized by law to inspect them. * * *"

As far as we have been able to find, no statute limiting or restricting the right of inspection to public health records or vital statistics has ever been held invalid under the Indiana statutes.

The Attorney General of Oregon had occasion to give an opinion on March 28, 1945, to the Oregon State Board of Health in answer to a question similar to yours. Oregon has a statute very similar to the Indiana statute. The opinion, after quoting the act said:

"Clearly, the release to the press of vital statistics records is inconsistent with the limitations upon the right of inspection of such records contained in the quoted provisions of law; to do so would make subdivision 4, above quoted, meaningless.

"The question of the right of a newspaper publisher to examine county clerks' records of county and circuit courts was considered in the case of Bend Publishing Company v. J. H. Haner, 118 Or. 105. It was there pointed out that section 10-1011, O.C.L.A., is in substantial accord with the common law, but that such statute was modified in the year 1909 by the enactment of the provision of law which is now identified as section 2-703, O.C.L.A., and that by virtue of the
provisions of the later act the newspublisher had the right of inspection of the county clerk's records. In its opinion, however, the court directed attention to section 2-701, O.C.L.A., which provides as follows:

"Every citizen of this state has a right to inspect any public writing of this state, except as otherwise expressly provided by this Code or some other statute."

"As an example of the exception expressed in the later provision of law above quoted, the court cited section 26-603, O.C.L.A., which places a limitation on the right to inspect the records of an indictment and any order or process in relation thereto. It is my opinion that section 19 of chapter 130, Oregon Laws 1941, is also within such exception."

And also said:

"The law of Oregon relating to the duties of the registrar of vital statistics with respect to records of death, as well as other records, as has been hereinabove pointed out, authorizes their release only to certain persons and under specified conditions which do not embrace persons desiring such records for newspaper publication."

The Indiana Statutes

Indiana has had legislation upon the question of vital statistic records at least since 1891 (Sec. 35-107, Burns 1933). Chapter 152 of the Acts of 1907 provided for a system of reports of deaths, births, marriages, diseases and vital statistics. This was under the State Board of Health and its rules and regulations. Section 2 of said act provided that the State Board of Health should, upon request, furnish an applicant a certified copy of the record of any birth or death registered under the provisions of the act. This act was amended in 1913 by making such records open generally to inspection, but provided for the obtaining of certified copies of records of births and deaths.

In 1943 the Legislature adopted Chapter 306, which, by its title purported to be an amendment of the 1913 Act. How-
ever, it was in large measure an independent act in substance. Section 11 of the 1943 Act related to disclosure of the records. It made them subject to the provisions of the act and regulations of the State Board of Health; provided that it was unlawful for any officer or employee to disclose data contained in the vital statistics records, except as authorized by the act and the board; and provided that the registrar should not permit inspection of the records or issue a certified copy of a part thereof unless he was satisfied that the applicant had a direct interest in the matter recorded and that the information therein contained was necessary for the determination of personal or property rights. The decision of the state registrar was made subject to review by the board or a court under the limitations of the section.

The 1943 Act was expressly repealed by Section 15 of Chapter 154 of the Acts of 1945. However, Section 12 of the 1945 Act was an exact re-enactment of Section 11 of the 1943 Act. The 1945 Act like the 1943 Act was apparently modeled on the Uniform Vital Statistics Law. The history of the Uniform Vital Statistics Act is as follows:

As early as 1917 the need for a Uniform Vital Statistics Act was discussed by the National Conference of Commissioners on Uniform State Laws, which, for several years, considered successive drafts of a proposed act and in 1920 approved a Uniform Vital Statistics Act. This act did not meet with general approval and was withdrawn by the conference in 1929. In 1939 the United States Bureau of Census presented to the conference for its consideration a draft of a tentative uniform act on vital statistics. This act was considered section by section at the conference at San Francisco and a special committee of the conference worked on the draft throughout the year until the annual meeting in Philadelphia in 1940 when another tentative draft was submitted and again considered section by section. The draft as revised as a result of the discussion at the Philadelphia meeting was tentatively approved by the conference, which recommended, however, that the draft lie over for a year for further study in detail.

During the ensuing year and prior to the 1941 annual meeting at Indianapolis, the committee of the conference transmitted to the United States Bureau of Census the final Philadelphia draft requesting that it be tested in the field by submitting it to the state health officers and vital statistics
registrars with an invitation to submit suggestions and criticisms. It was also submitted to analysis and criticism by a representative of the American Medical Association Legislative Bureau. At the Indianapolis meeting of the conference in 1941 the act was again considered, but it was not promulgated by the conference pending approval by the American Bar Association. As a result of further study by the conference and the American Bar Association, a revised draft was prepared and submitted to the conference at its annual meeting in Detroit in 1942 and was then approved by the American Bar Association. See Historical Notes and Commissioner's Notes, Uniform Acts Annotated.

I have pointed out at length the history of this act for the purpose of showing that the act was not a matter of hasty preparation, but is the product of the work of recognized authorities in several organizations. Questions of policy involved and legality have been given careful consideration over a period of years by eminent attorneys during all of which time all persons and organizations had opportunity to present their views.

Section 12 of Chapter 154 of the Acts of 1945, Section 35-141 of Burns' 1947 Supplement, is as follows:

"(a) The records and files of the bureau of vital statistics of the Indiana state board of health are subject to the provisions of this act (Sections 35-130—35-142) and regulations of the board; but it is unlawful for any officer or employee of the state to disclose the data contained in vital statistical records, except as authorized by this act and by the board.

"(b) Disclosure of illegitimacy of birth or of information from which it can be ascertained, may be made only upon order of a court.

"(c) The state registrar shall not permit inspection of the records or issue a certified copy of a certificate or part thereof unless he is satisfied that the applicant therefor has a direct interest in the matter recorded and that the information therein contained is necessary for the determination of personal or property rights. His decision shall be subject, however, to review by the board or a court under the limitations of this section."
“(d) The board may permit the use of data contained in vital statistical records for research purposes only, but no identifying use thereof shall be made.”

This section is very similar to Section 23 of the Uniform Vital Statistics Act. This section, or one substantially similar, has been adopted in a large number of states.

I am indebted to counsel for the newspaper association for his fine memoranda on the law and regret that I cannot agree with his conclusions.

It was suggested in the memoranda that the policy of limiting the public use of such records causes the information so collected to fail to serve as great a public purpose as if such records were open to the public. It is argued that public information on the cause of death and such matters in a particular case or cases would serve a greater public benefit than if such facts are released in the form of statistics.

Under this act the State Board of Health does each month release the number of deaths and their causes in the form of a statistical compilation. In this report such figures are given by counties and in other forms. However, such reports do not give the names of the particular persons who died of a particular cause. Whether or not additional information was made public by the State Board, such as the names of persons and other matters in the records, would awaken a greater interest in the public to combat disease is a question which, it seems to me, is a matter of policy for the determination of the Legislature and not for this office.

In short, it seems to me that under its sovereign power to control the use of public records, it cannot be said that the enactment of Section 12, whether wise or not, exceeds the legislative power.

Provisions of public health laws making the records of a hospital privileged have been upheld in the case of Munzer v. State (1943), 41 N.Y.S. (2) 98. At page 103, it is said:

“The Legislature has made a great effort to place every safeguard around the case record of a patient, and it strictly limits the Commissioner and the Superintendents in the use thereof. Sections 20 and 84, supra. Legislative intent is not so elusive as one might
suppose, but can be gathered with an excellent degree of certainty from a reading of all its pronouncements on a given subject. So we say that Section 352, Civil Practice Act, and Sections 20, 32 and 84 of the Mental Hygiene Law, when read together, clearly indicate the intention of the Legislature to keep and protect the case records of a patient in a State Hospital as a privileged communication, and available only when the provisions of the statute as to release are met. No exception is made in favor of a member of a Board of Visitors, and the mere coincidence that the Visitor happens to be a physician makes no difference; and the Court so holds.”

In 42 Am. Jur., Public Administrative Law, Section 76, it is said:

"It is generally accepted that there is no common law right in all persons to inspect public records and documents, but if a person has an interest to maintain or defend in an action and such records or documents furnish evidence or necessary information therein he has such a right. Statutes frequently confer the right to examine the records and papers of administrative authorities, and in such cases the extent of the right is determined by the statute. Apart from a statutory right, a party to a proceeding before an administrative tribunal in which he is entitled to a hearing may be entitled to inspect the records and data of the tribunal to secure information or evidence to be used in such hearing, but this right cannot extend to a general examination which would seriously impede the work of the tribunal. Where an administrative department is given authority to promulgate rules governing the care, custody, use, and preservation of its papers and records, a subordinate of such department may not be compelled to violate a valid regulation of the department forbidding him from giving out certain records or copies thereof or producing them in court. The Federal Tariff Commission does not violate its rule that parties who have entered appearances shall have opportunity to examine the reports of the commissioner or investigator in charge of the investigation and also
the records, 'except such portions as relate to trade secrets and processes,' in refusing to disclose, at the request of one who will be affected by an increase of an import duty, information given it by producers in the United States as to their costs of production, where disclosure cannot be so cloaked that the identity of the producers will be effectively disguised."

In the case of United States ex rel. Stowell v. Deming et al. (1927), 19 Fed. (2) 697, (affirmed 275 U. S. 531), it was held that a citizen did not have a right to inspect records of temporary Civil Service employees of the City of Washington even though they constituted public records.

In the case of St. Louis Railway v. Interstate Commerce Commission (1924), 265 U. S. 64, an action to determine the right to inspect public records of the Interstate Commerce Commission as to data accumulated by it for the fixing of the value of a railroad, could not be successfully maintained even by the railroad, under a statute which provided: "Unless otherwise ordered by the commission, with reasons therefor, the records and data of the commission shall be open to the inspection and examination of the public." On page 78 of the opinion, after quoting the foregoing provision, the court said, "The Commission has otherwise ordered as we have stated and the order puts an end to the claim to examine the data on the naked ground that they are public documents."

In 25 American Jurisprudence, Health, Section 47, page 319, it is said:

"The compilation of vital statistics primarily pertains to the subject of health, although it is not always obviously referable thereto. The fact that the registration of births, deaths, marriages, etc., may be included in a proper exercise of the police power is conceded. The matter is not one of local concern only, but of general public importance. The legislature may determine the method to be employed in obtaining vital statistics for the use of the public, and no one can complain of being denied constitutional rights because he is not authorized to furnish them. Accordingly, the state may require a physician or midwife to report to the proper authority, for registration, the fact of
a birth which has come under his or her observation.

* * *

The Legislature has limited the right to a copy of the records of the state bureau of vital statistics to an applicant who has "a direct interest in the matter recorded and that the information therein contained is necessary for the determination of personal or property rights." It seems to me that there is nothing legally invalid in this classification. It applies alike to all persons who can show such an interest. It is, in fact, a statutory declaration and application of the original common law rule which was frequently applied to public records.

The records of the State Board of Health concerning vital statistics are provided for by the legislature for the purposes set forth in the Act. These records are the property of the State and are subject to the legislative will. In Welling v. Merrill et al., On Petition For A Rehearing (1876), 52 Ind. 350 at p. 354, it is said:

"* * * In the first place, the State owns the public records of the Supreme Court, out of which the books are made. These records are subject to the legislative will."

The question of classification of those who should furnish vital statistics, information and registration was before the court in Keiningham v. Blake, Registrar of Vital Statistics (Md., 1919), 109 Atl. 65, 67; 8 A.L.R. 1066, 1069 and the court said:

"* * * It was the evident theory of the Legislature that some of the information which the law directed, or the state registrar of vital statistics might deem necessary, to be included in the birth or death certificates, could be furnished more satisfactorily by a physician having the qualifications demanded by the statute of practitioners of medicine and surgery than by those who were licensed to practice osteopathy exclusively. As to the real necessity for making such a distinction, this court has no right to decide. The only inquiry we are authorized to make is whether the action of the legislature in restricting the means and agencies by which vital statistics are to be obtained is clearly unreasonable."
The court also quoted the United States Supreme Court as follows:

"* * * 'This rule prescribes no rigid equality, and permits to the wisdom and discretion of the Legislature a wide latitude so far as the interference of this court is concerned. * * * Equality of operation does not mean indiscriminate operation on persons, merely as such but on persons according to their relations. * * * Hardships, impolicy, or injustice of state laws is not necessarily an objection to their constitutional validity.'"

Freedom of Speech and Press

It has been suggested that the act violates Section 9 of Article 1 of the Indiana Constitution, which is as follows:

"No law shall be passed, restraining the free interchange of thought and opinion, or restricting the right to speak, write or print, freely, on any subject whatever: but for the abuse of that right, every person shall be responsible."

or the First Amendment to the United States Constitution, which is as follows:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

The rights given a newspaper by these constitutional provisions are neither greater nor less than the guarantees to the public at large. In 16 C.J.S., at page 630, it is said:

"While the publishers of newspapers, magazines, etc., are protected by the constitutional guaranties of freedom of speech and of the press to the same extent as the public at large, ordinarily they enjoy no additional immunity and are responsible for abuse of the right of free publication on the same principles as are other persons."
In 11 American Jurisprudence, at page 1112, it is said:

"The provisions of the Constitution of the United States and of the several states guaranteeing the freedom of the press are intended to secure to the conductors of the press the same rights and immunities that are enjoyed by the public at large. Where a private citizen has the right to speak the truth in reference to the acts of government of public officials or of individuals, the press is guaranteed the same right; the press, however, does not possess any immunities not shared by every individual."

All of the authorities which we have been able to find where the above constitutional provisions were involved deal with the question as one of the rights to utter or publish whatever a citizen may please with immunity from legal censure and punishment so long as there is no abuse.

In 16 C.J.S., at page 638, it is said:

"Freedom of speech and of the press implies the right freely to utter and publish whatever a citizen may please with immunity from legal censure and punishment for the publication so long as it is not harmful in its character when tested by such standards as the law affords. * * *"

In 11 American Jurisprudence, at page 1111, it is said:

"The freedom of the press consists largely of the right, without any previous license or censorship, to publish the truth with good motives and for justifiable ends, whether it respects government, magistracy, or individuals. The primary meaning of the phrase 'liberty of the press,' as understood at the time our early Constitutions were framed, was freedom from any censorship of the press and from all such restraints upon publications as had been practiced by monarchical or despotic governments in order to stifle the efforts of patriots towards enlightening their fellow subjects upon their rights and as to the duties of their rulers."
There is involved in the statute no censorship of the press nor is there involved the rights of anyone to utter or publish any information. All information which any one can properly obtain may be discussed and published. The statute does not inhibit the publication of any facts by a newspaper. It deals only with the particular records made by the public officials and employees. It is only with these records which the act is concerned. The sources of information which would be available if there were no vital statistics law are still available. The Legislature need not have made provision for the physicians, etc., to make the reports in question; it had the power to make provision for the collecting and tabulating of such information for certain purposes and to confine its use to those purposes. The Legislature could make such information a matter of public record accessible to all, but it has chosen to limit its use and this policy of the Legislature may not be abrogated by the courts unless the act or the section in question contravenes some constitutional provision. For the reasons heretofore given, I am of the opinion said section is constitutional and a valid exercise of the police power.

The Question of Privilege

There is another basis upon which the Legislature may act in the control of vital statistics. That is the power of the Legislature for reasons of public policy to control privileged communications—to abolish, extend or limit privileged communications.

Thus, the physician may not be required to disclose information revealed by the patient during the course of an examination, a newspaper reporter may not be required to disclose the source of his information (Sec. 2-1733, Burns’ 1946 Replacement), etc.

It was well established in Indiana prior to the enactment of the law in question that in the absence of a statutory provision therefor the death certificate of a physician or a health record based thereon was of a privileged character.

In Pence v. Myers (1913), 180 Ind. 282, at page 286, the court said:

"* * * In the absence of a statutory provision therefor, it is equally true that the death certificate of such physician or a health record alleged to be based
thereon and showing the above facts or any of them is incompetent in such a case, being hearsay testimony as to facts or statements not directly admissible because of their privileged character. * * *” (Our emphasis.)

In Brotherhood, etc., v. Barlow (1910), 46 Ind. App. 160, a death record of the Board of Health of Evansville was held not admissible in evidence as a public record.

Laws making such information privileged have uniformly been enforced. As was said by our Supreme Court concerning the privilege statute, Schlarb v. Henderson (1937), 211 Ind. 1, 4 N. E. (2d) 205:

“The purpose of the statute, and of the common law rule before the statute, was to secure privacy concerning disease and infirmities and to permit having recourse to the advice and assistance of physicians and surgeons without the danger of publicity concerning such private and intimate affairs. * * *”

With the growth of government functions many matters which have been considered as the private business affairs of the individual and protected by the right of privacy are now required to be furnished to public officials. Examples are reports of private business which are made for tax purposes. Tax reports contain much information which would be very valuable to a competitor. Bank reports contain much information about the private business affairs of the customers of the bank. The legislature has made these reports confidential or surrounded them with certain limitations as to publication generally. Whether such matters are to be made public is a matter for the people, acting through their representatives in the Legislature but even the Legislature could not invade a private right of an individual which is guaranteed by the Constitution.

As stated by our Supreme Court in the case of State ex rel. Mavity v. Lyndall et al. (1946), 224 Ind. 364, 372; 66 N. E. (2d) 755:

“Most of the law of privacy was developed as the result of intrusion for news or commercial purposes into the private affairs of the complainant.”
The right of privacy has been defined as the right of a person to be free from unwarranted and undesired publicity. See long list of authorities 138 A.L.R. p. 22 et seq.

In the second appeal of the Indiana case above referred to the right of privacy is discussed at length. The court said on page 917:

"The legislature has the right to learn for itself the reasons which impel it to act. A very large measure of authority is vested in the legislature upon that subject and unless we can say that the act is unreasonable we are not authorized to overthrow it. * * *

State et rel. Mavity v. Lyndall et al. (1947), 74 N. E. (2) 914-917.

In said case a man was arrested, fingerprinted and photographed. He was acquitted of any crime. The court held he was entitled to protection against his picture being placed on display in the so-called "rogues gallery" but that the department could file it "away from public gaze."

The vital statistics records may contain data furnished by the physician which has long been privileged to secure privacy concerning disease and infirmities and to permit having recourse to the advice and assistance of physicians and surgeons without the danger of publicity concerning such private and intimate affairs.

There is no reason why the Legislature does not have the same power to control the report of the physician to a public officer or agent that it has to make the same information privileged in the physician. In Key v. Cosmopolitan Life, etc. Insurance Co. (Missouri, 1937), 102 S. W. (2) 797, at page 799, it is said:

"Here the certificate of death had been prepared by Dr. Vaughan as the physician last in attendance upon the deceased, and, as to statements appearing therein with respect to matters falling within the category of confidential communications, we know of no reason why the certificate should have been any more immune to a claim of privilege than would have been the testimony of Dr. Vaughan himself in regard to the same matters."
(Missouri adopted the Uniform Act effective July, 1948.)

The purpose of the inclusion of the provision in the Uniform Act restricting the inspection and copy apparently was to protect the right of privacy. (See report of the committee on the Uniform Act.)

Statutes conferring such privilege on such communications and records are of ancient origin, are common in all states and the Federal Government and their validity is well recognized. However, it is not for this office or a court to inquire into the motive of the legislature. In Downey v. State (1902), 160 Ind. 578, at page 583, it is said:

"The rule is well affirmed that the courts will not institute an inquiry into the motives of the legislative department in the enactment of laws."

I, therefore, point out only that laws of a similar character which had the effect of protecting privacy have been recognized and upheld and do not say that was the motive of the legislature in placing the restrictions in question on the state records. The fact that the legislature made the local records more available as hereafter appears would not make the privilege and restrictions on the state records invalid. In Matters of N. Y. City Council v. Goldwater (1940), 284 N. Y. 296, at page 302, it is said:

"* * * The Legislature which has conferred the privilege may, if it chooses, limit its application. * * *"

The legislative power to make all of such records privileged includes the power to make some of them privileged and to relax the application of the privilege in regard to others.

Local Health Officials

There yet remains your question as to the records of local health officials. Chapter 154 of the Acts of 1945, Section 5 (Section 35-134, Burns’ 1947 Supp.) makes it the duty of physicians, etc., to fill out the forms prescribed. These forms are filed with the local health officer. (Section 6, Chapter 154, Acts of 1945, Section 35-135 of Burns’ 1947 Supp.)
Section 9 of said act (Section 35-138, Burns' 1947 Supp.) provides as follows:

"Births, stillbirths and deaths must be reported upon standard forms which shall be furnished by the state board of health, also the burial transit forms, monthly report cards and the necessary envelopes used in transmitting certificates to the state registrar on the fourth (4th) day of the following month.

"(b) Health officers, both city and county, shall at all times keep an ample supply of forms on hand in order that they may supply physicians, hospitals and funeral directors. They shall be responsible for obtaining a certificate of all births and deaths occurring within their jurisdiction. Provided, however, any person desiring to obtain a certified copy of a certificate of either a death or a birth may obtain same from the aforementioned health officers. Said health officers shall charge for such certified copies of certificates, however, said charge shall not exceed the sum of one dollar ($1.00); provided that no charge shall be made by any health officer of this state for furnishing either a birth or death certificate to any person, or the member of any such person's family, who needs same in connection with his or her service in the United States Armed Forces to establish his age, or to establish the dependency of any member of his or her family, or where it is required by the United States government in connection with the death pensions, or disability pensions, of any person in the United States Armed Forces, or where it is for the verification of the ages of children in school who are securing work permits.

"(c) Record books used by city and county health officers, for the keeping of the local records are to be furnished by and at the expense of the city or county.

"(d) The Indiana state board of health shall adopt and may amend appropriate rules and regulations concerning the reporting of births, deaths and stillbirths.

"(e) Failure to report or comply with the rules and regulations of the Indiana state board of health shall
be deemed a violation of the provisions of this act (Sections 35-130—35-142).”

On the fourth day of each month the original certificates are sent by the local health officer to the State Board of Health. (Section 10, Chapter 154, Acts of 1945, Section 35-139, Burns' 1947 Supp.)

Section 2 of the act (Section 35-131, Burns' 1947 Supp.) provides as follows:

"The state board of health shall:

(a) Maintain a bureau of vital statistics with suitable offices properly equipped for the preservation of its official records;

(b) Install a statewide system of vital statistics through county and city health officers of the state; and

(c) Make and amend necessary rules and regulations, give instructions and prescribe forms for collecting, transcribing, compiling, and preserving vital statistics and enforce this act (Sections 35-130—35-142) and the regulations made pursuant thereto."

Section 35-106, Burns' 1947 Supp., provides in part as follows:

"The state board of health shall have supervision of the health and life of the citizens of the state and shall possess all powers necessary to fulfill the duties prescribed in the statutes and to bring action in the courts for the enforcement of health laws and health rules. They shall study the vital statistics and endeavor to make intelligent and profitable use of the collected records of death and sickness among the people. They shall be the superior health board of the state, to which all other health boards are subordinate, and shall have supervision of the system of registration of births, deaths, marriages and infectious diseases, and they shall make up, from time to time, such blank forms as they may deem necessary for the collection, registration and report of vital and sanitary statistics throughout the state."
The State Health Board is the superior health board of the state; the local boards and officials are subordinate to it. It may, under certain circumstances, intervene and take over the functions of local health authorities (Section 35-126, Burns' 1947 Supp.). In the collection of vital statistics the local officials are, under the statutes, subordinate agents of the State Health Board and subject to its valid rules and regulations.

Under Section 9, above quoted, local health officers shall furnish any person desiring same “a certified copy of a certificate of either a death or a birth”, for which a fee of $1.00 is provided (with certain exceptions). No other provision is made for obtaining copies from local health officials by the statute but that is apparently left to be governed by the common law and by the rules and regulations of the state board.

I do not believe local health officials are “officers or employees of the state” within the criminal provisions of Section 12 (a) of the 1945 Act, above quoted. I believe the prohibition of disclosure of illegitimacy of birth, etc., in Section 12 (b) applies to such local health officials. I believe the local health officials are required to furnish a certificate of either a birth or a death to an applicant upon payment of the statutory fee. I do not believe they are required to open their records to the public, nor does the statute expressly prohibit their permitting an inspection (except illegitimate births), and in the absence of a valid regulation of the State Health Board, I believe they, in their sound discretion may permit an inspection of birth and death records.

The legislative history of the 1945 Act shows that the proviso in Section 8 relative to certified copies was added by amendment in committee in the house and as amended the bill passed both the house and senate without a dissenting note. The bill as passed provides for such certified copies to any person on the local level, but places additional restrictions on the state level. The question of expense, disturbances of records and other matters of policy may have entered into this decision. Be that as it may the question as to what officials should be permitted to issue certified copies is, under the authority of the legislature. Each provision is valid and violates no provision of the Constitution. The legislative authority of the State is vested in the General Assembly and in that field its authority is supreme except so far as its power is
limited by some provision of the State or Federal Constitution. In Connell v. State (1925), 196 Ind. 421, 425, it is said:

"'The legislative authority of the State shall be vested in the General Assembly' (Art. 4, Sec. 1, Constitution, Sec. 104, Burns 1926, Sec. 97, Burns 1914), and that body is supreme and sovereign, except so far as its power is limited by some provision of the State Constitution, or by the Federal Constitution or treaties made or acts of Congress passed under its authority. State ex rel. v. Menaugh (1898), 151 Ind. 260, 266, 51 N. E. 117, 43 L.R.A. 408, 418; Hanly v. Sims (1910), 175 Ind. 345, 356, 93 N. E. 228; Carr v. State (1911), 175 Ind. 241, 246, 93 N. E. 1071, 32 L.R.A. (N. S.) 1190; Lafayette, etc. R. Co. v. Geiger (1870), 34 Ind. 185, 196. * * *

SUMMARY

As may be seen from the above, public records which have to do with the raising and expenditures of public funds are open to public inspection. In fact the law makes provision for advertisement and public hearings at various stages in the making of a budget and tax rate. Records concerning the expenditure of public funds are open to public inspection. Records of which the public are required to take notice: title records, statutes, ordinances and many others, in fact most public records which have to do with the transaction of public business are open to inspection. There are other classes of records which are made by public officials which either are not open to public inspection or concerning which there are certain limitations or restrictions. These records for the most part are those which are not records of the transaction of public business but which involve private matters of private individuals. Examples are income tax returns of persons which contain information which would be valuable to a competitor and other private information. There are also records which contain information which the legislature has decided is of such a nature that the avoidance of embarrassment and the handicap which its publication would impose on the individual is greater than any advantage to be gained from its publication. This includes records of illegitimacy, disease, infirmities and intimate and private affairs. Such informa-
tion as is learned by a physician in the treatment of his patients as always has been regarded as confidential and privileged in order to permit recourse to the advice and assistance of physicians. For the same reasons communications between attorney and client, confessions and admissions made to clergymen in the course of discipline enjoined by their churches are by statute made confidential and privileged. The source of information procured by a newspaper man in the course of his employment is made confidential. (Sec. 2-1733, Burns' 1946 Replacement.) Subject to certain rights of privacy which are secured to the individual and certain matters exclusively in the control of the executive and judicial departments, what matters and records shall be public are subject to the decision of the legislature as the representative of the people.

As shown by the appendix hereto, a large majority of the states have placed certain restrictions and limitations on the right of public inspection of records of vital statistics. Vital statistics are not a record of the transaction of public business. It is my opinion that Section 12 of the vital statistics law is constitutional and controls the disclosure of information and data contained in the vital statistics records. That under this section disclosure of illegitimacy of birth or of information from which it can be obtained may be made only on an order of court. That the state registrar may not permit inspection of the records or issue a certified copy of a certificate or part thereof unless "he is satisfied that the applicant therefor has a direct interest in the matter recorded and that the information therein contained is necessary for the determination of personal or property rights." His decision, however, is subject to review by the board or a court under the limitations of the act. The section also provides that the board may permit the use of data contained in such records for research purposes provided no identifying use thereof is made. Under this section it is expressly made unlawful for any officer or employer of the state to disclose the data contained in the records except as authorized by the act and by the board and the right of the board is limited as above set forth in the act.

The statute does not permit you or any state official or employee to furnish from these records data for a mailing list to commercial concerns that they may circularize the
parents of new born children or families of deceased persons for the purpose of selling baby food, monuments, etc.

As to the local health officials, it is my opinion that under the statute, as adopted by the legislature, they are required to furnish a certificate of either a birth or a death to an applicant upon payment of the statutory fee. As to inspection otherwise, I believe the language of the Supreme Court in the Ex Parte Brown case quoted above in this opinion is applicable, that, that there is no unrestricted or unconditional right to handle the records and to make searches or transcripts of one's own volition, but inspections are under the sound discretion of such local health officials in the absence of a valid regulation of the State Board of Health.

Because of the interest shown in the question and the fact that it has been suggested that Indiana stands almost alone in its position as set forth in said Section 12, we have made an investigation of the laws and policy of other states and the result thereof is set forth in an appendix hereto.

APPENDIX

ALABAMA

Alabama does not have a Uniform Act or equivalent provision, but statutes provide that any citizen may inspect and obtain a copy of a particular certificate. Opinion of the Attorney General, January 31, 1930; Opinion of the Attorney General, September 29, 1944; Scott v. Culpepper (1930), 220 Ala. 393.

ARIZONA

Opinions of Attorney General, July 31, 1934. It is my opinion that the records in the office of a local registrar are public records within contemplation of Section 102 of the Revised Code of Arizona, 1928, and as such are at all times, during office hours, open to the inspection of any person, and that a fee cannot be exacted from such person for the privilege of making the inspection.

Opinions of Attorney General, February 26, 1935. In reviewing the provisions of our laws in regard to birth certificates and vital statistics, it is found that they are considered
as public records in which the public has a vital interest and has the right to inspect, and more especially so because of the fact that there is no provision prohibiting the inspection or publication of such records. The general rule seems to be that, unless a statute provides otherwise, they must always have access to all public records required to be kept by a public officer. It is, therefore, the opinion of the attorney general that all records of birth are public records, open to public inspection and subject to publication.

Opinions of Attorney General, July 22, 1937. You have no right to permit commercial firms or others to search your records and take copies thereof if they desire. The statute provides that your department shall give such copies as requested and fix the fee therefor. Therefore, you shall refuse to permit persons to handle, examine, and copy your records indiscriminately, but should at all times be willing to make the desired search and copies of documents upon the payment of the proper fee.

ARKANSAS

The Acts of 1943 provide that the State Registrar shall not permit searching of the files and records of the Bureau of Vital Statistics by any person or persons other than by the authorized employees of the Bureau of Vital Statistics. Lists for publication by bona fide newspapers, as news, shall not be construed as a commercial purpose. The State Registrar shall not furnish lists of births and/or deaths for commercial purposes.

The regulation provides that all certificates returned to the custody of the State Registrar under the provisions of this act and under the regulations and rules of the Board, shall be public records, but they shall not be open to public inspection, except that persons having a direct and tangible interest in such records, which must be shown to the satisfaction of the State Registrar as to the particular facts sought to be disclosed, may, upon application, obtain a certified copy of that part of the contents of such records as to which they have shown this direct and tangible interest, and except, further, that the State Registrar, in behalf of the Board, shall be, and hereby is, authorized to direct the registrars of vital statistics to make a return upon the filing of such certificates
with them of certain data shown thereon to agencies administering Federal or State social legislation. Any disclosure of facts or data on vital statistics records in the form of listings, tabulations, copies, or extracts, except as stated in this section or as determined or approved by the Board, shall be, and hereby is, prohibited. The Board is hereby authorized to approve the use of facts and data on vital statistics records for legitimate and scientific research purposes.

CALIFORNIA

The records of births and deaths in California appear to be classified as a general public record.

COLORADO

The Colorado statutes provide for a system of registration of vital statistics. Section 121, subsections 3, 4 and 5, 1935, Colorado Statutes Annotated, as amended by Chapter 111, Colorado Session Laws 1943, provides as follows:

"(3) All certificates in the custody of the state registrar are open to inspection, subject to the provisions of this law and regulations of the state registrar, and it shall be unlawful for any employee of the state to disclose data contained in vital statistics, except as authorized by this law or by the state registrar.

"(4) The state registrar shall not permit inspection of the records, or issue a certified copy of a certificate, or parts thereof, unless he is satisfied that the applicant therefor has direct and tangible interest in the matter recorded, subject, however, to review by a court of competent jurisdiction under the limitations of this section.

"(5) The state registrar may permit the use of data contained in vital statistics records for research purposes, but no record shall be given or shown identifying the persons to whom the records relate."

CONNECTICUT

Public Act No. 72 of 1945 provides in part:

"* * * With the exception of the chief executive officer of the municipality or his authorized agent,
attorneys at law and title examiners, no person, except the person whose birth is recorded, if over twenty-one years of age, or his parent or guardian if a minor, shall have any access to or be permitted to examine the original or any copy of the birth certificate or birth record, of any person, nor shall he disclose any matters contained therein or any information concerning such birth, which original, copy or information is in the custody of any registrar of vital statistics or of the state department of health nor shall he be entitled to any copy of any such certificate, record or information, except upon written order of a court of record or upon written request of a state department or the federal government when approved by the department of health."

Public Act No. 261 of 1945 makes provisions for a certificate of birth being issued which contains only "the name, sex, date of birth, place of birth and date of filing of the certificate of birth of the person to whom it relates." (See Section 1.) Section 4 of said act provides:

"Such registrar or the state department of health may issue a certified copy of the certificate of birth of any person born in this state (a) upon the order of a court of record; (b) upon the specific written request of the person to whom the record of birth relates, if over twenty-one years of age, or of a parent or legal representative of such person or (c) when approved by the state department of health, upon the specific written request of any state or federal agency."

DELAWARE

The Uniform Act was adopted in 1943. Section 50 of Volume 44, 1943 Laws of Delaware, provides:

"793. Section 50. Disclosure of Records: (1) The records and files of the Bureau of Vital Statistics shall be considered confidential matter and shall be open to inspection subject to the provisions of this Act and regulations of the Board. It shall be unlawful for any officer or employee of the State to expose data con-
tained in vital statistics records except as authorized by this Act and by the Board.

“(2) Disclosure of illegitimacy of birth or of information from which it can be ascertained may be made only upon order of a court in a case where such information is necessary for the determination of personal or property rights, and then only for such purpose.

“(3) The State Registrar shall not permit inspection of the records or issue a certified copy of a certificate or part thereof unless he is satisfied that the applicant therefor has a direct interest in the matter recorded and that the information therein contained is necessary for the determination of personal or property rights. His decision shall be subject, however, to review by the Board or a Court under the limitations of this section.

“(4) The Board may permit the use of data contained in vital statistical records for research purposes only, but no identifying use thereof shall be made.

“(5) Subject to the provisions of this section, the Board may direct local registrars to make a return, upon the filing of birth and death certificates with them, of certain data shown thereon to Federal, State, or Municipal agencies. Payment by such agencies for such services may be made through the State Registrar to local registrars as the Board shall direct.”

DISTRICT OF COLUMBIA

The statutes provide in substance that the reports required by Sections 6-301 to 6-304 shall, when duly filed with the health officer of the District of Columbia, be a part of the public records of said District, and any persons having an interest in any particular matter contained or reasonably believed to be contained therein, shall be permitted to inspect such certificates and reports, during all reasonable hours, without charge, so far as can be done without interfering with the official use of such certificates by employees of the health department. The health officer aforesaid shall be the custodian of all reports filed under the provisions of Sections 6-301,
6-302 and annually, and at such other times as the commissioners of said District may direct, shall make and publish abstracts and analyses of the data therein contained.

FLORIDA

The statute of Florida provides for a system of registration of the vital statistics. Apparently there is no statutory provision restricting or limiting the general right of inspection except provision is made for a fee to the Registrar for each hour or fractional part of an hour of time of search where certified copies are not requested. Chapter 382.35, Florida Statutes, 1941, is as follows:

"The state registrar shall, upon request, supply to any applicant a certified copy of the record of any birth or death registered under provisions of this chapter, for the making and certification of which he shall be entitled to a fee of fifty cents, to be paid by the applicant. And any copy of the record of a birth or death, when properly certified by the state registrar, shall be prima facie evidence in all courts and cases of the facts therein stated. For any search of the files and records when no certified copy is made, the state registrar shall be entitled to a fee of fifty cents for each hour or fractional part of an hour of time of search, said fee to be paid by the applicant; provided, that the state board of health may waive any or all of the fees required under this section; and the state registrar shall keep a true and correct account of all fees by him received under these provisions, and turn the same over to the state treasurer."

GEORGIA

The statutes provide for a system of registration of the vital statistics. Chapter 88 of the Acts of 1945, Section 8, provides for certain forms to be filled out by parents and for a separate confidential form by the attending physician. Section 17 of the Act limits the obtaining of birth certificates to certain persons and agencies and in some instances requires a court order.
IDAHO

The statute provides for a system of registration of the vital statistics. There is apparently no statute limiting or restricting the right of inspection. Acts of 1923, Chapter 89; 1932 Code 38-209. There is apparently a rule in Idaho that every citizen has the right to inspect and take a copy of any public copy of the State except as otherwise expressly provided by statute. As an administrative matter the Bureau of Vital Statistics will answer any specific inquiries that are made, but will not compile mailing lists or allow unauthorized persons access to their filing system. This regulation, I am informed, is founded on the necessity of keeping the files undisturbed.

ILLINOIS

Section 48 of the Acts of 1943, Vol. 1, p. 1010, provides that the names of the parents of illegitimate children shall not be placed on the record without consent. Section 55 of the Act contains certain limitations as to whom a birth certificate may be issued. Smith-Hurd (1947 Supp. 11111-36, etc.). Illinois makes statutory provision for a system of registration of vital statistics. Section 20 of the Birth and Death Registration Act, as amended by act approved July 21, 1947, provides as follows:

"The Department of Public Health, or any local registrar or any county clerk shall, on request, furnish a certification of the record of any birth, stillbirth or death to any applicant entitled to the same upon the payment by such applicant of a fee of one dollar ($1.00) to the maker of such certification. The certification of birth may contain only the name, sex, date of birth, and place of birth of the person to whom it relates, and none of the other data on the certificate of birth. Any such certification of a birth, stillbirth or death, when properly certified to by the Department of Public Health or the local registrar or the county clerk, shall be prima facie evidence in all courts and places of the facts therein stated.

"The Custodian of the birth registration records shall not issue any other copy of such records, or any part thereof; provided however, that
"1. The United States National Office of Vital Statistics or any agency which may be substituted therefor may obtain, without expense to the state, transcripts or certified copies of births, stillbirth and death certificates without payment of the fees herein prescribed;

"2. A certified copy of the certificate of birth may be issued

"(a) Upon the order of a court of record, or

"(b) Upon the specific written request by the person, if of legal age or by a parent or other legal representative of the person to whom the record of birth relates, or

"(c) Upon the specific written request by a department of the state or a municipal corporation or the federal government;

"3. A proper local or state health officer may examine such records for the purpose of ascertaining whether the required steps have been taken to prevent *ophthalmia neonatorum*; and provided further, that the Department of Public Health, in its discretion and in the interest of promoting registration of births, may issue, without fee, to the parents or guardian of any or every child whose birth has been registered in accordance with the provisions of this act, a special certification of birth, limited in its statement of items from the record of birth to the name and sex of the child, names of the parents, date and place of birth, date recorded, and the name of the attendant." (As amended by act approved July 21, 1947. L. 1947.)

We are informed that the State Department of Public Health has taken the view that under their law they are not required to furnish lists of newborn children and their parents or to allow an individual to personally inspect any record other than one for which he is entitled to a certified copy.
IOWA

The Iowa statutes make provision for a system of registration of vital statistics. Sections 144.41 and 144.42 of the 1947 Health Laws are as follows:

"The state registrar or any county registrar shall, upon request, supply to any applicant for any proper purpose, a certified copy of the record of any birth, death, or marriage, registered under the provisions of this chapter, for the making and certifying of which he shall charge a fee of fifty cents."

"In cases in which search of the files and records is made, but no certified copy is requested, or the requested record is not found, the state registrar shall charge a fee of fifty cents for each hour or fractional part of an hour spent in search."

Under date of December 17, 1923, the Attorney General of Iowa gave an opinion that the vital statistics records might only be used or furnished for certain purposes; that they could not be used for purely commercial purposes. In the opinion it is said:

"While these records are public records for certain purposes, still they are not for all purposes. The statute expressly provides that these records shall be available under the provisions of the law. Under no circumstances should they be furnished for any other than proper purposes."

The Iowa Department does not furnish lists of birth registrations to commercial firms to be used for mailing lists.

KANSAS

Statutes of Kansas provide for a system of registration of vital statistics. They provide for a separate and confidential record for illegitimate births and that other records shall be open for public inspection. 1935 Kansas Code Annotated, 65-142.
KENTUCKY

In Kentucky the State Board of Health, under the Department of Health, has the authority to administer the state's system of records of births and deaths. Under the statutes, particularly K.R.S. 213.190, it is provided that the Division of Vital Statistics, regulated by the State Board of Health, shall, upon request, furnish any applicant a certified copy of the record of any birth or death registered under the provisions of that chapter for a fee of fifty cents to be paid by the applicant. There is no restricting statute against the right to inspect the records. The right of an individual to inspect all the records for the purpose of obtaining a mailing list or for publication does not appear to have been passed upon by the court or the Attorney General of Kentucky.

LOUISIANA


MAINE

Section 366 of Chapter 22 of the revised statutes of Maine, as amended in 1945, provides in part as follows:

"IV. All certificates and all records pertaining to birth, marriage and death in the custody of the state registrar of vital statistics and the clerks of the several municipalities of the state are open to inspection subject to the provisions of this chapter, and it shall be unlawful for the state registrar or any employee of the state or any clerk or employee of a municipality to disclose data contained in such vital records except as authorized by this chapter.

"V. The state registrar may permit the use of data contained in records pertaining to birth, marriage and death for research purposes, but no record shall be given or shown identifying the persons to whom the records relate, except in records of death."

Section 388 of said chapter, as amended in 1945, provides:
"The state registrar and the clerk of a municipality shall not permit inspection of the records of birth, marriage, and death, marriage intentions excepted, or issue a certified copy of a certificate relating thereto, or to parts thereof, unless he is satisfied that the applicant therefor has a direct and tangible interest in the matter recorded, the decision of the state registrar or the clerk of a municipality being subject, however, to review by the superior court or any justice thereof in vacation, under the limitations of this chapter. The city and town clerks shall, upon request, supply to any such qualified applicant a certified copy of the record of any birth, marriage, or death registered under the provisions of this chapter, upon the payment of a fee of 50 cents, to be paid by the applicant in advance. For any search of the files and records, where no certified copy is made, the fee shall be 50 cents for each hour or fractional part of the hour for time of search, said fee to be paid by the applicant in advance. The city or town clerk's record of any birth, marriage, or death, or a duly certified copy thereof, shall be prima facie evidence of such birth, marriage, or death, in any judicial proceeding."

Section 366 of said chapter also limits the disclosure of the record of birth of an illegitimate child to the illegitimate, his guardian or legal counsel or in response to court process.

MARYLAND

The statutes provide that the records of births and deaths shall be preserved and open to the inspection of all proper persons by city and town officials, the state registrar and his representatives. Birth certificates may be furnished only for proper purposes. 1939 Annotated Statutes, 43-24 et seq. See: Keiningham v. Blake, Registrar of Vital Statistics, 109 Atl. 65.

MASSACHUSETTS

The statutes provide for a system of registration of vital statistics. General Laws of Mass., Ch. 46. There are specific
provisions for illegitimate children. Special provision is made for special or supplemental reports by the physician concerning the birth of any child with visible congenital deformities, or any condition apparently acquired at birth which might lead to crippling. The contents of such report are solely for the use of the department in connection with its functions relative to crippled children and the statute expressly provides it shall not constitute a public record or be open to public inspection. Section 3, above chapter. Otherwise there appears to be a general right of inspection under Section 10 of Chapter 66.

**MICHIGAN**


**MINNESOTA**

Minnesota adopted the Uniform Vital Statistics Act in 1945, Chapter 512 of the Acts of that year. For a decision in the Supreme Court of Minnesota on the right to inspect public records, decided prior to the adoption of the Uniform Act, see State v. McCubrey (1901), 84 Minn. 439. In 1947, subsection 3 of the Uniform Act was repealed. Regulation 3025 of the Health Department is as follows:

"The State Registrar, local registrars and clerks of district court shall not prepare for sale or gift for commercial purposes information identifying persons recorded in birth and death certificates; neither shall hospital administrators, nor funeral directors or embalmers use the vital records for any such purpose."

**MISSISSIPPI**

The statutes provide for a system of registration of vital statistics. Apparently there is no provision limiting or restricting the right of inspection of such records. Sec. 7060, Miss. Code Ann., Acts of 1944, Ch. 309. Special provision is made concerning the records of illegitimate births. The
courts of Mississippi have construed as pari materia the statutes relating to the privilege of communications between physicians and patients and the section of the vital statistics law which provided for certified copies of records of vital statistics and made them prima facie evidence of the facts therein stated and held that said provisions of the vital statistics law made an exception to the operation of the Privileged Communication Statute and made the records of the office of vital statistics accessible to the public. Life and Casualty Co. v. Walters (1937), 177 Southern 47.

MISSOURI

Missouri adopted House Bill 65, effective July 18, 1948. This is substantially the Uniform Act including the section relative to inspection and copy of the records of the state registrar. On June 18, 1948, the Attorney General of Missouri gave an opinion on said section which assumed, but did not discuss, the validity of the section.

Prior to the adoption of the Uniform Act in substance Missouri apparently applied the common law and one seeking an inspection is required to show that he has some interest in the document he wishes to inspect and that the inspection is for a proper purpose. Opinions of Attorney General, May 16, 1937. It has been held in Missouri that the privilege of the physicians continues and applies to the information which he places upon the certificate filed under the regular law. Key v. Cosmopolitan, etc. Co. (1937), 102 S. W. (2d) 797, 799.

MONTANA

Montana adopted the Uniform Vital Statistics Act in 1943. See: Laws of 1943, Chapter 44.

NEBRASKA

The statute of Nebraska provides for a system of statewide registration. There are certain restrictions relative to the inspection and copying of records of illegitimate births. The statute also provides for the issuing of birth certificates “for any proper purpose.” Acts of 1919, Ch. 180, last amended in 1943 by Ch. 147. Sec. 71-612, Nebraska Code Annotated 1943. The quoted words were added by amend-
ment in 1927. It is the construction that the addition of these words was for the purpose of clothing the department with a discretion to at least be satisfied that the use to which such certificate would be put was a legitimate use within the intent manifest in the original act.

NEVADA

The Nevada statute provides for state-wide registration of vital statistics. The section of the act relative to inspection and obtaining copies is fairly similar to the corresponding section of the Uniform Vital Statistics Act. See: 1931-1941 Supplement (as amended in 1941) N.C.L. Statutes, Section 5268.14.

This act is affected by Chapter 30, Statutes of 1945. Section 3 makes it unlawful, except for purposes directly connected with the administration of old-age assistance, for any person to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list of names of, or any information concerning, person applying for or receiving such assistance, directly or indirectly derived from the records, papers, files, or communications of the state or county boards or subdivisions or agencies thereof, or acquired in the course of the performance of official duties, or in any other manner whatsoever, in violation of the provisions hereof, and any person found guilty of violation of any provision of this act shall be deemed guilty of a misdemeanor.

On March 10, 1937, the Attorney General gave a letter of advice to the State Health Officer that birth and death certificates on file were not open to inspection to curiosity seekers or to promote private financial enterprise.

NEW HAMPSHIRE

The New Hampshire statute provides for a system of registration of vital statistics. See: Revised Laws of New Hampshire 1406-8. These acts were adopted in 1883 and 1895. There was an amendment in 1943, Chapter 194, which provides that anyone may obtain a birth certificate. Under the statutes, as construed, they are open at all proper times for public inspection and examination except that no town officer having custody shall loan the same or permit them to be taken
from the place where they are usually kept, except when necessary for the discharge of official duties or upon a summons of a court of competent jurisdiction.

NEW JERSEY

The statutes of New Jersey provide for a system of registration of vital statistics. Under the law, Section 26:8-39 of the Revised Statutes of New Jersey, no official in the State shall issue a birth certificate revealing or disclosing illegitimacy; provided, that a certificate may be issued disclosing such information in response to court process or subpoena or in response to the request of the illegitimate, his or her guardian or legal counsel. The State Department of Health has ruled that the records of the State Bureau of Vital Statistics shall not be accessible to anyone to secure lists for advertising or soliciting purposes.

NEW MEXICO

The statute of New Mexico provides for a system of registration of vital statistics. The statute provides that certificates of births and deaths shall not be open to the general inspection of the public except in the presence of the legal custodian of said records and under said restrictions as the State Board may prescribe to prevent mutilation, alteration or injury thereof, or wrongful or improper use of the information contained therein. Acts of 1937, Chapter 19, New Mexico Statutes Annotated 1941, 71-401, as amended by Chapter 132 of the Laws of 1943. The validity of this section was upheld by an opinion of the Attorney General in Vol. 1939-1940, page 134. The statutes of New Mexico also make special provisions for the records of illegitimate births. A regulation has been adopted which provides that records of births and deaths may be examined only in the actual personal presence of the legal custodian of such records, or his lawful deputy, who shall exercise sufficient supervision during such examination to insure that the record shall not be altered, mutilated, removed or destroyed. Any person who desires to examine a record of birth or death shall state to the legal custodian of such record the name of the person whose birth or death record he desires to examine, shall give the date and place of birth or death, if known to him; and
shall state his own home and address, and the nature of his relationship to the person named in such record, if any, and his purpose and authority for examining such record. The legal custodian of birth and death records shall not allow examination of such records by any person not having a proper personal or legal interest therein, and shall not permit the making of lists of names for advertising or any other purposes from such records, or the examination of any other records than the one named by the person making application to examine the record, except as noted in Section 4 hereof. Officers of the state, of the county, and of municipalities shall be permitted at all times during regular office hours to have access to records of births and deaths, for any and all official purposes.

NEW YORK

The statutes of New York make provision for a system of registration of vital statistics. In 1947 they adopted an act substantially similar to the Uniform Vital Statistics Act. Acts of 1947, Chapter 73; Thompson Law of New York 1939, 1948 Supp., Section 391 of the Public Health Law. Prior to the adoption of the Uniform Act, the Attorney General had given an opinion in 1921, 26 St. Dep. Rep. 514, that under the provisions of the act then existing, the public health council had authority to provide under the circumstances the records of the division of vital statistics in the State Department of Health might be inspected and copies made where such rules and regulations had as their aim the purposes of the law in establishing a division of vital statistics and that such aim might be fully subserved and subverted and, in particular, that it had the authority to provide that no inspection, transcript or search of any such records should be made without facts being disclosed to indicate that the application for such search was made for legal purposes.

In an opinion dated April 20, 1944, the Attorney General said in part:

"The general principle to be deduced from the decisions bearing on the subject is that not all records kept by public authority are open, as of right, to the inspection of any member of the general public. In the absence of specific statutory provision or regula-
tion authorized by law, an inspection of those which are not kept for the information of the public can be compelled only by one having a direct and tangible interest, distinct from that of the community at large.

“In Matter of Egan, 205 N. Y. 147, inspection of reports bearing on the award of a contract by the New York City Commissioners of Water Supply was allowed on the ground that Section 51 of the General Municipal Law had expressly conferred upon any taxpayer in his status as such an interest in the records included within that statute. The case, however, recognized that such right could be subjected to reasonable regulations if authorized by the statute and must give way before limitations in special statutes relating to public documents in particular departments. In a case decided on the same day the Court refused to compel allowance of inspection of documents of the Board of Health of the City of New York where there had not been compliance with rules of the department established under specific authority of the City Charter to regulate ‘publicity’ of such records (Matter of Allen, 205 N. Y. 158). In a later case, the Court observed the distinction between ‘public records’ in the strict sense and other files and reports kept in public custody or made pursuant to statutory requirements. In the former category were placed those records required to be made by public officers to disseminate information to the public or to preserve for the public a record of the transaction of official business. Such records were said to be available to every citizen, but the reports of motor vehicle accidents made to the Commissioner of Motor Vehicles were held not to come within that class and were made available only to a person showing that such a report might directly bear upon his individual rights. Such disclosure was permitted, however, even though the statute requiring such reports to be made was silent as to inspection. The decision was affirmed by the Appellate Division on the ground that disclosure of such a record was required by Section 66 of the Public Officers Law, and by the Court of Appeals without
opinion (Matter of Stenstrom v. Harnett, 131 Misc. 75, 224 App. Div. 127, 249 N. Y. 606). The only general conclusion to be drawn is that the right of inspection or to disclosure may be expanded or restricted by statute or subjected to authorized regulation.

"It is quite apparent that vital statistics are not a record of the transaction of public business, nor does the statute give any indication that the individual and personal details required to be given are recorded for the information of the general public. Accordingly, it is to the statute that resort must be had to determine whether inspection is required to be allowed or refused, and to what extent it may be governed by regulation. In so far as the matter is left to rules of the Commissioner or Public Health Council, their power is not limited as it would be in the case of documents which are ‘public records’ in the strict sense."

NORTH CAROLINA

The statutes of North Carolina make provision for a system of registration of vital statistics. The statutes further provide that anyone can obtain a copy of a certified birth certificate. We have found no decision in this State upon the question of general inspection. Acts of 1913, Chapter 109, General Statutes of North Carolina, Title 130, Section 102.

NORTH DAKOTA

North Dakota has provisions for the registration of vital statistics. The Acts of 1941, Chapter 297, Section 7, as amended by the Acts of 1943, Chapter 271, Section 1, provide restrictions on the issuance of copies of birth certificates and on inspection of records which appear to be stricter than those provided by the Uniform Vital Statistics Act. As to local registrars an opinion of the Attorney General, April 16, 1943, states that they are not permitted to give any information in any form relative to births and the obtaining of all information is in the hands of the State Registrar of Vital Statistics.
Ohio has a system of registration of vital statistics. The Ohio Statutes are found in the Ohio General Code Ann. 1261-44—1261-68. Restrictions are placed on the records of illegitimate births. Otherwise the statutes appear to allow inspection by the public at large. Ohio has a special statute on furnishing lists. It is Section 1261-66b, General Code, and is as follows:

“The director of health or person authorized by him shall, upon request and upon the payment of a fee of one cent per name, supply to any applicant a list of births which shall contain only the full name of the mother, her address, and the sex and birth date of the child. The director of health shall keep a correct account of all fees so received and shall pay the same into the state treasury.”

Oklahoma has provision for a system of registration of vital statistics. By Section 8, Chapter 14, page 407, Title 630, Oklahoma Session Laws 1947, Oklahoma has adopted a portion of the Uniform Vital Statistics Act relative to restricting inspection of vital statistics records.

Oregon Compiled Laws Annotated 99-1030, which is the Acts of 1941, Chapter 130, adopts the section of the Uniform Vital Statistics Act relative to restrictions on inspection of records. Opinions of the Attorney General of Oregon 42-44, page 191, referred to in the text of this opinion, interprets the Uniform Act in relation to the giving of information to newspapers. The Acts of 1937, Chapter 343-1, Oregon Compiled Law Annotated 99-1013 B, provides further restrictions on the question of illegitimacy. On March 28, 1945, the Attorney General gave an opinion on the authority of the State Health Officer to release to the press, daily, the official vital statistics records under the 1941 law with the conclusion that such officer had no authority to do so.
Pennsylvania has a system of registration of vital statistics. Section 20 of the Act of 1943, Public Law 414, as amended; 35 P. S. Section 505.20, adopts the section of the Uniform Vital Statistics Act relative to the confidential nature of the records of births, except that subsection 2 relative to illegitimacy was amended to permit disclosure to the person to whom the record relates and to permit substitution of the name assumed by the illegitimate where it differs from the original name.

On February 8, 1944, the Attorney General of Pennsylvania gave Formal Opinion No. 485 which upholds said Section 20 and states that it superseded prior laws in conflict therewith.

On August 17, 1948, the Attorney General of Pennsylvania gave an informal opinion, No. 1456, that the department could, if it saw fit, issue complete copies of death certificates in all cases of maternal deaths occurring in Allegheny County to the Allegheny County Medical Society on the basis that that said Society was a non-profit professional organization and desired the information solely for research in the cause of maternal deaths. This was on condition that the association make no identifying use of such information beyond the realm of research.

Rhode Island has provision for a system of registration of vital statistics. Apparently most of the records are kept by local authorities and there seems to be no restriction on the examination and copying of such records. Acts 1923, Chapter 166, General Laws Rhode Island, 1938, Chapter 268. This statute was amended by the Acts of 1942, Chapter 1191, to allow state officials to make necessary rules for uniform and proper registration.

South Carolina has provision for a system of registration of vital statistics. This is provided by statute found in 1942 Code of South Carolina, paragraphs 5130 to 5135, which apparently places no limit on inspection of such records. We are not advised as to the common law rule in South Carolina.
SOUTH DAKOTA

South Dakota has a system of the registration of vital statistics provided by Chapter 27.02 of the South Dakota Code of 1939. This appears to make no limitation on inspection and copying of such records except in the case of adoption. See: Opinions of Attorney General, April 6, 1940, relative to records of adoption.

TENNESSEE

Tennessee has provision for a system of registration of vital statistics. Acts of 1941, Chapter 23, Williams Tennessee Code Ann. 1934, Sections 5827 through 5829, adopt the Uniform Vital Statistics Act and by regulation local registrars are limited in allowing inspection of vital statistics records.

TEXAS

Texas has a system of registration of vital statistics. The Acts of 1927, Chapter 1941, as amended by the Acts of 1939, p. 343, and the Acts of 1941, Chapter 564, found in Vernons' Texas Statutes 1936, paragraph 4477, rules 34a through 55a, provide that a birth certificate shall be issued only to a "properly qualified applicant" and only for proper purposes and further that such certificates shall have no indication of illegitimacy of birth. The power is given to impose reasonable restrictions on inspection.

UTAH

Utah has provision for the registration of vital statistics. Revised Statutes of Utah Ann. 1933, Section 35-2-12, seems to allow the obtaining of birth certificates for any purpose and to allow public inspection. Opinions of Attorney General, October 7, 1937, state it is not mandatory that access be given to vital statistics to commercial concerns. Opinions of the Attorney General of July 6, 1937, expressed the opinion that the right of inspection is limited and that the only unlimited method of obtaining information is by requesting birth certificates which the state registrar is required to furnish.
VERMONT

Vermont has provision for the registration of vital statistics. Vermont Statutes 1947, Title 16, Chapter 183, Sections 4091 through 4157, seem to allow general inspection with some limitation as to illegitimate births.

VIRGINIA

Virginia has a system of registration of vital statistics as is set out in the Virginia Code Ann. of 1942, Sections 1561 through 1584, as last amended by Chapter 415, Acts of 1948. Section 1580 provides that "the State Registrar, however, may decline to issue a certified copy of the certificate of the birth or the death of an illegitimate child or to give any information concerning same, except by order of court or upon the written request of the mother of the child or other person responsible for it."

The registrar follows the common law rule that certified copies may be obtained only by one who has an interest in the record sought. Access is not given to the state records for general publication but newspapers obtain their information from city departments.

WASHINGTON

Washington has a system of registration of vital statistics provided for by the Acts of 1891, page 189, as amended by the Acts of 1915, page 641, and further amended by the Acts of 1939, Chapter 133, page 280, found in Remington Revised Statutes of Washington, Sections 6011 through 6039 and in the 1940 Supplement 6013 which provide that a certificate shall be given to any one who applies. Apparently public inspection is unrestricted except in the case of illegitimate births. Opinions of the Attorney General, July 5, 1939, state that although records are open to public inspection, that officials have no duties to prepare lists of births and deaths.

WEST VIRGINIA

West Virginia has a system of registration of vital statistics. Acts of 1921, Chapter 137, found in West Virginia Code 1933, paragraphs 1339 through 1341, provide that the
records shall be open to public inspection and that birth certificates be given to anyone who applies making special provision in cases of illegitimacy.

WISCONSIN

Wisconsin has provision for a system of registration of vital statistics. Acts of 1943, Chapter 503, found in Chapter 69 Wisconsin Statutes of 1943, provides that records shall be open to the public with some restrictions relative to the registration of illegitimate births.

WYOMING

Wyoming has a system of registration of vital statistics. Chapter 116 of the Acts of 1941, found in 63-610 of Wyoming Compiled Statutes, adopts in effect provisions of the Uniform Vital Statistics Act relative to limitations on inspection and the confidential nature of records.

OFFICIAL OPINION NO. 55

August 30, 1948.

Hon. C. E. Ruston,
State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

I am in receipt of your letter of recent date requesting an official opinion relating to subsection 3 of Section 48-6403 Burns' Statutes, 1947 Supplement, which subsection refers to the method of retirement of members of the Police Pension Fund. Your specific question is quoted as follows:

"Will you please state whether or not in your opinion, members of the police force who have heretofore retired may make additional applications from time to time as the salary of a first class patrolman may be increased which increase would affect the amount received by the retired policeman."