

When marriage license becomes <sup>a</sup> public record. ✓

May 29th, 1933 ✓<sup>2</sup>



Hon. James S. Rooney,  
Prosecuting Attorney,  
Clay County,  
Liberty, Missouri.

Dear Sir:

We have your request of May 13th, 1933 for an opinion upon the following state of facts submitted to you by the recorder of deeds of your county:

" I feel that I am imposing on you by bothering you with so many questions, but I have one more question that I would appreciate having your opinion on, and I will be very thankful to you if you will also get an opinion from the office of Attorney General in regard to this matter.

It has been the custom in Clay County, for many years, to have applicants for a marriage license sign an application, or an affidavit, in regard to their addresses, ages, etc.

I am contemplating doing away with the system of having the applicants sign this affidavit, as I understand this old procedure is merely for the convenience of the officer issuing the license, and that a marriage license is not considered a public record until it is returned to the officer who issued it.

Now my idea is this, - get the information from the applicant and place it directly on the marriage license I am issuing, and save the time and formality of bothering with the application for marriage. Of course, you understand, I will keep a record of the names and addresses, to be used in checking up on the unreturned ones, so that I may be able to comply with the Statutes of Missouri in such cases.

It is my understanding that the officer issuing a marriage license has no authority to administer an oath to an applicant, and even though he did, the applicant would not be committing perjury if he swore falsely.

It appears to me to simmer down to this, - when does the issuing of a marriage license become a public record? If it is considered a public record from the time it is issued, then I suppose the system we have in force at this time is the proper way, but if it is not a public record until it is used and returned for record, then I think the application blanks are unnecessary.

I will certainly appreciate having an opinion in regard to this matter, as I thought perhaps I had better be sure before I made the change."

Under Section 2979 R. S. 1929, it is made the duty of the recorder of deeds to keep all marriage licenses issued in a well-bound book kept for that purpose. We call your attention to Section 2978, R. S. 1929 which provides two separate forms, one to be used in authorizing the marriage, and the other to be used by the person officiating at the marriage. Each of these constitutes a separate document by itself. A marriage license becomes a public record as soon as it is issued. In State ex rel. v. Moore, 96 Mo. App. 431, l.c. 434, the Court said,

" While none of the statutory provisions to which we have called attention in express terms require that the marriage license shall be recorded at the time it is issued, still, is not this requirement as clearly implied as if it had been expressed? May not this duty be fairly deduced from the general scope of these provisions? It will be observed that the statute requires the recorder to record all marriage licenses in a well-bound book kept for that purpose, and this is the only record of such licenses he is authorized to make. No memorial of such licenses is anywhere required to be made and recorded. If he is not required to record such licenses when issued, how can he tell from any record in his office that any one or more of them have not been returned? If he has not recorded them when issued by him, how is he to certify to the grand jury, as is his duty under said section 4319, a list of such of them as have not been returned to him by the person solemnizing the marriage under them within ninety days after the issue thereof? From what record authorized by law does he make out and certify this list? Is it to be made out from a

private memorandum or list kept by him, or from memory? A construction lending countenance to this would be intolerable. Suppose the recorder die, resign or his term of office expire, while one or more licenses issued by him have not been returned by the person solemnizing the marriage within the ninety days required by the statute, how can his successor certify the list required by said section 4313? To what record or memorial of his office can he have access to ascertain what licenses have not been timely returned? Suppose some person who has solemnized a marriage under a license has not made return thereon to the recorder, as required by the statutes, is indicted by the grand jury under section 4318 for his failure to return such license, how is the State at the trial on the indictment to establish its prima facie case? The license itself would be the best evidence but that would be in the possession of the defendant; and the record of such license would be the next best evidence, but since there would be no such record the State's case would probably fail at that point.

The manifest purpose of the marriage-license statute was to make such license returns thereto and certificates of marriage, public records so as to give notice to all the world of the occurrence to which they severally relate. Their contents thereby become matters of public knowledge because the law requires them to be kept, authorizes them to be used, and secures to all persons access to them, that knowledge of them may be public. It would therefore seem that a construction of the marriage license statute that requires the recording of all licenses when issued would obviate and clear away the difficulties which present themselves under the contrary construction for which respondent contends. After a rather full examination of the entire marriage-license statute in all its length and breadth, we have been unable to escape the conviction that the Legislature intended that the licenses authorized by it should be placed on record by the recorder issuing them when issued, and in accordance with that conviction we must so rule. This construction, it seems to us, will best subserve the purpose of the statute."

Hon. James S. Rooney

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It will be noted that under Section 2963 R. S. 1929, that the Legislature itself has treated the marriage license and the return thereon as two separate and distinct documents. This intent has been written into Section 2964 R. S. 1929 by requiring the person who solemnizes the marriage to keep a record of such return.

It is therefore the opinion of this office that marriage licenses when issued, must be properly recorded, and then and there become a public record.

Yours very truly,

FRANKLIN E. REAGAN  
Assistant Attorney-General

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APPROVED:

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ROY McKITTRICK  
Attorney-General