

MARRIAGE LICENSES: In discretion of recorder whether or not applicants for licenses are required to appear personally.

February 9, 1940

Honorable B. D. Hardesty
Circuit Clerk
Lincoln County
Troy, Missouri



Dear Sir:

We are in receipt of your request for an opinion, dated February 6, 1940, in which you inquire as to whether or not applicants for marriage licenses must appear personally before you in order to secure same.

Section 2977, R. S. Mo. 1929, provides that licenses must be obtained for all marriages, and that all marriages thereafter contracted should be invalid unless such licenses have been obtained.

The following section, 2978, R. S. Mo. 1929, provides that the recorders of the several courts in the City of St. Louis shall issue a license to any person entitled to the same, and sets out the form to be used.

At no place in Chapter 19, R. S. Mo. 1929, relating to marriages, is there an expressed provision requiring both applicants for a license to personally appear, and it is necessary to consider all sections thereunder in order to arrive at the legislative intent.

Section 2974, R. S. Mo. 1929, is as follows:

"All marriages between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters of the half as well as the whole blood, between uncles and nieces, aunts and nephews, first cousins, white persons and negroes or white persons and Mongolians, and between persons either of whom is insane, mentally

imbecile, feeble-minded or epileptic, are prohibited and declared absolutely void; and it shall be unlawful for any city, county or state official having authority to issue marriage licenses to issue such marriage licenses to persons heretofore designated, and any such official who shall issue such licenses to the persons aforesaid knowing such persons to be within the prohibition of this section shall be deemed guilty of a misdemeanor; and this prohibition shall apply to persons born out of lawful wedlock as well as those in lawful wedlock." (Italics ours)

Since the foregoing section makes it a misdemeanor for a recorder to issue a license to those related within a certain degree, or disqualified by reason of race or mental incapacity, we are unable to see how such fact could be determined except by virtue of an examination of the parties as to their qualifications.

Section 2983, as amended by Laws of Missouri, 1939, at page 509, is as follows:

"No recorder shall in any event except as herein provided issue a license authorizing the marriage of any person under fifteen years of age: Provided, however, that said license may be issued on order of the circuit or probate court of the county in which said license is applied for, such license being issued only for good cause shown and by reason of such unusual conditions as to make such marriage advisable, and no recorder shall issue a license authorizing the marriage of any male under the age of twenty-one years or any female under the age of eighteen

years, except with the consent of his or her father, mother or guardian, which consent shall be given at the time, in writing, stating the residence of the person giving such consent, signed and sworn to before an officer authorized to administer oaths. The recorder shall state in every license whether the parties applying for same, one or either or both of them, are of age, or whether the male is under the age of twenty-one years, or the female under the age of eighteen years, and if the male is under the age of twenty-one years or the female is under the age of eighteen years, the name of the father, mother or guardian consenting to such marriage."

This section contemplates that any male under the age of twenty-one years or any female under the age of eighteen years must be accompanied by his or her parent or guardian to the recorder since such parent or guardian's consent "must be given at the time". The section further contemplates that the recorder state in each license the age of the parties, and it is apparent that he must determine the age from the parties themselves in the absence of any other proof which would be difficult to obtain.

In an abundance of caution, the legislature further provided in Section 2984 that any recorder issuing a license contrary to the provisions of Chapter 19, should be guilty of a misdemeanor.

Two sections which indicate that the presence of both parties is not necessary are Sections 2978 and 2980. In Section 2978, we find the following:

"The recorders of the several counties * * * shall, when applied to by any person legally entitled to a marriage license * * *"

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And in Section 2980, the following:

"If any recorder wilfully neglect or refuse to issue a license to any person legally entitled there-
to on application * * *"

There appear to be no decisions in this state, or in any other jurisdiction with similar statutes, which have passed on this question. Since the only person who can be penalized by the issuance of a license which does not set out the true facts is a recorder, it appears that it should be properly left to his determination whether the issuance of a license is proper under the facts.

It is therefore the opinion of this department that it is entirely within the discretion of the recorders of the several counties and the recorder of the City of St. Louis whether or not they shall cause the applicants for a marriage license to appear in person for the purpose of procuring such license.

Respectfully submitted,

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APPROVED:

W. J. BURKE
(Acting) Attorney General

RLH:VC