

RECORDERS OF DEEDS - Licenses issued on Sunday or other designated legal holidays are valid.

Marriage solemnized on Sunday or other legal holidays is valid.

August 21, 1941

Hon. A. L. Gates
Prosecuting Attorney
Moniteau County
California, Missouri

8-25



Dear Sir:

We are in receipt of your request for an opinion, dated August 15, 1941, which reads as follows:

"The circuit clerk and ex-officio recorder of deeds of this county has consulted me regarding the legality of his office issuing marriage licenses on Sunday.

"At this time I am unable to find in my office any law applicable to this question. I would, therefore, like for you to render me an official opinion as to whether or not the recorder of deeds may legally issue marriage licenses on legal holidays and Sundays."

Section 3360 R. S. Missouri, 1939, reads as follows:

"Marriage is considered in law as a civil contract, to which the consent of the parties capable in law of contracting is essential."

It will be noted from reading the above Section that marriage contracts are of a civil nature.

We now call attention to Section 4739 R. S. Mo., 1939, which reads as follows:

"Every person who shall either labor himself, or compel or permit his apprentice or servant, or any other person under his charge or control, to labor or perform any work other than the household offices of daily necessity, or other works of necessity or charity, or who shall be guilty of hunting game or shooting on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor, and fined not exceeding fifty dollars."

We also call attention to the case of State v. Chicago, Burlington & Quincy Railroad Company, 143 S. W. 785, 239 Mo. 196, in which case there will be found an exhaustive opinion pertaining to the Sunday law. The court, in that case, had this to say, at l. c. 209:

"The Missouri Sunday laws have regard to that day as a day of rest, and not to the religious character of the day. They are civil, not religious regulations, and are based upon a sound public policy which recognizes that rest one day in seven is for the general good of mankind. (Hennington v. Georgia, 163 U. S. 299-304.) Those laws are sustained as civil, municipal or police regulations, without reference to the fact that the day of rest is also the Christian's day of rest and worship. * * *"

Further, Judge Woodson, in his separate concurring opinion, in the same case, had this to say at l. c. 247:

"The power of the Legislature to authorize the performance of any kind of labor on Sunday cannot be questioned, for the reason that in contemplation of law it is simply a civil institution, and may be regulated or abolished altogether by the lawmaking power of the State, as it may see proper, notwithstanding the fact that it is a day of the week given up by Christian people to religious worship. In the eyes of the law Sunday is merely a day of rest, and is not considered from the standpoint of religion."

Therefore, from reading this case, we find that the law in Missouri was established, that all laws pertaining to the prohibiting of certain acts on the first day of the week, commonly called Sunday, are civil regulations and the legislature has the right to make, or not to make, such regulations as they see fit through statute. This principle of law was further approved in the case of State v. Springfield v. Smith, 19 S. W. (2d) 1, l. c. 5. Therefore, from the reading of Section 4739, supra, we do not find that a recorder of deeds is directly, or indirectly, prohibited from accomodating some person who desires to procure a marriage license on Sunday.

Now turning to another legal phase presented by your question, which we deem very pertinent in reaching the proper conclusion, or answer to your question, we call attention to 38 C. J., Par. 74, Page 1307, where we find the following statement:

"A marriage license must be issued by the officer designated by the statute, and the duty, although ministerial,

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involves official and personal discretion and therefore is not susceptible of being delegated. Under some statutes a record must be made by the officer of the license when issued, and in some states a bond is required, conditioned that there is no lawful impediment to the marriage. A statute conferring a special authority upon an officer must be fully complied with before he is entitled to act. Where a license is improperly issued, neither the license nor the marriage solemnized under it is void, although the officer issuing it may incur a penalty for the act. * * * * *"(Underscoring ours.)

(Cases substantiating the above underlined portion are found in footnote 87 in 38 C. J. Page 1307)

It will be noted that the cases cited in the above footnote are collected from Alabama, Kentucky, Louisiana, Mississippi, New York and Pennsylvania. We do not find a Missouri case which directly holds this general proposition, but are of the opinion that if the question were raised, as it was in these cases, the Missouri courts would adhere to the same proposition of law. We say this for the reason that in the case of *Mayler v. Brock*, 120 S. W. 1167, 222 Mo. 74, 133 Am. St. Rep. 513, 17 Ann. Cas. 673 and also the case of *Mayler v. Waters*, 120 S.W. 1174, 222 Mo. 102, the court held that the law presumes that a marriage is valid and the burden is on those claiming the contrary to show why it is not, by strong and persuasive evidence, the presumption being one of the strongest known to law. We also call attention to the case of *St. Louis v. Sommers*, 148 Mo. 398, l. c. 401, where the court had this to say:

"The solemnization of a marriage is in no sense a judicial act. Were a justice to perform it in his court, no record or note could be made of it. It may be per-

formed anywhere within his jurisdiction, at any and all hours of the night or on Sunday and there is nothing which requires the clerk to attend the justice in his perambulations or to take ex officio notice when parties will call upon the justice at his home to perform the marriage ceremony nor does it require the justice to report such ceremony to his absent clerk."

Further, the court in the case of State ex rel v. Moore, 96 Mo. App. 431, l. c. 435, had this to say:

"The manifest purpose of the marriage-license statute was to make such licenses, 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. * * * "

From a reading of the Sommers case, supra, we find that the Supreme Court has directly ruled that a marriage ceremony may be entered into on Sunday, the same as any other day in the week.

In view of the fact that the cases supra conclusively rule that a marriage contract, being a civil contract, and that the solemnization of the marriage being the actual legal act which perfects the civil contract, ie of marriage, the courts having ruled that this contract could be performed on Sunday, we can see no reason why

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the parties would be affected or the contract rendered void by the mere issuance of a license, or a legal privilege to marry, on the first day of the week, commonly called Sunday, and, under the Missouri law the license could be either used or returned, and no marriage perfected thereto.

Our statutes do not directly or indirectly, as we read them, prohibit the person authorized under the statute to issue marriage license, to issue such license on Sunday.

CONCLUSION.

We are of the opinion that the issuance of a marriage license by a recorder of deeds on the first day of the week, commonly called Sunday, or other designated holidays, does not affect the legality of a marriage performed thereunder.

A marriage solemnized on Sunday is valid.

Respectfully submitted

APPROVED:

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