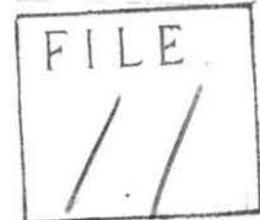


MARRIAGES: Justice of the peace not prohibited from  
soliciting marriage ceremonies.

April 27, 1942

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Hon. G. R. Breidenstein  
Prosecuting Attorney  
Clark County  
Kahoka, Missouri



Dear Sir:

We are in receipt of your letter of April 21, 1942,  
in which you request an official opinion, as follows:

"I would like to have an opinion from  
your department upon the following state  
of facts.

"This county is in the northeast cor-  
ner of the State adjoining both Iowa and  
Illinois. Because of the laws regulating  
marriage licenses in those states, many  
couples come to Kahoka, the county seat  
of this county to get married. Especially  
on Saturdays this business of issuing  
marriage licenses in this county is heavy.  
Generally seventy-five or more licenses  
will be issued on each Saturday. A Jus-  
tice of the Peace with office close to  
the Court House solicits the business of  
performing the marriage ceremony for these  
couples. He has several men working for  
him who approach each automobile bearing  
an out-of-state license plate as it ap-  
proaches the courthouse. They ask the  
occupants of the car if they have come  
to get married and if so that they will  
gladly take them where they can get their  
their license and get married. If the

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parties are willing these solicitors then escort the couple to the Records Office and wait while they get the license and then take them to this justice of the peace who performs the marriage ceremony.

"Not all occupants of cars with these foreign licenses who come to the courthouse on business are looking for marriage licenses. But they are all approached and solicited. Naturally they are embarrassed by this. The practice has also caused much unfavorable comment on this county. The practice is generally detested by our people.

"Is there any action that can be taken in any court to restrain this justice of the peace and his agents from engaging in this practice?"

Section 3363 R. S. Missouri, 1939, reads as follows:

"Marriages may be solemnized by any judge of a court of record or any justice of the peace, or any licensed or ordained preacher of the gospel, who is a citizen of the United States or who is a resident of and a pastor of any church in this state."

The above section specifically states who may solemnize a marriage.

In a careful research of the statutes we find no law which prohibits a justice of the peace from soliciting the

performance of marriage ceremonies.

A justice of the peace in performing a marriage ceremony is not acting in a judicial capacity. It was so held in the case of *St. Louis v. Sommers*, 148 Mo. 398, l. c. 401, where the court said:

"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 performed 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."

I am assuming from the facts stated in your request that the justice of the peace and his agent are soliciting the marriage ceremony business upon the street, and not in the confines of the courthouse, or courthouse yard.

There is no question but that the county court can make a rule governing the soliciting of any business in the courthouse or courthouse grounds. This rule has been stated in the cases of *Walker v. Linn County*, 72 Mo. 650, *Morgan v. Owen*, 193 Mo. 587, and in Volume 15 C. J., page 536, section 220.

#### CONCLUSION

It is, therefore, the opinion of this department that the county court, as the agency which is placed in the control and management of county property, is authorized to

Hon. G. R. Breidenstein

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prohibit persons from soliciting in and about the courthouse, providing such solicitation prevents the public officials from performing their official duties, or interferes with the general public in its free access to, and use of, the public grounds.

It is further the opinion of this department that a justice of the peace, or his agent, cannot be restrained from soliciting marriage ceremonies on the public streets if they do not interfere with the official acts of the county departments.

Respectfully submitted

W. J. BURKE  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General of Missouri

WJB:RW