MARRIAGES:
CIRCUIT JUDGES:

Circuit Judges authorized to solemnize marriages any place in the State of Missouri.

December 18, 1943

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3

12/21

Honorable Robert L. Aronson
Judge of the Circuit Court
Eighth Judicial District
Civil Courts Building
St. Louis, Missouri

Dear Judge Aronson:

This department is in receipt of your letter of November 20, 1943, which reads as follows:

> "After further considering the matter, I believe it would be desirable if your Department would write an opinion on the question presented in my letter of November 12th, as to the power of a Circuit Judge to officiate at a wedding in a County outside his judicial circuit."

In compliance with your request for an opinion of this department, we turn to Section 3360, R. S. Mo. 1939, which 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."

Thus marriages in Missouri may be effected by and between the contracting parties agreeing to marry the other provided they have the statutory qualifications of age, et cetera, essential to such contract, secure the required license (Laws 1943, pp. 640-641), and have the marriage solemnized by a person authorized by law to perform marriage ceremonies.

Section 3363, R. S. Mo. 1939, pertaining to the solemnization of marriages, 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."

It is to be noted that this section does not restrict the authority of a judge of a court of record to his judicial territory in solemnizing marriages, and that no minute or court record is to be kept of marriage ceremonies performed by a judge.

In 38 C. J., pages 1311-1312, the following rule is announced:

> "It is usually provided by statute that marriages may be solemnized by a justice of the peace or other magistrate, and unless otherwise expressly stipulated, this authority is not confined to the territory in which such officer has jurisdiction in other cases, nor is it determined upon the judicial power vested in such officer. * * * "

It has been ruled in Missouri that the performance of a marriage ceremony is not a judicial act. In Smith v. Pettis County, 136 S. W. (2d) 282, 345 Mo. 839, l. c. 848-9, the following appears:

> " * * * Our decision in City of St. Louis v. Sommers, 148 Mo. 398, 50 S. W. 102, involving such similar facts and statutes is peculiarly apposite here. The facts in that case showed that <u>all</u> fees collected for services of a justice of peace were to be turned over to the city treasurer and in return the justice of the peace was to receive a stated salary from the city. The

> question for decision was whether the justice was required to turn over to the city fees received for solemnizing marriages. We said that the solemnization of a marriage is in no sense a judicial act and that any marriage fee received by the justice is for services, possibly of a perambulatory nature 'wholly disconnected from his judicial character.' * * * "

Thus the authority of a circuit judge to perform a marriage ceremony is not limited to his circuit, and in addition he does not perform a judicial act in solemnizing marriages.

CONCLUSION

It is, therefore, the opinion of this department that a circuit judge has the power and authority to solemnize marriages any place within the State of Missouri.

Respectfully submitted

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APPROVED:

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