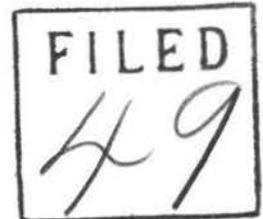


**MARRIAGE LICENSES:** Duty of recorder of deeds to record returns of marriage licenses.

May 15, 1944



Mrs. Ruby Koelling  
Recorder of Deeds  
City of St. Louis  
St. Louis, Missouri

Dear Mrs. Koelling:

Your letter of May 10, 1944, has been received. Your letter states:

"I have had numerous occasions during the year 1943 where marriage licenses have been returned showing that marriages have been performed in other states than Missouri. It is my understanding our licenses are not good in any other state.

"Will you please advise me as to the procedure I shall take in this instance.

"Also since the beginning of 1944 the new law makes marriage licenses void after they have been issued 10 days and we are receiving returns showing that marriages have been performed using licenses over 10 days old.

"Please advise me as to the proper procedure."

It is understood that your inquiry as to your procedure in both instances refers to your duties with respect to recording the returns on such marriage licenses issued by you. This opinion, therefore, will be addressed to the requirements of our statutes respecting your duty to record such returns.

Section 3364, Article 1, Chapter 20, R. S. Missouri, 1939, was repealed by the General Assembly in 1943 and was reenacted with certain changes therein, and accompanied by four new sections, known as Sections 3364-A, 3364-B, 3364-C and 3364-D, at

pages 639 to 643 of the Session Acts of 1943.

Section 3364, as it stood prior to the legislative change in 1943, provided for the issuance of a marriage license by recorders of deeds of this state, including the city of St. Louis, forthwith upon application therefor. Section 3364, as enacted by the Legislature in 1943, provided as the only change from that section as it stood before that the applicants for a marriage license shall apply for the license three days before the date of the issuance of the license, that the application be presented to the recorder of deeds, and that upon the expiration of three days after the receipt of the application the recorder of deeds shall issue the license, unless one of the parties withdraws such application.

The new sections numbered 3364-A, 3364-B, 3364-C and 3364-D are sections providing for laboratory health tests to be supplied, with certain affidavits by the applicants for a marriage license to be made fifteen days before the issuance of the license, and with the provision that a license when issued shall be void after ten days from the date of issuance, a penalty being prescribed for violation of some of the provisions of these sections by some of the persons named therein, and with the final provision in Section 3364-C to the effect that the validity of any marriage under the Act shall not be impaired by violation of any of the provisions of any or all of these Sections 3364-A, 3364-B and 3364-C if the parties to the marriage are otherwise qualified for marriage. Otherwise, the provisions of Chapter 20, R. S. Missouri, 1939, respecting the duties of recorders of deeds of the State of Missouri, including the city of St. Louis, are not changed but remain as they appear in the revision of our Statutes of 1939.

Section 3365, R. S. Missouri, 1939, provides that the recorders of the several counties of this state, and the recorder of the city of St. Louis, shall, when applied to by any person legally entitled to a marriage license, issue the same, and sets out the form of the license. The said section provides that within ninety days after the issuance of the license the person solemnizing the marriage shall make a return showing the place and the time he solemnized the marriage for the parties named in the license.

The statutes of this state have apparently always provided a ninety day period for the person solemnizing a marriage

contract in which to make the return of the license showing the solemnization of the marriage.

In the Revised Statutes of 1879, Section 3270 thereof provided that returns of marriage licenses should be made to the recorder of the county where the marriage ceremony was performed. In 1889 the Legislature repealed Section 3270 and enacted a new section known as Section 6850, R. S. Missouri, 1889, providing that the return should be made to the recorder issuing the license. This is still the law of this state, as contained in Section 3365, R. S. Missouri, 1939.

Section 3367, R. S. Missouri, 1939, provides a penalty against any recorder who wilfully neglects or refuses to issue or record a marriage license with the return thereon.

These sections were before the Kansas City Court of Appeals in the case of State ex rel. Stephens v. Moore, Recorder, 96 Mo. App. 431. The opinion recites the terms of the statutes existing at the time, including those of the then Section 4319, now Section 3368, R. S. Missouri, 1939, which require that the recorder of deeds of each county shall certify to the grand jury at each regular term of the court having criminal jurisdiction within the county a list of all marriage licenses issued by him and which have not been returned to him by the person who shall have solemnized the marriage under said license within ninety days after the issuance thereof, and further showing the penalty prescribed. This statute is now mandatory, as it was at the time of the Court of Appeals opinion referred to.

The court discusses very clearly the whole scheme and purpose of the marriage license statutes. The court issued its permanent writ of mandamus against the Recorder of Cole County, Missouri, requiring him to record marriage licenses and the returns thereon. The court's opinion, l. c. 436-437, closed with this paragraph:

"Nor do we discover any insuperable difficulty in the way of recording the license when issued, and, later on, when the return is made, to record it. If it be true, as we have been informed, that there are well bound record books now made and in use by the recorders in some of the counties in which the blank form of license and return prescribed in section 4316 are printed in the same order

as therein, it would seem that a recorder provided with such a record book could without the least inconvenience record a license when issued by him, filling out a blank in his record of marriage licenses, and, later on, when the return is in, fill out the blank for it immediately following the record of the license, and thus complete the record of both instruments. Whether such printed record book for recording marriage licenses and the returns thereon are in use or not, it is easy to see that it is practicable to procure them, and in them to record, without inconvenience, all marriage licenses when issued, and the returns thereto when made.

"It results that the relator's motion for a peremptory writ must be sustained, and the writ ordered accordingly. All concur."

Our statutes do not prescribe any place for the solemnization of a marriage. Section 3363, R. S. Missouri, 1939, does provide:

"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."

Thus it would seem to be presumed that a marriage should be solemnized within the jurisdiction of the State of Missouri under any marriage license issued in this state.

Under Section 3366, R. S. Missouri, 1939, it is mandatory that the recorders of this state shall record licenses, and then when the return is sent in, record the return also as made by the person who solemnized the marriage, as is required of such person in Section 3365, R. S. Missouri, 1939. It is not the duty nor the prerogative of recorders of deeds of this state to determine the validity or invalidity of a marriage performed in another state even though the return showing its performance discloses that the marriage was solemnized in consequence of the issuance of a license to the contracting parties by a recorder of deeds in the State of Missouri.

One of the primary purposes apparently running through all these statutes is to provide a list of marriage licenses issued and which have not been returned by persons solemnizing the marriages, to be given to the grand jury as a basis for criminal proceedings against persons who solemnize marriages and fail for more than ninety days to make the proper return.

It is, therefore, the opinion of this department that your office should proceed to record, under the terms of Section 3366, R. S. Missouri, 1939, all returns of licenses issued by you and sent to you by persons solemnizing marriages; that you should certify to the grand jury of the city of St. Louis, as required by and in conformity with the provisions of Section 3368, R. S. Missouri, 1939, a list of all marriage licenses issued by you and which have not been returned to you by persons solemnizing marriages under such licenses within ninety days of the issuance thereof.

Taking up the last paragraph of your request for this opinion on the matter of your procedure where a return of the marriage licenses shows that marriages have been performed using licenses issued more than ten days prior to the solemnization of the marriage, it is the opinion of this department that your office should record such returns in like manner as you are hereinabove advised respecting marriage licenses returned showing the marriage to have been solemnized outside the State of Missouri. This, for the further reason that Section 3364-A, Session Acts of 1943, p. 642, states:

" \* \* \* The laboratory report \* \* \* shall be made not longer than fifteen (15) days before the date of the issuance of the license and said license shall be void after ten (10) days from the date of issuance."

Section 3364-B provides penalties against the recorders of deeds, physicians and persons applying for a license for violations on the part of any of them of provisions named in said section, but it does not provide any penalty against persons obtaining a marriage license in case they do not use it until after ten days have elapsed from the date of its issuance. It would thus appear that that part of the statute is directory only.

Section 3364-C is as follows:

"If the parties to a marriage are otherwise qualified for marriage, the validity of any marriage under this Act shall not be impaired by any false statement contrary to the provisions of this Act or by the illegal communication of information concerning one or both of the parties to such marriage or by any other violations under Section 3364-A and Section 3364-B."

It is apparent from reading Section 3364-C that the validity of any marriage solemnized more than ten days after the date of the issuance of the license will not be impaired by the failure of the parties to utilize the license within the ten days. At most such a marriage would be only voidable, not void.

Authority for this position is contained in the case of State v. Eden, 350 Mo. 932, 169 S. W. (2d) 342. That was a case recently decided by our Supreme Court. The defendant, Eden, was convicted of bigamy. He defended on the ground that his first marriage was void. The defendant testified (without contradiction) that the license for his first marriage was issued by a justice of the peace and not by the recorder of deeds, and that his second marriage was lawful. The Supreme Court held his first marriage at most only voidable, and that a voidable marriage would support a conviction for bigamy. Judge Leedy, P. J., who wrote the opinion, said, l. c. 937 (Mo.):

" \* \* \* As we construe the language of Sec. 3364, 'no marriage hereafter contracted shall be recognized as valid,' etc., it was not intended to render void ab initio a ceremonial marriage solemnized under the forms of, and in apparent compliance with, the marriage statutes, as in the case at bar. As to such marriage (even assuming the truth of defendant's testimony touching the circumstances under which he procured the license), it is our conclusion the language just quoted, when taken in connection with the further provision that 'no marriage shall be deemed or adjudged invalid' (for the reason therein specified) can, in no event, mean anything more than it shall not be recognized as valid on judg-

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ment, and certainly not that it is ipso facto and utterly void. In other words, the most that can be said of the defective issuance of the license, if such it was, is that it rendered the marriage merely voidable, and it was therefore to be treated as valid until declared void by competent authority; and a voidable marriage will support an indictment for bigamy.  
\* \* \* "

The question of whether persons are otherwise qualified for marriage would be a matter of fact to be determined by the courts, and not by the recorders of deeds, as would also be the question of the validity of a marriage in another state.

Respectfully submitted

GEORGE W. CROWLEY  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General

GWC:HR