

MARRIAGE LICENSES: Duties of recorder of deeds in issuing marriage licenses to minors.

August 11, 1945

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Honorable Morris Anderson
Prosecuting Attorney
Marion County
Hannibal, Missouri

Dear Sir:

Reference is made to your letter dated August 7, 1945, requesting an official opinion upon a letter addressed to you by Eugene B. Poole, Recorder, Marion County, Missouri, and reading as follows:

"In the past, the recorder's office in Marion County, Missouri, has required that a guardian of a minor have written proof of his guardianship, from the Probate Court, before this office would recognize his consent to the marriage of said minor.

"Section 3370, Revised Statutes of Missouri, 1939, on this subject, says in part:

"...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...'

"I have two cases in hand upon which I must pass. A young man twenty years old, accompanied by his fiancee, also twenty, and his uncle who claims to be the boy's guardian,

has applied to me for a marriage license. The two young people were fortified with the proper health certificates and are observing the three day waiting period. The guardian has no written proof from the Probate Court showing his guardianship, and, under the law, he claimed he did not need it; that if I wanted it, I would have to get it myself from Judge Bigger.

"QUESTION: Is it necessary, under the statutes, that a guardian, in addition to giving 'consent at the time, in writing,' etc., also furnish written or other proof of guardianship?

"The second problem concerns an Illinois couple seeking a marriage license, under similar circumstances as set out above, the only difference being that the guardian was willing to furnish proof of his guardianship; but the status of an Illinois guardian giving his consent to a marriage license issued in Missouri is questioned.

"The question, of course, in this case is: Has a guardian, who lives in a foreign state, the legal right to give consent to marriage of the minor in Missouri?

"In view of the provisions of the statute referred to above, another problem presents itself, although it has not yet materialized. The question arises under that portion of the statute which says, '. . . which consent shall be . . . signed and sworn to before an officer authorized to administer oaths.'

"QUESTION: Can (or should) this office recognize a sworn statement, in granting ANY marriage license, where said statement was sworn to before any officer or person other than the recorder or one of his deputies?"

With respect to the first question proposed, we direct your attention to Section 3370, R. S. Mo. 1939, reading 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 of 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."

Under the provisions of Section 3371, R. S. Mo. 1939, it is made a misdemeanor for any recorder to issue a marriage license to a minor contrary to the provisions of Chapter 20, R. S. Mo. 1939. Said section reads as follows:

"Any person who shall solemnize any marriage wherein the parties have not obtained a license, as provided by this chapter, or shall fail to keep a record of the solemnization of any marriage, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not exceeding five hundred dollars, and in addition shall be subject to a civil action by the parent, guardian or other person having care or custody of the person so married,

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to whom services are due whersin the recovery shall not exceed the sum of five hundred dollars; and any recorder who shall issue a license contrary to the provisions of this chapter shall be subject to a like punishment."

In view of the penalty attached to the issuance of a license contrary to these provisions, we believe that the recorder has the right to demand reasonable proof of the guardianship asserted by a person purporting to give his consent to the issuance of the license to a minor. Parenthetically, we might say that the same rule would apply to any person who claimed to be the parent of a minor seeking a license. Of course, if the recorder is satisfied that the person claiming to be the parent or guardian of the minor is actually such parent or guardian, he might well waive written proof of such parentage or guardianship, but, in the absence of such actual knowledge, we believe that it would be reasonable to require written proof of such parentage or guardianship.

As to the second question you propose, we direct your attention to 39 C. J. S., Guardian and Ward, par. 186, reading, in part, as follows:

"Generally, the authority of a guardian is limited to the state in which he is appointed, and he cannot exercise rights of guardianship elsewhere without obtaining letters of guardianship from the local tribunals, but his authority is sometimes recognized in other states on the principle of comity or by virtue of express statutory provision."

Further, par. 187:

"Under the principles of comity, the courts of a state may recognize the rights of a foreign guardian with respect to his ward even though a local guardian has been appointed."

We have been unable to find any decisions of the appellate courts of Missouri construing the rights of a foreign guardian with respect to the precise question you have proposed. However,

as indicative of a relaxation of the general rule, we do note that no provision has been made by the General Assembly for the appointment of a guardian in the State of Missouri unless the minor has either property in this state or is domiciled here. Further, under the provisions of Sections 416 and 417, R. S. Mo. 1939, recognition is given to the rights of foreign guardians and curators with respect to the transfer of the property and effects of nonresident wards without the necessity of such foreign guardians or curators having been supplemented by domiciliary guardians or curators.

We think from the above that for the purpose of giving consent to the issuance of a marriage license permitting the marriage of a minor, the authority of a foreign guardian may be recognized upon suitable proof of the existence of such guardianship being submitted.

We do call your attention to the fact that in some states guardians do not have authority to consent to the marriage of their minor wards. Necessarily, in each instance recourse must be had to the statutes setting forth the powers of guardians to ascertain whether or not such guardians do have such power to consent to the marriage of their minor wards within the state of their domicile. With reference to the particular case you have cited, we note from Chapter 83, Section 6, Ill. R. S. 1941, that guardians do have authority to consent to the marriage of their minor wards.

With respect to the third question you have propounded, we believe it is answered by the provisions of Section 1885, R. S. Mo. 1939, reading as follows:

"Whenever any oath or affirmation is required by law to be taken before a particular court or officer, the same may be done before any other court or officer empowered to administer oaths, unless it is expressly prohibited; and when no court or officer is named by whom an oath may be administered or affidavit taken, the same may be done by any court or officer authorized to administer oaths."

Further, we direct your attention to the provisions of Section 1884, R. S. Mo. 1939, reading as follows:

"Every court and judge, justice and clerk thereof, and all justices of the peace, shall respectively have power to administer oaths and affirmations to witnesses and others concerning any thing or proceeding depending before them, respectively, and to administer oaths and take affidavits and depositions within their respective jurisdictions, in all cases where oaths and affirmations are required by law to be taken."

In addition to the officers mentioned in the last quoted section, there are many other state, county and municipal officers authorized to administer oaths for specific purposes. Necessarily, if an application is presented which has been sworn to before a person other than the recorder or one of his deputies, it devolves upon the recorder to ascertain whether such officer actually had authority to administer such oath.

CONCLUSION

In the premises, we are of the opinion (1) that a recorder of deeds may reasonably require written proof of the guardianship of a person purporting to give consent to the issuance of a marriage license authorizing the marriage of a minor; (2) that a guardian of a minor domiciled in a state other than Missouri has the right to give his consent to the issuance of a marriage license authorizing the marriage of such minor, provided that such guardian is empowered with such authority in the state wherein he was appointed; and (3) that the oath required under the provisions of Section 3370, R. S. Mo. 1939, may be administered before any officer authorized to administer oaths.

Respectfully submitted,

WILL F. BERRY, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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