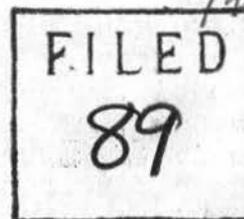


DOCUMENTARY EVIDENCE OF ) A certified copy of the record of a  
MARRIAGE CONTRACTED IN ) marriage contracted in the State of Arkansas  
ARKANSAS OFFERED IN ) is admissible in the circuit court, State of  
CIRCUIT COURT IN THE ) Missouri, if it is attested by the seal of  
STATE OF MISSOURI: ) office of the county official in Arkansas  
) known as clerk and recorder.

August 16th, 1949

257

Honorable B. C. Tomlinson  
Prosecuting Attorney  
St. Francois County  
Farmington, Missouri



Dear Sir:

We have your letter of June 21, 1949, in which you request an opinion of this department, your letter is as follows:

"I would like an opinion from your office in answer to the following situation:

"In a bigamy prosecution where the second marriage took place in Arkansas, can a certified copy of the Arkansas record of the marriage be introduced in evidence? If so, please outline the manner in which the record must be certified and authenticated and how the proof of the second marriage should be made by this record."

The first question is whether or not a certified copy of an Arkansas marriage record is admissible in the circuit court of Missouri when relevant for the purpose of proving bigamy in a bigamy prosecution, and the second question is whether or not assuming that a certified copy of such record from another state is admissible in the circuit court of Missouri, how must it be certified, or authenticated to render it admissible.

We have examined both the Missouri Statutes and the Statutes of the State of Arkansas relative to documentary evidence, and we find that the law of both Missouri and Arkansas provides that certified copies of marriage records shall be admissible in evidence in courts of record to show or prove the marriage in cases in which the proof of marriage is relevant to the issues before the court. Such provision of the Missouri law is to be found in Section 1869 R.S.A. Mo. 1939, and reads as follows:

"The record books of marriages to be kept by the respective recorders, in pursuance

of the provisions of law, and copies thereof certified by the recorder under his official seal, shall be evidence in all courts."

This statute is, of course, not in and of itself sufficient to render certified copies of the marriage records of other states admissible in evidence in Missouri courts, but taken in connection with similar statutory provisions in the State of Arkansas, which provisions we shall hereinafter set forth, and with the common law upon the subject, which we shall hereinafter undertake to set forth, we are of the opinion that said Missouri Statute above quoted, does have a significance worthy of consideration in the process of arriving at a conclusion and an answer to the question propounded. We shall now refer to the Walter L. Pope compilation of the Statutes of Arkansas for 1937, and to certain specific sections of the Arkansas law set forth in said compilation. Section 5143, Vol. I, of said compilation of the Arkansas Statutes is as follows:

"Papers on File in Public Offices"

"Copies of any record, book, report, paper or other document on file with, or of record in the office of any public officer or commissioner of the state, or of any county officer, or any excerpts from said record, book, report, paper or other documents, when duly certified by the officer or secretary of the commission in whose custody such record, book, paper or other document is found, shall be received in evidence in any court of this state with like effect as the originals thereof."

Section 11208 of said compilation of the Arkansas Statutes is as follows:

"There shall be established in each county in this state an office, to be styled the recorder's office, it shall be kept at the Seat of Justice."

Section 11209 of said compilation of the Arkansas Statutes

is as follows:

Circuit Clerk to be Recorder.

"The clerk of the Circuit Court shall be ex-officio recorder for his county and shall duly attend to the duties of such office, and shall provide and keep in his office well-bound books, in which he shall record in a fair and legible hand, all instruments of writing authorized or required to be recorded in the manner hereinafter provided."

Section 11214 of said compilation of the Arkansas Statutes is as follows:

"The seal of the circuit court shall be the seal of the recorder and shall be used as such in all cases in which his official seal may be required."

Section 9049 of said compilation of the Arkansas Statutes reads as follows:

"Upon the return of any license officially signed as having been executed and that the parties therein named have been duly and according to law joined in marriage, the clerk issuing the same shall make a record thereof in the marriage records of his office; and he shall immediately make out a certificate of such record giving names, date, book and page, together with the names of county and state and attach such certificate to the license and return the same to the party presenting it. Said certificate shall be signed officially by the clerk and sealed with the County Seal."

We comment that from the Arkansas Statutes last above quoted, it is apparent that the law of Arkansas provides that certified copies of public records kept pursuant to the provisions of the law by county officials whose duty it is to keep

such records are admissible in evidence in the courts of Arkansas, and it is apparent that the law of that State establishes the office of recorder, and makes the clerk of the circuit court ex-officio recorder, and it is further apparent that the Arkansas law imposes upon said recorder the duty to make a record of all marriages contracted, said records to be made when a return of the marriage license has been presented, and it is further apparent that the law of Arkansas provides that the circuit court shall have an official seal which shall be the official seal of the clerk of the circuit court when acting in his capacity as ex-officio recorder. It is further apparent that the law of Arkansas provides that marriage records duly certified shall be admissible in the courts.

We are of the opinion that the existence of these provisions of the Arkansas law warrants the conclusion that marriage records of the circuit clerk and recorder properly certified are admissible in the courts of that state, and we believe that said statutes above quoted warrant the opinion that when the certificate of said recorder certifies the document to be a true and correct copy of said marriage record, and when said certificate is attested by the seal of the recorder, said copy is duly certified and is admissible in the courts of the State of Arkansas.

We believe, therefore, that we have thus far demonstrated that marriage records of marriages contracted in the State of Missouri duly certified by the recorder are admissible in evidence in the Missouri courts, and that marriage records as to marriages contracted in the State of Arkansas when duly certified by the recorder are admissible in the Arkansas court, and that such marriage records in the State of Arkansas may be attested by the official seal of the recorder in that State. These facts, however, do not establish the proposition that duly certified marriage records of the State of Arkansas are admissible in evidence in the State of Missouri.

In order to determine whether or not such records of Arkansas marriages are admissible in the State of Missouri, we have endeavored to arrive at the common law involved in the question. In this connection we wish to quote as follows from Greenleaf on Evidence under the heading "Official Register":

Section 483, Greenleaf on Evidence  
Vol. I, Page 630.

"The next class of public writing to be considered consists of official registers, or books kept by persons in public office, in which they are required by statute or by the nature of their office, to write down particular transactions, occurring in the course of their public duties, and under their personal observation. These documents, as well as others of public nature, are generally admissible in evidence, notwithstanding their authenticity is not confirmed by those usual and ordinary tests of truth, the obligation of an oath, and the power of cross examining the persons on whose authority the document depends. The extraordinary degree of confidence it has been remarked, which is reposed in such documents is founded principally upon the circumstance that they have been made by authorized and accredited agents appointed for the purpose; but partly also on the publicity of their subject-matter. Where the particular facts are inquired into and recorded for the benefit of the public, those who are empowered to act in making such investigation and memorials are in fact the agents of all the individuals who compose the state; and every member of the community may be supposed to be privy to the investigation. On the ground therefore, of the credit due to agents so empowered and of the public nature of the facts themselves, and such documents are entitled to an extraordinary degree of confidence; and it is not necessary that they should be confirmed and sanctioned by the ordinary tests of truth. Besides this, it would be always difficult, and often impossible to prove facts of a public nature by means of actual witnesses upon oath".

**Section 484:**

"These books, therefore, are recognized by

law because they are required by law to be kept, because the entries in them are of public interest and notariety, and because they are made under the sanction of an oath of office, or at least under that of official duty. They belong to a particular custody, from which they are not usually taken but by special authority, granted only in cases where inspection of the book itself is necessary, for the purpose of identifying the book or the handwriting, or of determining some question arising upon the original entry; or of correcting an error which has been duly ascertained. Books of this public nature, being themselves evidence when produced, their contents may be proved by an immediate copy duly verified. Of this description are \* \* \*; the registers of births and marriages made pursuant to the Statutes of any of the United States; \* \* \* In short, the rule may be considered as settled that every document of a public nature, which there would be inconvenience in removing, and which the party has the right to inspect may be proved by duly authenticated copy." (Underscoring ours).

In view of the reasoning embodied in the above rather extensive quotation from Greenleaf on Evidence, we are of the opinion it is well established that the marriage and birth records of any state in the Union when duly certified are admissible in the courts of record of any sister state.

We are, therefore, of the opinion that the record of the marriage in Arkansas to which you refer when duly certified will be admissible in a trial for bigamy in the circuit court in the State of Missouri.

This then leaves the second question for consideration, and that is what constitutes sufficient certification or authentication of the record. In this connection we point out that where an official has a seal of office, his certificate reciting his official capacity and reciting the fact that the law of his

state authorizes him and imposes on him the duty of keeping such records, and reciting the fact that the copy being certified is a true and correct copy of such record, is a proper certificate when attested by his official seal, and constitutes due certification of the instruments offered in evidence, and should be admitted in evidence. In support of the proposition that attestation by the official seal of the certifying officer constitutes the necessary authentication, we desire to quote the following appearing under footnote 2, on page 627 of Volume I, of Greenleaf on Evidence, and particularly Section 3, under said footnote which reads as follows:

"The genuineness of an official document - i.e. the fact that it was executed by the officer purporting to execute it would ordinarily have to be proved as the genuineness of any other document is; but in many cases where the seal is appended the genuineness is assumed. The seal is in such cases usually said to be judicially noticed; but the case seems rather to be one of real presumption, or of the presence of a purporting official seal being treated as sufficient evidence of genuineness. - \* \* \* Thus, if a paper purporting to be a certified copy of an official marriage register is offered it must first be asked why the original is not produced; this objection being satisfied, the question then arises whether the register itself is receivable under the hearsay exception as testimony to the facts recorded in it, and again whether under the same exception the certified copy is receivable to show the register's contents; finally, the genuineness of the certified copy must somehow be indicated."

It is clear that the author here means that the prevailing doctrine is that the genuineness of the certified copy is established by its attestation by the official seal of the officer.

We further desire to call your attention to the case

of State vs. Shreve, 137 Mo. 1, l.c. 6. This is a case of prosecution for bigamy in which a certified copy of the record of the probate court at Leavenworth, Kansas, of the marriage of the defendant was admitted in evidence by the circuit court in the State of Missouri. It was pointed out by the Supreme Court in its opinion, that the laws of both Missouri and Kansas made certified copies of the record of marriages competent evidence, and it held that the objection to the admission of the Kansas marriage record was without merit. The following is a quotation from the opinion:

"Error is also predicated upon the admission in evidence of the certified copy of the record of the probate court of Leavenworth County, Kansas.

"This objection is utterly without merit. The laws of Kansas which provided for a license to marry; which authorized the probate judge to perform the marriage ceremony; which provided for the return of the license to the probate judge; which provided for recording the license and return thereon; and which made certified copies of the record thereof evidence in all courts, were in evidence. These laws are in harmony with our own and the same credit is due here to the action of the judge thus duly certified as would have been accorded to the same in Kansas. The objection was properly overruled."

#### CONCLUSION.

We are, therefore, of the opinion that if you obtain a certificate of the proper officer of the State of Arkansas, namely, the recorder, who is also the circuit clerk, attested by his seal of office to the effect that the marriage record,

a copy of which he is certifying, is a true and correct copy of the record in his office and reciting further that he is such recorder duly elected, or appointed and qualified under the law of the State of Arkansas, and that it is his duty under the law to keep records of marriages and record same, and if you offer such certified copy in evidence, and if you also offer in evidence therewith either the printed statutes of the State of Arkansas with the particular sections thereof designated which pertain to issuance of licenses to marry, return of marriage licenses after marriage, recordation of marriage by the recorder and establishment of the office of recorder and also pertaining to the duty of the recorder to keep records of marriages, namely, Sections 11208, 11209 and 9049 of the Walter L. Pope Compilation of the Statutes of Arkansas, 1937 edition above cited, or if printed volumes of such statutes are not conveniently available, then copies of said sections certified by the Secretary of State of either Arkansas or Missouri to be correct copies of said sections of the Arkansas law, said officer's certificate so certifying said section setting forth in full the title and page of such printed copies of said sections in accordance with the provisions of section 1814 R.S. Mo. 1939, then both your certified copy of marriage record, and your copies of said Arkansas laws will be admissible in evidence in the Circuit Court of the State of Missouri for the purpose of proving the purported second marriage of defendant.

Respectfully submitted,

APPROVED:

SAMUEL M. WATSON  
Assistant Attorney General

J. E. TAYLOR  
ATTORNEY GENERAL  
SMW:p