

RECORDED OF DEEDS: Consent of a parent or guardian is required when
MARRIAGE LICENSES: a license is issued under a court order to a
MINORS: minor under fifteen years of age. No three day
waiting period required by Section 451.040, RSMo
1959. May be waived by a circuit or probate court
for good cause shown. No requirements in Section
451.050, RSMo 1959, regarding serological tests
can be waived by any court except in case one of the
applicants is pregnant or on the death bed. Section
451.090, RSMo 1959, does not authorize a court
to order a license issued to an applicant over
fifteen years of age.

November 14, 1961



Honorable Harold L. Volkmer
Prosecuting Attorney
Marion County
Court House
Hannibal, Missouri

Dear Mr. Volkmer:

On August 3, 1961, you requested an opinion from this office on the following questions:

"1. What documents are necessary to be presented to the County Recorder of Deeds by an applicant for a marriage license prior to his issuing a marriage license to a person under fifteen years of age. What additional document, if any, is necessary to be presented to the County Recorder of Deeds if the applicant wishes to have the license without having to wait the three-day waiting period.

"2. What documents are necessary to be presented to the County Recorder of Deeds by an applicant prior to his issuing a marriage license to a male between the age of fifteen years and twenty-one years or a female between the age of fifteen and eighteen years. What additional document, if any, is necessary to be presented to the County Recorder of Deeds if the applicant wishes to have the license without having to wait the three-day waiting period.

Honorable Harold L. Volkmer

"3. What documents are necessary to be presented to the County Recorder of Deeds by an applicant prior to his issuing a marriage license to a male twenty-one years of age or older or a female eighteen years of age or older. What additional document, if any, is necessary to be presented to the County Recorder of Deeds if the applicant wishes to have the license without having to wait the three-day waiting period.

"4. Does the fact that a female applicant is pregnant with child relieve either a male or a female applicant from the necessity of providing any of the documents that may be required in the situations designated in questions 1, 2, and 3 above."

In a letter accompanying your request you state you understand marriage licenses are being issued to persons under fifteen years of age solely upon the order of a probate or circuit court and a health certificate as required by Section 451.050, RSMo. You also state that you understand marriage licenses are issued to males under the age of 21 and females under the age of eighteen and at least fifteen years of age solely upon the application of the probate court or circuit court and a health certificate as required by Section 451.050. You further state that the consent of the parents or guardian is not required before a license is issued under the above conditions. You also express your opinion as to what you consider is a correct construction of Sections 451.040 and 451.090. We wish to thank you for furnishing us with your views regarding the matter you have submitted.

On August 14, 1961, you submitted an additional question as follows:

"May a County Recorder of Deeds issue a marriage license upon order of the Probate Court to a male applicant who is under the age of twenty-one years or a female applicant who is under the age of eighteen years although no written consent of a parent or a guardian is provided. Would the same apply if the applicant is under fifteen years of age, and would the County Recorder of Deeds

Honorable Harold L. Volkmer

be in contempt for refusing to obey any such order."

In determining the answers to the questions you have submitted, certain statutory provisions must be considered. Section 451.040, RSMo 1959, provides in part:

"1. Previous to any marriage in this state, a license for that purpose shall be obtained from the officer authorized to issue the same, and no marriage hereafter contracted shall be recognized as valid unless such license has been previously obtained, and unless such marriage is solemnized by a person authorized by law to solemnize marriages.

"2. Before applicants for a marriage license shall receive a license, and before the recorder of deeds shall be authorized to issue a license, the parties to the marriage must, at least three days before the date they desire such license to be issued, present an application for the license to the recorder of deeds. Upon the expiration of three days after the receipt of such application, duly executed and signed, the recorder of deeds shall issue the license, unless one of the parties withdraws the application.

"3. Provided, however, that said license may be issued on order of the circuit or probate court or a judge thereof in vacation of the county in which said license is applied for, without waiting three days as herein provided, such license being issued only for good cause shown and by reason of such unusual condition as to make such marriage advisable."

Subsections 4, 5, and 6 of the above statute are immaterial to the questions under consideration and are not quoted herein.

It should be observed that under subsection 2, quoted above, applicants for a marriage license must present their

Honorable Harold L. Volkmer

application at least three days before the date they desire a license and the recorder of deeds must wait at least three days after the date of application before a marriage license may be issued.

Subsection 3, quoted above, provides in substance that a marriage license may be issued on an order of the circuit court or probate court or judge thereof in vacation in the county where the license is applied for without waiting the three day period when the court finds good cause therefor and such unusual conditions as to make such marriage advisable.

It is our opinion the only authority given the circuit court or probate court under subdivision 3 is to determine whether the license should be issued without waiting for the three day waiting period. This section does not authorize said courts to waive compliance with any other statutory provisions other than the three day waiting period.

Section 451.090, RSMo 1959, provides as follows:

"1. 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.

"2. 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.

"3. The recorder shall state in every license whether the parties applying for same, one or either or both of them, are

Honorable Harold L. Volkmer

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."

Subsection 2 and 3, in substantially the same form and substance, were enacted in 1881 and provided that no recorder should issue a license to any male under twenty-one years of age or any female under the age of eighteen without the consent of a parent or guardian (Laws 1881, page 162). Under this statute a person under the age of fifteen years could obtain a license with parent's consent.

In 1919 the statute as enacted in 1881 was amended by adding subsection 1, which provides that no recorder shall in any event except as therein provided issue a license authorizing the marriage of any person under fifteen years of age, provided, however, said license may be issued on an order of the circuit court or probate court for good cause being shown and by reason of such unusual conditions as to make such marriage advisable. Under this statute only on the orders issued by a court on a finding of good cause and under such unusual conditions which the court considers makes such marriage advisable can a license be issued for the marriage of a child under fifteen years of age.

The evil which the statute as amended in 1919 sought to remedy was the consummation of marriages of children under the age of fifteen years even though the parents or guardian had consented without regard to whether such marriages were advisable. It is our opinion the amendment created an additional safeguard in the public interest, limiting the otherwise mandatory result which theretofore had followed from the giving of parental consent but it did not eliminate the necessity for such consent.

Subdivision 2 of Section 451.090, supra, provides 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 without parental or guardian's consent. The word "any" as so used would necessarily include males and females under the age of fifteen years as well as those above said age. That such was the intent would also

Honorable Harold L. Volkmer

appear from the fact that subsection 3 of said statute requires the recorder to state on every license (if the male is under twenty-one years or the female is under eighteen years) the name of the father, mother or guardian consenting to such marriage.

It is our view Section 451.090, supra, when read as a whole and harmonizing all the provisions in accordance with requisite rules of statutory construction, should be construed to mean:

1. No license may be issued to any male under the age of twenty-one or any female under the age of eighteen years except with consent of the parent or guardian.

2. In no event shall such consent of the parent or guardian be effective to authorize the issuance of a license to a person under fifteen years of age unless the proper court has also issued the requisite court order. That is to say, as to children under fifteen years of age, a court order is necessary in addition to parental consent but not as a substitute for it.

It is also our opinion that subsection 1, supra, does not confer authority or authorize a circuit court or probate court to order a license issued to persons over the age of fifteen years who apply for such license without the consent of the parent as required by subdivision 2 of said section. Therefore, there is no authority under this section for the circuit court or probate court to order a marriage license issued to any applicant over the age of fifteen even on the basis that unusual conditions make such marriage advisable. The fact that one of the parties is pregnant at the time of the application does not alter this rule or eliminate the requirement of parental consent.

Section 451.050, RSMo 1959, requires applicants for a marriage license to file with the recorder certain laboratory reports and affidavits as to applicants' physical condition regarding syphilis before a marriage license shall be issued. It applies to all applicants without regard to the age of the applicant. This section expressly states that the recorder may waive the requirements of this statute if a certificate of a physician is filed stating that an applicant is pregnant. It does not authorize the court to waive this statutory requirement.

CONCLUSION

It is our opinion that Section 451.040, RSMo 1959, authorizes a circuit court or probate court or judge thereof

Honorable Harold L. Volkmer

in vacation for good cause shown and by reason of such unusual conditions which make such marriage advisable, to order the license issued without waiting three days after the application is made before the license issued as required by subsection 2 of Section 451.040. It is our opinion this section authorizes the court to waive the three day waiting period but does not authorize said courts to waive any other statutory requirement such as the serological test of Section 451.050 or the parent's consent as required by Section 451.090.

It is our opinion that Section 451.090, RSMo 1959, authorizes a circuit court or the probate court in the county where the application is made for a marriage license for the marriage of a person under fifteen years to order the license issued, when the court finds good cause exists and such unusual conditions as to make such marriage advisable. However, consent of the parent or guardian must be obtained before the recorder shall issue the license.

It is also our opinion that subdivision 1 of Section 451.090, RSMo 1959, does not authorize or empower the circuit or probate court to order a license issued to an applicant over the age of fifteen years even though the facts and conditions exist that would make the marriage advisable.

It is our further opinion that the requirements of Section 451.050, RSMo 1959, that certain reports and affidavits be filed with the recorder as to the applicants' physical condition regarding syphilis are applicable even when a court order is issued under Section 451.040 or under 451.090. However, said requirements may be waived by the recorder when a certificate of a physician is filed stating that one of the applicants for such license is pregnant.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Moody Mansur.

Very truly yours,

THOMAS F. EAGLETON
Attorney General