

Opinion No. 370 Ans. by Letter
(Stephan)

November 7, 1963



Honorable Frank Conley
Prosecuting Attorney
Boone County
Columbia, Missouri

Dear Mr. Conley:

This is in response to your recent request for an opinion of this office relating to the validity of certain marriages contracted in the State of Arkansas. As you indicated in correspondence subsequent to your original letter, "The problem has arisen as a result of newspaper articles indicating that Arkansas has declared void certain marriages wherein the parties to same are under a certain age. It is my recollection from a reading of such articles that the statute in question was enacted by the Arkansas legislature in about 1943."

We requested the Attorney General of Arkansas to advise us of the specific nature of this problem and received from him a letter which reads in part as follows:

"The inquiries which you have received are resulting from the Social Security Administration's refusal to recognize as valid, or qualify for benefits, any marriage consummated subsequent to a 1941 Act in which either party was below the required minimum age. A copy of this Act, codified as Ark. Stats. § 55-102 (1947), is enclosed.

"Also enclosed is a copy of a memorandum opinion which represents our interpretation of the statute and the marriages regulated by it. This opinion does not in any way bind the Social Security Administration."

The memorandum opinion referred to in the above quotation was issued on July 19, 1963, to certain residents of Missouri. The pertinent portions of that opinion provide as follows:

"I am writing you in reply to your letter in which you inquire about the legality of marriages in Arkansas where the age of one or both of the parties is less than the legal minimum age as required by Ark. Stats. § 55-102 passed in 1941.

"Although it is our opinion that such under age marriages were legal under Arkansas law until declared invalid by a competent Court, the Regional Office of the Social Security Administration does not agree with our interpretation. Mr. Patrick A. Hebert, the Deputy Regional Attorney for the Department of Health, Education and Welfare has held that the Social Security Administration interprets these marriages as being void and hence, widows of such marriages are ineligible for social security benefits.

"We regret that the Social Security Administration has taken the position that they have on this question. However, our office has no control over their decision. We are sincerely hoping that a proposed curative bill in the next session of the Arkansas Legislature to remedy this situation will become law and make these under age marriages valid. If this is done, we hope Social Security will then accept these marriages as legal and widows of such marriages will be eligible for social security benefits in the normal course of law. You can rest assured that our Office will offer any assistance we can to the passage of this bill and the recognition of marriages such as yours.

"As concerns the children of such marriages, their status as legitimate has never been questioned, Ark. Stats, Ann. § 61-104 (1947) provides:

The issue of all marriages deemed null in law, or dissolved by divorce, shall be deemed and considered as legitimate."

For the sake of completeness, we will set out the pertinent provisions of the Arkansas statute in question, Section 55-102 (1947):

"Every male who shall have arrived at the full age of 18 years, and every female who shall have arrived at the full age of 16 years, shall be capable in law of contracting marriage; if under those ages, their marriages shall be absolutely void.

"Provided that males under the age of 21 years and females under the age of 18 years shall furnish the clerk, before the marriage license can be issued, satisfactory evidence of the consent of the parent or parents or guardian to such marriage, and, in all cases where the consent of the parent or parents or guardian is not provided or there shall have been a misrepresentation of age by a contracting party, such marriage contract may be set aside and annulled upon the application of the parent or parents or guardian to the Chancery Court having jurisdiction of the cause."

This office will not undertake to question an interpretation of an Arkansas statute by the Attorney General of that state. Consequently, we are of the opinion that such marriages are valid unless dissolved by a court of competent jurisdiction.

We might note parenthetically that the recorder of deeds of Boone County could, under the circumstances which you describe, properly issue a marriage license to the parties who contracted such marriages in Arkansas as have been ruled invalid by the regional office of the Social Security Administration. If that office were correct in its interpretation of Arkansas law, the parties to such marriages would presumably be eligible for a license in this state. If the parties are validly married to each other at this time, we do not believe that such marriage presents any statutory disqualification for the issuance of a marriage license when the applicants are married to each other at the time they apply for the license.

Honorable Frank Conley

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Section 451.030, RSMo 1959, declares all marriages void "where either of the parties has a former wife or husband living, . . . unless the former marriage shall have been dissolved." However, this statute was obviously directed at pre-existing relationships with third parties (that is, "former" rather than present marriages) and not at relationships such as we have here. None of the other statutory prohibitions against the issuance of marriage licenses contemplates situations of this type, Sections 451.020, 451.050, 451.090, RSMo 1959, and we can perceive no valid reason for refusing to issue a license under the circumstances described in your letter.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

AJS:lt