

**MARRIAGE:** The statutory prohibitions against interracial  
**MISCEGENATION:** marriages as set forth in Section 451.020, RSMo  
Supp. 1965, and Section 563.240, RSMo 1959, are  
unconstitutional.

OPINION NO. 308 (1967)

July 6, 1967

Honorable Forrest P. Carson  
Chairman  
Missouri Commission on Human Rights  
314 East High Street  
Jefferson City, Missouri



Dear Mr. Carson:

This official opinion is issued in response to your request for a ruling. You inquire as to whether Section 451.020, RSMo Supp. 1965, and Section 563.240, RSMo 1959, are unconstitutional.

These statutes prohibit interracial marriages and are commonly referred to as antimiscegenation statutes. The relevant provisions of Section 451.020, read as follows:

"All marriages between . . . white persons and negroes or white persons and Mongolians . . . are prohibited and declared absolutely void; and it shall be unlawful for any city, county or state official having authority to issue marriage licenses to issue such marriage licenses to the persons heretofore designated, and any such official who shall issue such licenses to the persons aforesaid knowing such persons to be within the prohibition of this section shall be deemed guilty of a misdemeanor; and this prohibition shall apply to persons born out of lawful wedlock as well as those in lawful wedlock."

Section 563.240, provides:

"No person having one-eighth part or more of negro blood shall be permitted to marry any white person, nor shall any white person be permitted to marry any negro or person having one-eighth part or more of negro blood; and every person who shall knowingly marry in violation of the provisions of this section shall, upon conviction, be punished by imprisonment in the penitentiary for two years,

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or by fine not less than one hundred dollars, or by imprisonment in the county jail not less than three months, or by both such fine and imprisonment; and the jury trying any such case may determine the proportion of negro blood in any party to such marriage from the appearance of such person."

On June 12, 1967, the Supreme Court of the United States handed down its opinion in the case of Loving et ux. vs. Commonwealth of Virginia, No. 395.--October Term, 1966. The appellants, Mr. and Mrs. Loving, had been sentenced for violating Virginia statutes banning interracial marriages. The Court held the Virginia statutes as unconstitutional and void.

Two of the Virginia statutes before the Court read as follows:

"All marriages between a white person and a colored person shall be absolutely void without any decree of divorce or other legal process." Virginia Code Annotated, Section 20-57 (1966).

"If any white person intermarry with a colored person, or any colored person intermarry with a white person, he shall be guilty of a felony and shall be punished by confinement in the penitentiary for not less than one year nor more than five years." Virginia Code Annotated, Section 20-59.

The Missouri statutes, quoted above, and the Virginia statutes ruled upon by the Court are, in all material aspects, the same. Further, it is to be noted that the United States Supreme Court took cognizance of the Missouri statutes and those of the fourteen other states with such statutes.

What the Court said in ruling upon the Virginia statutes clearly strikes down all antimiscegenation statutes. The Court stated:

"There is patently no legitimate overriding purpose independent of invidious racial discrimination which justified this classification . . . . There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause.

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" \* \* \* The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.

"Marriage is one of the 'basic civil rights of man' fundamental to our very existence and survival . . . . To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive to the principles of equality at the heart of the Fourteenth Amendment, is surely to deprive all of the State's citizens of liberty without due process of law. The Fourteenth Amendment requires that freedom of choice to marry not be restricted by invidious racial discriminations. Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual and cannot be infringed by the State."

CONCLUSION

Therefore, it is the opinion of this office that the statutory prohibitions against interracial marriages as set forth in Section 451.020, RSMo Supp. 1965, and Section 563.240, RSMo 1959, are unconstitutional.

The foregoing opinion, which I hereby approve, was prepared by my assistant Louis C. DeFeo, Jr.

Yours very truly,

  
NORMAN H. ANDERSON  
Attorney General