

OFFICERS: Recorder of Deeds should not send out signed and sealed marriage licenses to Justices of the Peace to be used as needed, but should issue them himself upon request.

April 12, 1943

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Miss Leoma Maddox
Recorder
Linn County
Linneus, Missouri

Dear Miss Maddox:

Your question, apparently, is whether or not the custom of the Recorder of Deeds, in sending out signed and sealed marriage licenses to Justices of the Peace can continue. Under Section 3364, R. S. Missouri 1939, the marriage license shall be obtained from the officer therein authorized.

"Previous to any marriage in this state, a license for that purpose shall be obtained from the officer herein authorized to issue the same, and no marriage hereafter contracted shall be recognized as valid unless such license has been previously obtained, * * * * *."

Section 3365, R. S. Missouri 1939, specifically provides for the Recorder to issue the license.

"The recorders of the several counties of this state, and the recorder of the city of St. Louis, shall, when applied to by any person legally entitled to a marriage license, issue the same, * * * * *."

Section 3366, R. S. Missouri 1939, provides for the recording of licenses which are issued.

"The recorder shall record all marriage licenses issued in a well-bound book kept for that purpose, * * * * *."

Section 3367, R. S. Missouri 1939, provides the penalty for any default in the issuance, recording or returning of the license.

"If any recorder willfully neglect or refuse to issue a license to any person legally entitled thereto on application, on payment or tender of the fee provided for in the next preceding section, or shall fail or refuse to record such license, with the return thereon, as herein provided, he shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than five nor more than one hundred dollars. Every officer or person who shall fail to return a license within ninety days after the issuing of the same, or who shall make a false return thereon or any recorder who shall willfully make a false record of any marriage license or return thereon, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished as provided in the preceding part of this section. "

In the case of State ex rel v. Moore, 70 S. W. 512; 96 Mo. App. 431, l. c. 435 and 436, the court ruled that it was the duty of the recorder to act under the statutes. The court specifically stated:

"* * * * *After a rather full examination of the entire marriage-license statute in all its length and breadth, we have been unable to escape the conviction that the Legislature intended that the licenses authorized by it should be placed on record by the recorder issuing them when issued, and in accordance with that conviction we must so rule. * * *

"* * * * * it would seem that a recorder provided with such a record book could without the least inconvenience record a license when issued by him, filling out a blank in his record of marriage licenses, and, later on, when the return is in fill out the blank for it immediately following the record of the license, and thus complete the record of both instruments. * * * * *

CONCLUSION.

It is the opinion of this office that in view of the above quoted sections it is the duty of the Recorder of Deeds to issue the licenses and under Section 3365, supra, to determine whether or not the persons applying for the licenses are legally entitled thereto. The practice of sending out signed and sealed marriage licenses prevents the Recorder from complying with this statutory mandate. It is the opinion of this office that this practice must stop immediately for the above stated reason.

Respectfully submitted

WILLIAM C. BLAIR
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APPROVED:

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WCB:FAW