MARRIAGE: Marria ... l wher rformed after expiration of licen. date.

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Mr. Alfred F. Moeller
Prosecuting Attorney
Ste. Genevieve County
St. Genevieve, Missouri

Dear Sir:

This acknowledges your request, which is as follows:

> "Section 3364A (Laws of Missouri 1943 Page 641) contains a provision that a marriage license shall be void after ten days from the date of issuance.
>
> "Section 3364C (Laws of Missouri 1943 Page 642) contains a provision that the validity of any marriage under the act shall not be impaired by any violations under Section 3364A.
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> "The Recorder of Deeds of this County has reported to me that the returns on several licenses issued by his office show that the marriages were performed more than ten days after the date of the issuance of the license. He wants to know whether these marriages are void under Section 3364A, or whether they are validated under the provisions of Section 3364C."

Replying thereto, your question appears to be this, is a marriage void where the contracting parties have complied with all of the law, except that the marriage ceremony was performed more than ten days after the issuance of the license.

Your question is evidently based on that provision in Section 3364-A, Laws 1943, page 641, which, in speaking of the

marriage license required of those who contemplate marriage, provides:

> " * * * * said license shall be void after ten (10) days from the date of issuance."

The courts in Missouri, as well as generally over the nation, make a definite distinction between penalizing parties who offend against laws relating to marriage on the one hand, and the validity of such marriages on the other hand. The general rule of law followed by the Missouri courts is that a ceremonial marriage is not void unless the statute prohibits such a marriage. There are several classes of marriages which are by the statute prohibited. Bigamous marriages and common-law marriages are illustrations thereof.

However, the marriages under the circumstances considered in this opinion are not those which are prohibited by law. The statute does not say that the marriage itself shall be void if the marriage ceremony is not performed within ten days after the issuance of the license. It merely provides that the license shall be void. The courts in this state have held that a marriage itself is valid although no legal license was procured.

In State v. Eden, 169 S.W. (2d) 342 (1943), Division No. 2 of our Supreme Court affirmed a conviction of bigamy. The facts were that defendant had in 1939 procured from a justice of the peace a marriage license to marry Edith Box. In July, 1941, the defendant procured from another justice of the peace a marriage license to marry Letta Pancake. Neither license was issued by the recorder of deeds, as required by law. In both instances the defendant "went through the form of the two ceremonial marriages in question." After procurement of each said so-called license, living together and cohabitation followed and a child was born to the first union, and the second wife became pregnant. Thereafter defendant was prosecuted for bigamy and his defense was that the second marriage was not bigamous, because he was never legally married to the first wife who was still living. The court held the first marriage was not void but, at most, voidable (on which question of voidability the court did not pass) and not having been legally voided was a marriage, and that our statute saying "no marriage shall be recognized as

valid," etc., means nothing more than "it shall not be recognized as valid on judgment, and certainly not that it is ipso facto and utterly void." The court said at l.c. 344-5:

> "Section 3364 says 'no marriage hereafter contracted shall be recognized as valid unless' a license for that purpose shall have been previously obtained from the officer authorized to issue the same. The same section further provides, 'Common-law marriages hereafter contracted shall be null and void.' These provisions were enacted by the 51st General Assembly, Laws 1921, p. 468, by an amendment which added all of the matter now contained in said section following the second comma therein. It is clear said amendment was designed to prohibit nonceremonial or common-law marriages, which until that time were sanctioned, notwithstanding the statute which then read, 'Previous to any marriage in this state, a license for that purpose shall be obtained.' Sec. 7302, R.S. 1919. This is made manifest by the express words of the statute declaring all such marriages thereafter contracted to be 'null and void.' But the section itself contains an exception -- that with relation to the want of authority in any person solemnizing a marriage 'under the next preceding section, if consummated with the full belief on the part of the persons, so married, or either of them, that they were lawfully joined in marriage.' But the 'want of authority' therein specified has no reference to the matter of a license. It is not contended there was any invalidity in the first marriage other than as declared by Sec. 3364, and so we are not concerned with other sections which declare certain marriages 'absolutely void,' such as those between uncles and nieces, aunts and nephews, first cousins, etc., Mo. R.S.A. Sec. 3361; nor, for the moment, with Sec. 3362 making like provision as to 'all marriages, where either of the parties has a former wife or

> husband living, * * * unless the former marriage shall have been dissolved.' As we construe the language of Sec. 3364, 'no marriage hereafter contracted shall be recognized as valid,' etc., it was not intended to render void ab initio a ceremonial marriage solemnized under the forms of, and in apparent compliance with, the marriage statutes, as in the case at bar. As to such marriage (even assuming the truth of defendant's testimony touching the circumstances under which he procured the license), it is our conclusion the language just quoted, when taken in connection with the further provision that 'no marriage shall be deemed or adjudged invalid' (for the reason therein specified) can, in no event, mean anything more than it shall not be recognized as valid on judgment, and certainly not that it is ipso facto and utterly void. In other words, the most that can be said of the defective issuance of the license, if such it was, is that it rendered the marriage merely voidable, and it was therefore to be treated as valid until declared void by competent authority; and a voidable marriage will support an indictment for bigamy. 10 C.J.S., Bigamy, Sec. 4; 7 Am. Jur., Bigamy, Sec. 9. We express no opinion as to whether, on the facts assumed, the defect was so gross as to have justified a decree of nullity in a proceeding brought for that purpose. It is enough to say it had not been so declared, and thus brought within the exception created by the fourth clause of Sec. 4645, supra. * * * *"

In addition to the above reasons why such marriage is not void, Section 3364-C, Laws 1943, page 642, specifically provides that if the contracting parties are otherwise qualified for marriage the validity of the marriage shall not be impaired by any violation of the provisions of Section 3364-A, supra.

Conclusion.

It is our opinion that a marriage is not rendered void

because of the fact that the marriage ceremony is performed more than ten days after the date of the issuance of the license therefor.

Very truly yours,

DRAKE WATSON
Assistant Attorney General

APPROVED:

J. T. TAYLOR
Attorney General

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