

MARRIAGES: Ceremony - where performed.

July 30, 1943



Honorable Martin E. Morthland
Judge of the County Court
Macon County
Decatur, Illinois

Dear Sir:

We acknowledge receipt of your letter of July 28, 1943, requesting an opinion, which letter is as follows:

"Under the Selective Service Act, I was appointed Chairman of the Advisory Board for Macon County, Illinois. Recently, a Selectee one Joseph Hicks, of Marcoa, Illinois, called at my office with an original Certificate of Marriage purporting to have been executed by Justice of the Peace George R. Hart of St. Louis County, Missouri. This Certificate indicated that said Justice of the Peace had married Joseph Hicks and Miss Lorraine Johnson on September 3, 1939.

"This Certificate apparently had been issued by the Recorder of Franklin County, Missouri, but the words Franklin County had been obliterated and above the obliteration appeared the designation, book, and page. It thus is evident that the License was issued by the Recorder of one County and the marriage was celebrated in another County.

"Mr. Hicks is desirous of making an allotment to his wife and a minor child born subsequent to the foregoing marriage but has received information that the government would not honor a Marriage Certificate with an obliteration as above described. The Clerk of this County telegraphed to the

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Recorder of St. Louis County, a photostatic copy of which is enclosed herewith, making inquiry about the recording of this marriage and received a reply, a photostatic copy of which is herewith enclosed, stating that there was no record of the same in St. Louis County. He then telegraphed the Recorder of Franklin County, a photostatic copy of which is herewith enclosed, inquiring about the recording of said marriage and the validity of the same, and received a reply, a photostatic copy of which is enclosed herewith, setting forth that said marriage is recorded in Franklin County and that said marriage is valid.

"We realize that the contract of marriage is governed by the laws of the respective States wherein said marriage is celebrated and are not familiar with the Laws of Missouri on this point. In Illinois, a marriage must be celebrated in the County where the license is issued.

"I, therefore, request you to give me an opinion with reference to the validity of the foregoing marriage celebrated by Justice of the Peace, George R. Hart, at St. Louis County on September 3, 1939."

Section 3363 R. S. Missouri, 1939, providing by whom marriages may be solemnized, is as follows:

"Marriages may be solemnized by any judge of a court of record or any justice of the peace, or any licensed or ordained preacher of the gospel, who is a citizen of the United States or who is a resident of and a pastor of any church in this state."

person authorized under the laws of this state, to solemnize marriage between A B of _____, county of _____ and state of _____, who is _____ the age of twenty-one years, and C D of _____, in the county of _____, state of _____, who is _____ the age of eighteen years.

"If the man is under twenty-one or the woman under eighteen, add the followin:

"The father or mother or guardian, as the case may be, of the said A B or C D (A B or C D, as the case may require), has given his or her assent to the said marriage.

"Witness my hand as recorder, with the seal of office hereto affixed, at my office, in _____, the _____ day of _____, 19____. _____, recorder.

"On which said license the person solemnizing the marriage shall, within ninety days after the issuing thereof, make as near as may be the following return, and return such license to the officer issuing the same:

"State of Missouri,)
County of _____) ss.

"This is to certify that the undersigned _____ did at _____ in said county, on the _____ day of _____ A. D. 19____, unite in marriage the above-named persons."

It will be noted that there is no provision in any of these statutes that direct: that the marriage must be performed in the county in which the marriage license is issued. It will also be noted that Section 3363, supra, provides that any judge of a court of record, or any justice of the peace, or any licensed or ordained preacher of the gospel, who is a citizen of the United States, or who

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is a resident of and a pastor of any church in this State may solemnize marriages. The prescribed form of license contained in Section 3365, supra, authorizes any judge, justice of the peace, licensed or ordained preacher of the gospel or other person authorized under the laws of this State to solemnize marriages between A B etc. It has been a common practice since these statutes became the law of this State, for marriage licenses to be obtained in one county and the ceremony performed in another. The legality of this procedure apparently has never been questioned, because we are unable to find a decision of any court involving this question.

CONCLUSION

It is, therefore, the opinion of this department, that a marriage ceremony may be performed in a county other than the county in which the marriage license was issued.

Respectfully submitted

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APPROVED BY:

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Attorney General

LAP:RW