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ARIZONA ATTORNEY GENERAL

March 8, 1960

Honorable S. Earl Pugh
State Representative
House of Representatives
State Capitol
Phoenix, Arizona

Originator	STIRLEY NEWELL
I Concur	WADE CHURCH LES HARDY
I Concur	BETSY FREDERICKSON

Dear Mr. Pugh:

This is in reply to your letter of February 23, 1960, in which you have asked certain questions based upon an assumed set of facts.

Your assumed facts are that a male under eighteen years of age and a female sixteen years of age obtain a marriage license from the proper Arizona authorities; that in so doing the father of the male applicant falsely states his son's age to be eighteen and gives his consent in writing; that the mother of the female applicant gives her consent in writing with knowledge of the facts concerning the male applicant's age; that both the applicants have full knowledge of the facts; and that a proper marriage ceremony is then performed in Arizona.

You asked whether the marriage is legal. It is the opinion of this office that under present Arizona law such a marriage would be valid until dissolved by annulment or divorce.

The Arizona statutes provide that males under eighteen years of age shall not marry, with certain exceptions (A.R.S. § 25-102), but there is no provision regarding such a person's status if he does obtain a license and marries.

Courts almost invariably hold that violation of a statute concerning the age for marriage will not of itself render the marriage null and of no legal effect, in the absence of statute specifying this result. Such might be ground for annulment or divorce, but definite court proceedings would be necessary in order for such a marriage to be voided.

Your assumed facts state that the mother of the female applicant is the parent giving consent. Under A.R.S. § 25-122, the father's consent is required unless the parents are living apart, in which case the parent having custody of the applicant gives the consent. There is no provision voiding a marriage based on a license obtained through improper consent. Again, under such statutes the courts hold such a marriage valid until dissolved by annulment or divorce.

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You ask whether either or both of the consenting parents in your assumed facts would be subject to criminal prosecution for the father's mis-statement of the son's age.

The Arizona statutes provide that it is a misdemeanor for one to knowingly issue a marriage license or certificate of marriage without consent in writing where the male is under twenty-one years or the female under eighteen years, but there is no provision dealing specifically with the giving of consent or mis-statement of age.

It is possible that this situation would fall under the broad provisions of the perjury statutes, particularly A.R.S. § 13-561, perjury by single statement, and A.R.S. § 13-570(A), perjury by subornation. Also, it is possible that the general misdemeanor provision contained in A.R.S. § 25-103.09, pertaining to violation of Article 1 of that chapter, would be of some effect.

Very truly yours,

WADE CHURCH
The Attorney General

STIRLEY NEWELL
Assistant Attorney General

SN:ec

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