

November 6, 1950

Op. No. 50-246

Belle D. Hall, Clerk
Superior Court, Pima County
Courthouse
Tucson, Arizona

n/R

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ARIZONA ATTORNEY GENERAL

Dear Madam:

Tucson

This is in reply to your letter of October 4, 1950, wherein you asked the following question:

"At this time I am writing to ask if, in event a notary public should marry after taking out her commission and having her seal made, could she use her maiden name and said seal in notarizing document until her commission expired, or would it be necessary for her to take out a new commission in her married name and have the seal made to conform?"

The Legislature enacted and has amended Chapter 14 of our Code, known as Sections 14-101 to 14-106, inclusive, entitled "Notaries Public and Commissioners of Deeds". This entire enactment and cases cited under it do not touch your question. Section 14-101 makes appointment of officer for four years. The person is appointed, not the name.

Our statutes, Article 3 of Chapter 63, ACA 1939, entitled "Rights of married persons" gives us some light on this. Quoting from Section 63-303, we have this:

"Married women shall have the sole and exclusive control of their separate property, and the same shall not be liable for the debts or obligations of the husband, and may be sold, mortgaged, conveyed

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or bequeathed by them as if they were unmarried. Married women of the age of twenty-one (21) years and upwards shall have the same legal rights as men of the age of twenty-one (21) years and upwards, except the right to make contracts binding the common property of the husband and wife, and are subject to the same legal liabilities as men of the age of twenty-one (21) years and upwards."

Section 10, under the title "Married Woman's Name", as found in 38 Am. Jur., page 600, says:

"A married woman's name consists, in law, of her own Christian name and her husband's surname, marriage conferring on her the surname of the husband. Her correct first name is her maiden Christian name, and not the Christian name of her husband.

The question of the correct middle name of a married woman is unimportant where the law does not recognize a middle name or initial. While there is no direct authority as to the name or initial to be used by a married woman for her middle name, the courts have quite generally recognized the use of the middle name or initial of her maiden name to be proper, as against the use of the husband's middle name or initial, the same as in the case of her Christian name. The prefix 'Mrs.' is a mere title and no part of her legal name."

The annotation, as found on page 417 of 35 A. L. R. under the heading "correct name of married woman", has this to say:

"There are many cases involving the sufficiency of the name used in a judgment, pleading, process, etc., to identify and describe a married woman; but comparatively few of them have, as in the reported case (Brown v. Reinke, ante, 413), undertaken to give the correct form for naming a married woman. So far as the cases cited in the annotation bear upon the sufficiency of the form used in a particular case, as distinguished from its correctness, they are illustrative merely, and not exhaustive. It would seem that the question, to which the annotation is confined, as to the correct form, might be of practical as well as academic importance in connection with rules and regulations for the future conduct of administrative officers.

A married woman's name consists, in law, of her own Christian name and her husband's surname. (Cases cited) And that such is the correct form of her name is stated, in effect, in Harper v. Hudgings (1919) --Mo. --, 211 S.W. 63, State, Elberson, Proscutrix, v. Richards (1880) 42 N.J.L. 69, and Chapman v. Phoenix Nat. Bank (1881) 85 N.Y. 437.

There is, of course no dispute as to the correct form of the surname of a married woman, because, as stated in Chapman v. Phoenix Nat. Bank (N. Y.) supra; Rich v. Mayer (1889) 26 N.Y.S.R. 107, 7 N.Y. Supp. 69; Blanc v. Blanc (1897) 21 Misc. 268, 47 N.Y. Supp. 694; Uihlein v. Gladieux (1906) 74 Ohio St. 232, 78 N.E. 363; Freeman v. Hawkins (1890) 77 Tex. 498, 19 Am. St. Rep. 769, 14 S.W. 364, and Lane v. Duchac (1889) 73 Wis. 646, 41 N. W. 962, --on her marriage, the law confers on the wife the surname of her husband.

It has been held, as in the cases of Bogart v. Woodruff (1892) 96 Cal. 609, 31 Pac. 618, and Emery v. Kipp (1908) 154 Cal. 83, 19 L.R.A. (N.S.) 983, 129 Am. St. Rep. 141, 97 Pac. 17, 16 Ann. Cas. 792, that a married woman may be sued in her maiden name, but it was assumed in the former case, and stated in the latter case, that the true surname of the defendant was that of her husband."

The treatise under the heading "Acknowledgments" as found in 1 Am. Jur. page 354, discusses this matter fairly complete, but does not touch our particular point. We quote from Section 97, supra:

"The courts in a number of jurisdictions have taken the view that the omission from a certificate of acknowledgment of any statement as to the official position or authority of the officer issuing it will not render it invalid, at least where there is extrinsic evidence that he actually had authority. However, in other jurisdictions, certificates by one who does not give himself any official character in the certificate or subscription have been regarded as fatally defective. Under many statutes it has been held that the certificate must purport to have been executed by an officer authorized by law to take acknowledgments,-- that is, the official character of the person executing the certificate must appear upon the face of the writing. This requirement is satisfied by descriptive words appended to the signature; the body of the certificate need not contain a recital of the fact. It seems, also,

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That the instrument itself may be looked at in determining the character of the officer taking an acknowledgment.

It is presumed that the individual you are writing about secured her commission under the name, we might assume as Mary Smith, and afterwards married a man by the name of Jones. Her name would be Mary Jones now or Mary Smith Jones, as she may choose to use. If she continued to use her seal it would be necessary for her to sign acknowledgments in some manner to show that she was the same individual who was alluded to in the seal. She could sign this "Mary Jones, formerly Mary Smith" or "Mary Smith Jones, formerly Mary Smith", or "Mary Smith, now Mary Jones", or "Mary Smith Jones". She should make it clear in the actual signing of acknowledgments that she is the same individual to whom the commission was issued. If this woman follows the suggestions above it would not be necessary for her to secure a new commission and get a new seal until after the expiration of her present commission.

Very truly yours,

FRED O. WILSON
Attorney General

CHAS. ROGERS
Assistant Attorney General

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