

Yes
5/24/51



May 23, 1951
Op. No. 51-138

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Dorothy Titcomb, Clerk
Superior Court of Santa Cruz County
 Nogales, Arizona

Dear Miss Titcomb:

This acknowledges receipt of your letter of May 14, 1951.

Although it is the usual policy of this office, in pursuance of the law, to render opinions upon the request of state officers or departments only, we do feel that in a matter of state-wide concern such as is contained in your inquiry, we are pleased to offer you the following.

Your inquiry is:

"A great many of our marriages are between people who have been divorced in another state or Mexico within a year. * * *, one of our attorneys, has questioned my issuing licenses to anyone being divorced anywhere within the year."

The issuance of marriage licenses by Clerks of the Courts of the various counties in Arizona is governed by Section 63-103 ACA 1939. This section provides in part as follows:

"No marriage without license.--No persons shall be joined in marriage within this state until a license has been obtained for that purpose from the clerk of the superior court of the county in which one of the parties reside (resides), or in which the marriage is to take place. A person

desirous of marrying may apply to the clerk of the superior court for a license to marry. The clerk shall require such person to take and subscribe to an oath that he will truly depose and declare to the name and age of himself or herself, the place of residence, the race to which the parties belong and the relationship between the parties applying for such license. The oath shall be filed by the clerk and he shall then issue to said applicants a license directed to the persons, authorized by law, to solemnize the rites of matrimony, which shall be sufficient authority for any one of such persons to solemnize such marriage; * * *

This statute thus sets forth the specific duty imposed upon the Clerk to issue the marriage license to an applicant therefor and requires that the Clerk obtain certain specific information, namely, (1) the names, (2) the ages, (3) the place of residence, (4) the race, and (5) the relationship between the parties applying for such license.

When the applicants for the license provide this information and subscribe to an oath that the said information is true, it then becomes the duty of the Clerk to issue the license. It is not the duty of the Clerk to make further inquiry respecting any other matters, including previous marriages, divorces or any other information beyond the scope of the statute.

Thus it would appear that you have not been in error in issuing licenses to applicants of the class which you define in your inquiry, but that you have been correct in so doing, since there is no duty imposed upon you by law to require of the applicants any information beyond that prescribed in the statute and to require an oath to be subscribed as to the verity of such information as is supplied.

With kindest personal regards and best wishes, I am

Sincerely yours,

FRED O. WILSON
Attorney General

FOW:mw

A Discussion of Laws Prohibiting Marriage Within
Certain Periods after a Divorce has been Granted
Either Party to a Proposed Marriage.

Laws prohibiting marriage within certain periods after a divorce has been granted either party to a proposed marriage may be divided into FIVE Classes, as follows:

FIRST: Where the law specifically provided that a marriage consummated within the prohibited period shall be null and void:

In this class may be named the States of South Dakota, Kansas, Illinois, Wisconsin, West Virginia, Wyoming and others, and when the law specifically declares such marriages void, then their invalidity is without question.

SECOND: Where the law provides that a divorced person shall be incapable of entering into a valid contract of marriage within the prohibited period.

In this class may be named Washington, Oregon, Nebraska and others, and the courts hold that such laws prevent any person from entering into a valid marriage within the prohibited period.

THIRD: Where the law by express terms or by necessary implication suspends the operation of a decree of divorce for a limited period, or during the time an appeal may be taken.

In this class may be named California, Colorado, Rhode Island, Delaware, and others. The courts hold that such a condition prevents a valid marriage by either of the spouses to such a divorce within the prohibited period.

FOURTH: Where the statutes are held to be declarations of Public Policy, and that it would be against Public Policy to permit either party to a divorce to marry again within the restricted period.

Massachusetts is the principal state so pronouncing by law and by the decisions of its courts that it would be against Public Policy for the parties to a divorce to marry again within the restricted period, and such a law, seemingly, would prevent a valid marriage within the time restricted by law.

FIFTH: Where the law simply states that a divorced person shall not marry within some specified period after a decree of divorce has been granted.

States that have had or now have such a provision in their laws, similar to the law in Arizona, are as follows: North Dakota,

Minnesota, Iowa, Oklahoma, Mississippi, Georgia, North Carolina, and New York. Some of the said states have a further provision that any person violating the said law may be guilty of Bigamy, Adultery or a Misdemeanor.

The Courts of the states last above mentioned have determined the question of the validity or invalidity of marriages within the restricted periods, and none of them have held the marriage void. Some have held such a marriage valid, while others have held them voidable, only.

The material portion of the Arizona law prohibiting marriage within ONE YEAR after a divorce, found in Section 27-807 of the 1939 Arizona Code, is as follows:

"Either party may marry again only after one (1) year has elapsed from the date of the decree of divorce."

The Supreme Court of Arizona has had the question before it in two cases, but in the first one it avoided the direct issue by deciding the case on another question, and in the second case the wording of the decision makes it doubtful just what was decided. The two cases are as follows:

Horton vs. Horton, decided July 5th, 1921,
22 Arizona 490.

Burton vs. Valentine, 68 Ariz. 518, 141 Pac. (2nd) 847.

Other states deciding the question are as follows:

Woodward vs. Blake et al, 38 N.D. 38, 164 N.W. 156

State vs. Yoder, 113 Minn. 503, 130 N.W. 10

Crawford vs. State, 73 Miss. 172, 18 So. 848

Plummer et al, vs. Davis (Okla.) 36 Pac. 2nd 938

State vs. Parker, 106 N.C. 711, 11 S.E. 517

Park vs. Barron, 20 Ga. 702, 65 Amer. Dec. 641

Mason vs. Mason, 101 Ind. 25

Conn et al vs. Conn, 2 Kans. App. 419, 42 Pac. 1006-1009.

Hunt vs. Hunt, 23 Okla. 490, 100 Pac. 541

White et al vs. McGee, 149 Okla. 65, 289 Pac. 222-224.

Section 63-107, as amended in 1942, our Code provides what marriages shall be void, as follows:

"The marriage of a person of Caucasian blood with a Negro, Mongolian, Malay, or Hindu shall be null and void. The marriage between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters, of the one-half as well as of the whole blood, and between uncles and nieces, aunts and nephews, and between first cousins, is prohibited and void."

If the legislature had intended that a marriage within one year after a decree of divorce is granted should be void, it could easily have so stated, as it did in paragraph 63-107, as to marriages there stated.

Bishop in his Marriage, Divorce and Separation states that no marriage should be held void unless the law so declared it.

Justice Robinson in his concurring opinion in Woodward vs. Blake, above cited, said: "It (the statute) merely forbade a marriage, and did not make or declare it void. * * * " The rule is that a marriage shall not be held void unless the statute expressly declared it void.

Respectfully submitted.

Albert D. Leyhe.

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