

073-416—November 13, 1973

MARRIAGE LICENSE

COUNTY IN WHICH ISSUED

To: Mark H. Richardson, Jr., Highlands County Court Judge, Sebring

Prepared by: Stephen F. Dean, Assistant Attorney General

QUESTION:

Do the provisions of §741.01, F. S., require that a marriage license be issued only in the county wherein the woman resides?

SUMMARY:

Marriage licenses issued under §741.01, F. S., are required to be issued by the county court judge of the county wherein the woman resides. The residency required of the woman is equivalent to legal residence, *i.e.*, that she lives and intends to remain permanently in the county.

Since the terms of §741.01, *supra*, are merely directory in nature, the issuance of a marriage license in a county other than the county "wherein the woman resides" of itself would not invalidate the license or the marriage. No penalty is prescribed by law either for the applicant of the licensing official for application for, or the issuance of, a license in a county other than that in which the woman is a legal resident.

Your question is answered in the affirmative.

Section 741.01, F. S., as amended by Ch. 73-334, Laws of Florida provides as follows:

741.01 County court judge to issue marriage license. Every marriage license shall be issued by the county court judge of the county wherein the woman resides, under his hand and seal, and said county court judge shall issue such license, upon payment of his fee of \$2, if there appears to be no impediment to the marriage.

The term "resides" as used in §741.01, *supra*, is not defined by statute and there is no specific case law which defines the term with regard to this particular section.

The court in *Minick v. Minick*, 149 So. 483 (Fla. 1933), at 488, quotes the following statement from 19 C.J. *Domicile* §2, pp. 395-397, *et seq.*:

"Residence" as used in various statutes has been considered synonymous with "domicile," but of course this depends upon the intent of the particular statute as ascertained by construction of its provisions. The terms are not necessarily synonymous. Generally, where a statute prescribes residence as a qualification for the enjoyment of a privilege, or the exercise of a franchise, and whenever the terms are used in connection with subjects of domestic policy, domicile and residence are equivalent. (Emphasis supplied.)

Although the United States Supreme Court has spoken in recent cases concerning the right of states to restrict the enjoyment of a privilege of citizenship or exercise of a franchise based upon durational residence, it has not extended its opinions in this regard to the area of marital law. In fact, there has been a general reluctance on the part of the federal courts to become enmeshed in the area of marital law. Justice Terrell in *Herron v. Passailaigue*, 110 So. 539, 542 (Fla. 1926), as quoted in *Minick, supra*, states:

"No principle of law is better settled than this: The right of every state, under the Constitution of the United States, to regulate the matter of marriage and divorce within its own borders and to defend it against encroachment, and to fix and declare the matrimonial status of its own citizens, and the full faith and credit provision of the Constitution is not to be construed so as to defeat this right"

The Florida Supreme Court in *Light v. Meginniss*, 22 So.2d 455 (Fla. 1945), at 456, summed up the state's powers in this regard:

[M]arriage, being of vital public interest, is subject to the state and to legislative power and control *with respect to its inception, duration and status, conditions and termination, except as* restricted by Constitutional provisions.

Domicile or legal residence is more restrictive in definition since it includes not only living in the county, but includes the concept of permanent residence. Equating "resides" and "residence" to "domicile" restricts the definition of "residence" to more than living in a locality, and includes the concept of remaining in the locality permanently.

This stricter interpretation of the residences in regard to the issuance of marriage licenses would appear to be based upon the reasons as stated and discussed by the court in *Sweigart v. State*, 12 N.E.2d 134 (Ind. 1938) at 138, as follows:

The appellant contends that Section 44-201 (section 5622), *supra*, does not by its terms prohibit the clerk from issuing licenses to nonresidents of Indiana. We cannot agree to this contention. It seems to us that the language of the section is clear and unambiguous. It says: "they shall produce a license from the clerk of the circuit court of the county in which the female resides." This language certainly includes all female applicants for a marriage license. If it is the public policy that licenses can only be issued to female residents of the State in the county in which they live, why is it not just as important on grounds of public policy that a license shall not issue to a nonresident female? We think that it is and the very fact that thousands of couples, during the last few months, have been rushing to Lake county, Ind., from Cook county, Ill., and other states, to avoid the marriage regulations of the laws of Illinois and other states, shows conclusively the wisdom of the Indiana law. A clear provision of the law of Indiana should not be so construed as to assist persons to escape the provisions of the law of sister states.

As heretofore said, marriage and dissolution thereof are so important to the peace and welfare of society as to be subject to legislative control. The Legislature has seen fit to provide that a divorce will not be granted to a person who has not been a bona fide resident of the State for one year and of the county for six months immediately preceding the filing of the petition for divorce. This command of the Legislature is no more important to the peace and welfare of society than is the command that the female who applies for a marriage license shall be a resident of the county where the license is issued. Under the clear language of the statute a nonresident cannot come to Indiana and secure a divorce, and we think it is equally clear from the language of the statute that a nonresident female cannot secure a marriage license.

There is no penalty provided by law for the issuing of a license to a nonresident, and the law provides no durational requirement for residence in this particular instance. The Florida law in this regard parallels the law as set forth in *Stern v. Stern*, 168 N.E. 478 (Ohio 1929). In *Stern*, in considering the validity of a marriage in which the license was issued in a county other than that county in

which the woman resided, the court found that the residence requirement did not affect the validity of the license issued, or of the marriage. This results from the directory nature of the laws concerning marriage. Absent any expressed statutory provisions nullifying a marriage, a marriage is valid even though the license was issued improperly. *Johnson v. Johnson*, 8 N.W.2d 620 (Iowa 1943); *Caras v. Hendrix*, 57 So. 345 (Fla. 1912).

The only Florida provision which would nullify a marriage is the provision concerning the validity of common law marriages entered into after January 1, 1968. Section 741.211, F. S. This statute is limited, however, to consensual marriages and does not extend to marriages which are entered into in good faith by the party asserting the marriage and which marriage was in substantial compliance with the applicable statutes but is otherwise defective. Therefore, under the prevailing and generally accepted view, the mere issuance of a marriage license in a county other than that "wherein the woman resides" would not of itself invalidate the marriage.

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ELECTIONS

POLITICAL COMMITTEE APPOINTED UNDER FEDERAL LAW MAY NOT ACT AS CAMPAIGN TREASURER UNDER FLORIDA LAW

To: *Richard (Dick) Stone, Secretary of State, Tallahassee*

Prepared by: *Bjarne B. Anderson, Jr., Assistant Attorney General*

QUESTION:

May a candidate for representative in Congress appoint a political committee, organized under the Federal Election Campaign Act of 1971, as his campaign treasurer in lieu of a specific individually designated campaign treasurer under the provision of §2(1)(a), Ch. 73-128, Laws of Florida [§106.021(1)(a), F. S.]?

SUMMARY:

A candidate for federal office as U. S. Senator or Representative to Congress may not appoint a political committee organized under the Federal Election Campaign Act of 1971 (P.L. 92-225) as his campaign treasurer. Candidates for such national offices are required by §2(1), Ch. 73-128, Laws of Florida [§106.021(1), F. S.], to appoint an individual who is a registered voter in Florida as his or their campaign treasurer. Any such qualified individual may be appointed and serve as the campaign treasurer of such candidate and of a political committee organized under Ch. 73-128 or the treasurer of a political committee organized under P.L. 92-225.

Your question is answered in the negative.

Section 2, Ch. 73-128, Laws of Florida [§106.021(1)(a), F. S.], provides in part that:

(1)(a) *Each candidate for nomination or election to office and each political committee shall appoint a campaign treasurer. . . .*
(Emphasis supplied.)

A "campaign treasurer" is defined by §1(8), 73-128, *supra* [§106.011(8), F. S.], as: