



**THE ATTORNEY GENERAL  
OF TEXAS**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

**AUSTIN, TEXAS 78711**

November 3, 1970

Hon. Joe Resweber  
County Attorney  
Harris County Courthouse  
Houston, Texas 77002

Opinion No. M-717

Re: Authority of a county clerk to issue a marriage license to persons presently legally married to each other, and related question.

Dear Mr. Resweber:

Your recent letter requesting the opinion of this office concerning the referenced matter states, in part, as follows:

"The following are questions which have been posed by Mr. R. E. Turrentine, Jr., County Clerk for Harris County, relating to his duties under the Texas Family Code:

"1. Does the County Clerk have authority to issue a second marriage license to persons who are presently legally married to each other?

"2. If the answer to question number one (1) be in the affirmative, does the County Clerk have authority to issue the license under such circumstances without requiring that the respective applicants provide medical certificates?"

The Chief Deputy County Clerk of Harris County has further advised us of the fact situation upon which your request is based. He stated that your request does not pertain to a situation wherein a marriage license was lost, mutilated or destroyed, as was the case in Attorney General's Opinion No.

C-407 (1965). Rather, the request for our opinion was occasioned by two fact situations; in the first, a married couple had been issued a marriage license, had been married in a civil ceremony, and thereafter desired a license to be issued so they could be married in a religious ceremony; in the second, the husband and wife of a common law union (evinced by the filing of a declaration of informal marriage filed pursuant to Section 1.92 of the Texas Family Code) sought the issuance of a marriage license so that they could be married ceremonially. The common law couple, though under the age limits for a marriage license set by Section 1.52 of the Code, asserted a valid common law marriage between them by virtue of the holding of Attorney General's Opinion No. M-502 (1969).

Section 1.03(b)(5) of the Code provides that applicants for a marriage license shall execute an application form containing the following oath:

"I SOLEMNLY SWEAR (OR AFFIRM) THAT THE INFORMATION I HAVE GIVEN IN THIS APPLICATION IS CORRECT, THAT I AM NOT PRESENTLY MARRIED, AND THAT I AM NOT RELATED TO THE OTHER APPLICANT WITHIN THE DEGREES PROHIBITED BY LAW." (Emphasis added.)

Section 2.22 of the Code provides, in part, that:

"A marriage is void if either party was previously married and the prior marriage is not dissolved."

Section 1.07(b) of the Code provides:

"The county clerk shall not issue a license to the applicants if he knows any facts which would make the marriage void or voidable under this code."

However, Section 1.05 of the Code provides as follows:

"Any information pertaining to an applicant, other than the applicant's name, may be omitted from the application, and any formality required by Sub-chapters A, B, and D of this chapter may be waived on

the county judge's written order, issued for good cause shown, and submitted to the county clerk at the time the application is made." (Emphasis added.)

We believe that Sections 2.22, 1.03(b)(5), 1.07(b), supra, are not applicable to persons presently and validly married to each other. This is in keeping with the Code Construction Act, Article 5429b-2, Section 3.03, Vernon's Civil Statutes.

We are further of the opinion that the portion of the oath contained in Section 1.03(b)(5), supra, reading "that I am not presently married", does not apply to persons presently validly married to each other and this may be waived by the county judge pursuant to Section 1.05, supra, and that persons currently married to each other may, by securing such waiver, be issued a marriage license. This opinion is given subject to the proviso that marriage license applicants who allege a common law union between them, cannot, even with the judge's waiver as set forth above, be granted a marriage license unless the requirements of age and/or parental consent provided by Section 1.52 of the Code are met.

In answer to your first question, therefore, we are of the opinion that a county clerk may not issue a marriage license to persons presently married to each other, unless (a) a waiver from the county judge pursuant to Section 1.05, supra, waiving the recitation by the parties of that portion of the oath required by Section 1.03(b)(5), wherein they state they are not presently married, is obtained, and (b) both of the parties fulfill the age and/or parental consent requirements of Section 1.52.

With reference to your second question, we note that Section 1.02(2) of the Code provides, in part, as follows:

"Persons applying for a marriage license shall:

(2) submit for each applicant:

. . . . .

(B) a medical examination certificate or an exemption order as prescribed by Subchapter B of this chapter;

(C) if applicable, the county judge's order prescribed by Section 1.05 of this code ..."

Section 1.21 of the Code provides that:

"Except as provided by Section 1.22 of this code, the county clerk shall not issue a marriage license unless each applicant submits at the time of the application a medical examination certificate as prescribed by this code."

Section 1.22 of the Code states that:

"On the joint application of both applicants for a marriage license, the judge of any county or district court of the county in which the license is to be issued may issue a written order exempting the applicants from the medical examination requirements of this chapter if he is satisfied by proof that sufficient grounds exist for the exemption and that the exemption will not adversely affect the public health and welfare. The hearing on the application shall be private, and all records relating to the application shall be held in absolute confidence and shall not be opened to public inspection."

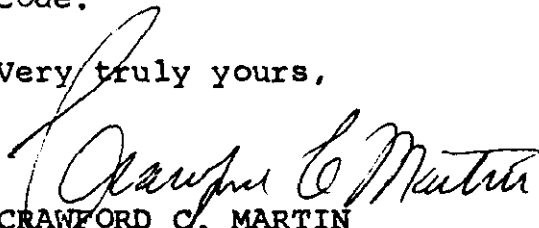
In view of the foregoing, and in answer to your second question, we are of the opinion that a county clerk does not have authority to issue a marriage license to persons entitled to same by virtue of our answer to your first question, without requiring that the parties provide medical certificates, unless the parties have obtained one of the exemptions from presenting such certificate pursuant to Subsections (B) or (C) of Section 1.02(2), supra, or Sections 1.22 and 1.05, supra.

S U M M A R Y

(1) A county clerk does not have the authority to issue a marriage license to persons who are presently legally married to each other unless (a) such persons meet the age and/or parental consent requirements of Section 1.52 of the Texas Family Code, and (b) a waiver of that portion of the oath required by Section 1.03(b)(5) of the Code reading "that I am not presently married" is obtained from the county judge pursuant to Section 1.05 of the Code.

(2) A county clerk does not have authority to issue a marriage license to persons entitled to one by virtue of the exceptions set forth in paragraph (1) of this Summary unless such persons either (a) present the medical certificate required by Section 1.02(2)(B) of the Code, or (b) obtain an exemption from presenting such certificate pursuant to Subsections (B) or (C) of Section 1.02(2), 1.05, or Section 1.22 of the Code.

Very truly yours,

  
CRAWFORD C. MARTIN  
Attorney General of Texas

Prepared by Austin C. Bray, Jr.  
Assistant Attorney General

APPROVED:  
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