



ALAN WILSON
ATTORNEY GENERAL

February 15, 2013

The Honorable Deirdre Edmonds
Judge, Horry County Probate Court
P. O. Box 288
Conway, South Carolina 29528

Dear Judge Edmonds:

Attorney General Alan Wilson has referred your letter of December 17, 2012 to the Opinions section for a response. The following is our understanding of your question presented and the opinion of this Office concerning the issue based on that understanding.

Issue: Is the Probate Court required under S.C. Code § 20-1-570 to record marriages conducted without a statutorily-required marriage license under S.C. Code § 20-1-230 and § 20-1-340 (et al. statutes), where no license was applied for, and where both parties are still alive and not a part of any other proceeding in Probate Court?

Short Answer: No. Pursuant to South Carolina Code § 62-1-302(a)(4),(c) (1976, as amended), the Probate Court lacks jurisdiction to hear claims concerning the validity of a marriage (whether common law or otherwise) unless it is part of an estate, trust, guardianship or conservatorship action. The Probate Court has exclusive original jurisdiction only concerning the issuance of marriage licenses "in form as provided by the Bureau of Vital Statistics of the Department of Health and Environmental Control" pursuant to South Carolina Code § 62-1-302(a)(4). The Court of Common Pleas has exclusive jurisdiction to hear any claims over the validity of a marriage contract pursuant to South Carolina Code § 20-1-510, -520 and therefore would be the proper venue for such claims. South Carolina Code § 20-1-570 says when "a certificate of the performance thereof has not been filed" it holds the presumption that a certificate (which is issued to a Probate Court only by the Bureau of Vital Statistics of the Department of Health and Environmental Control for the issuance of a marriage license pursuant to S.C. Code § 20-1-320) was granted to the couple to be married pursuant to an application for a marriage license.

Law/Analysis:

By way of background, as you state in your letter:

As you know, section 20-1-570 of the S.C. Code of Laws provides that "an official record of any marriage contracted in this State . . . when a certificate of the performance thereof has not been filed may be made and established in the manner hereinafter prescribed." Such section goes on to provide that:

The official record of marriage may be established by filing with the official whose duty it is to record marriages in the county in which the marriage was contracted (a) an affidavit of one or more of the witnesses to the marriage, (b) an affidavit of two or more reputable persons who were informed of the marriage and have knowledge that the persons so claiming to be married have lived together as husband and wife or (c) a certificate from the person officiating at the marriage if he were a minister of the Gospel or person qualified by law to administer an oath.

The probate courts of our state issue marriage licenses on a daily basis. In accordance with §20-1-230, "the judge of probate . . . with whom a marriage license application was filed shall issue a license" upon the filing of an application for a marriage license, the lapse of the twenty-four (24) hour waiting period, the payment of the requisite fee, and the required oath or affirmation from the persons seeking to contract marriage that are legally entitled to marry. §20-1-230, SC Code of Laws.

The probate courts of our state also record marriages in the state on a daily basis. Section 20-1-340 provides that "the probate judge . . . who issued any such licenses shall, upon the return of the two copies to him by the person who performs the wedding ceremony, record and index such certificate in a book kept for that purpose and send one copy to the Division of Vital Statistics . . ." §20-1-340, SC Code of Laws.

Your letter addresses two situations that involve two separate requests to record marriages without the issuance of a marriage license by the Probate Court. One application involves a ceremony and a layman's marriage contract while the other involves a common law marriage supported by affidavits and other various documents. In order to better understanding marriage licenses and certificates in South Carolina, these statutes ought to be reviewed.

SECTION 20-1-210.

It shall be unlawful for any persons to contract matrimony within this State without first procuring a license as is herein provided and it shall likewise be unlawful for anyone whomsoever to perform the marriage ceremony for any such persons unless such persons shall first have delivered to the party performing such marriage ceremony a license as is herein provided duly authorizing such persons to contract matrimony. Any officer or person performing the marriage ceremony without the production of such license shall, on conviction thereof, be punished by a fine of not more than one hundred dollars nor less than twenty-five dollars or by imprisonment for not more than thirty days nor less than ten days.

SECTION 20-1-220.

No marriage license may be issued unless a written application has been filed with the probate judge, or in Darlington and Georgetown counties the clerk of court who issues the license, at least twenty-four hours before the issuance of the license. The application must be signed by both of the contracting parties and shall contain the same information as required for the issuing of the license including the social

security numbers, or the alien identification numbers assigned to resident aliens who do not have social security numbers, of the contracting parties. The license issued, in addition to other things required, must show the hour and date of the filing of the application and the hour and date of the issuance of the license. The application must be kept by the probate judge or clerk of court as a permanent record in his office. A probate judge or clerk of court issuing a license contrary to the provisions, upon conviction, must be fined not more than one hundred dollars or not less than twenty-five dollars, or imprisoned for not more than thirty days or not less than ten days.

SECTION 20-1-230.

(A) The judge of probate or clerk of court with whom a marriage license application was filed shall issue a license upon:

- (1) the filing of the application required under the provisions of Section 20-1-220;
- (2) the lapse of at least twenty-four hours thereafter;
- (3) the payment of the fee provided by law; and
- (4) the filing of a statement, under oath or affirmation, to the effect that the persons seeking the contract of matrimony are legally entitled to marry, together with the full names of the persons, their ages, and places of residence.

(B)...

SECTION 20-1-310.

The form of license and certificate of marriage shall be prescribed and furnished by the State Registrar and shall contain information required by the standard certificate as recommended by the national agency in charge of vital statistics, all of which are declared necessary for registration, identification, legal, health and research purposes, with such additions as are necessary to meet requirements imposed by the State.

SECTION 20-1-320.

The Division of Vital Statistics of the Department of Health and Environmental Control shall, for the purpose of uniformity, print and distribute necessary forms of marriage license and certificate to be used by all probate courts of this State in the issuance of marriage licenses.

SECTION 20-1-330.

The officer issuing marriage license certificates shall issue them in triplicate, all of which shall be delivered to either of the contracting parties and the parties to whom they are delivered shall in turn deliver them to the minister or officer who performs the wedding ceremony. The minister or officer who performs the wedding ceremony shall fill them out as required by law and deliver one to the contracting parties, without additional charge, and the other two within fifteen days to the officer who issued the license certificates.

SECTION 20-1-340.

The probate judge or clerk of court who issued any such license shall, upon the return of the two copies to him by the person who performs the wedding ceremony, record and index such certificate in a book kept for that purpose and send one copy

to the Division of Vital Statistics of the Department of Health and Environmental Control within fifteen days after the marriage license is returned to his offices. The judge of probate shall issue a certified copy of any such license and certificate to any person and he may charge the sum of fifty cents for so doing unless otherwise prohibited by law.

SECTION 20-1-350.

The Department of Health and Environmental Control shall properly file and index every marriage license and certificate and may provide a certified copy of any license and certificate upon application of proper parties except that upon request the Department of Social Services or its designee must be provided at no charge with a copy or certified copy of a license and certificate for the purpose of establishing paternity or establishing, modifying, or enforcing a child support obligation.

SECTION 20-1-360.

Nothing contained in this article shall render illegal any marriage contracted without the issuance of a license.

...

SECTION 20-1-375.

In addition to the marriage license fee authorized pursuant to Section 20-1-230, there is imposed an additional twenty dollar fee for each marriage license applied for. This additional fee must be remitted to the State Treasurer and credited to the Domestic Violence Fund established pursuant to Section 20-4-160.

(emphasis added).

The Probate Court has limited jurisdiction to decide issues concerning the administration of estates and determination of heirs. Op. S.C. Atty. Gen., 1991 SCAG 474788 (November 12, 1991) (citing S.C. Code § 62-1-302, *Weathers v. Bolt*, 293 S.C. 486, 361 S.E.2d 773 (S.C.App.1987)). The Probate Court has original jurisdiction over the issuance of marriage licenses in the form provided by the Bureau of Vital Statistics of the Department of Environmental Control (DHEC), but only has jurisdiction to hear issues relating to common law marriage in connection with “estate, trust, guardianship, and conservatorship actions pending before it, concurrent with that of the family court, pursuant to....” S.C. Code § 62-1-302(a)(4),(c) (emphasis added). That means if someone has no license or whose claim does not involve the application for a marriage license, the Probate Court would not have original jurisdiction. The Probate Court has exclusive original jurisdiction only concerning the issuance of marriage licenses “in form as provided by the Bureau of Vital Statistics of the Department of Health and Environmental Control” pursuant to South Carolina Code § 62-1-302(a)(4). However, In South Carolina, a court of common pleas has the authority to hear and determine any issues regarding the validity of a marriage contract, and if either party denies or doubts the validity, they may bring a suit to affirm the marriage. S.C. Code § 20-1-510, 520. A probate judge is not in a position to validate a purported marriage but establishes an official record of the marriage by accepting a license for recording. Op. S.C. Atty. Gen., 1991 WL 474788 (November 12, 1991).

South Carolina Code § 20-1-570 says when “a certificate of the performance thereof has not been filed” it holds the presumption that a certificate (which is issued to a Probate Court only by the Bureau of Vital

Statistics of the Department of Health and Environmental Control for the issuance of a marriage license pursuant to § 20-1-320) was granted to the couple to be married pursuant to an application for a marriage license. In other words for the certificate not to be filed with the Probate Court, it entails a certificate originally to have been issued by the Probate Court. And it is this Office's understanding the only way to obtain a certificate of marriage from the Probate Court is with a marriage license approval. South Carolina Code § 20-1-570 is not a way to circumvent bringing an action in common pleas nor is it a way to avoid the license and fees requirements in applying for a marriage license, as it appears your two applicants may be inadvertently doing. Additionally, in analyzing S.C. Code § 20-1-360, it is clear the validation of a marriage without obtaining a license is for common law purposes only, not to override any requirements to obtain a license. Op. S.C. Atty. Gen., 1991 WL 474788 (November 12, 1991).

The purpose of requiring a license before a couple may marry includes obtaining the information required for vital statistics along with verification that the parties are of requisite legal age and of sufficient distance in familial relationship, in addition to providing a twenty-four hour waiting period. S.C. Code §§ 20-1-210, -220, -310, et. al. Additionally, a license process allows the State the opportunity to provide family planning information along with collection of fees, twenty dollars of which goes to the Domestic Violence Fund. 20-1-240, -375. Without following such a process, the two parties would be allowed to obtain a marriage certification with no verification of the legal requirements and without paying the costs and filing for the application for a marriage license, which was not (presumptively) the intent of S.C. Code § 20-1-570.

As a background on statutory interpretation, the cardinal rule in statutory interpretation is to ascertain the intent of the Legislature and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. Id. An entire statute's interpretation must be "practical, reasonable, and fair" and consistent with the purpose, plan and reasoning behind its making. Id. at 816. Statutes are to be interpreted with a "sensible construction," and a "literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose." U.S. v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1950). This Office looks at the plain meaning of the words, rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598 (2006). The dominant factor concerning statutory construction is the intent of the legislature, not the language used. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) (citing Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956)).

The first place to look in regards to interpreting the statute is to the legislative intent. A look at the legislative history of S.C. Code § 20-1-570 shows the statute was passed in 1933 solely to allow people who were married before the requirement of a marriage license on July 1, 1911 to make such a record for posterity's sake. S.C. Code § 20-1-570 (1933 Code). In analyzing S.C. Code § 20-1-570 it seems the reasonable and logical interpretation is that the statute applies in one of two situations, either where a couple was married before marriage licenses were required in 1911 or when a certificate was issued after a license was applied for but for whatever reason, the certificate was not filed afterward with the Probate Court.

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In the past, this Office has received questions concerning § 20-1-570. In those instances this Office advised using the statute (formerly 20-47, 1952 Code) where some (and presumptively all of the) parties held a certificate of marriage with the seal of the Probate Court in that county but the Probate Court contained no record. In those cases the licenses were applied for and obtained and certificates filled out, but the Probate Court's records lacked some of the certificates and licenses. Therefore the statute § 20-1-570 (formerly 20-47, 1952 Code) was properly invoked to establish those records. Please note in some instances even the Bureau of Vital Statistics was used to help show the records for licenses. See Ops. S.C. Atty. Gen., 1960 WL 11688 (July 14, 1960); 1961 WL 8404 (August 21, 1961); 1962 WL 12680 (February 28, 1962); 1966 WL 11955 (April 21, 1966). Therefore, there can be instances in which it is proper to invoke South Carolina Code § 20-1-570, but the two situations you mentioned are not those.

Conclusion: Based on the conclusion that South Carolina Code § 20-1-570 applies only when a license and certificate have previously been issued, it appears the two situations you have described would be better handled in the court of common pleas. However, this office is only issuing a legal opinion. Until a court or the legislature specifically addresses the issues presented in your letter, this is only an opinion on how this office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let me know.

Sincerely,



Anita Smith Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General