1975 WL 29098 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
August 25, 1975

***1** Rev. Msgr. William J. Voors
Chancellor
Diocese of Fort Wayne—South Bend
1103 S. Calhoun Street
P. O. Box 390
Fort Wayne, Indiana 46801

Dear Rev. Msgr. Voors:
Your letter to the South Carolina State Attorney General concerning the validity of a marriage of minors was forwarded to me for reply.

Your first question concerns the requirement of parental permission to a marriage of minors. Section 20-24 of the Code of Laws of South Carolina states:
'No license shall be issued when the woman or child woman is under the age of fourteen or when the male is under the age of sixteen, provided that when the female applicant is between the ages of fourteen to eighteen and when the male applicant is between the ages of sixteen to eighteen and when the applicant resides with father or mother, or other relative or guardian, the probate judge or other officer authorized to issue marriage licenses shall not issue a license for the marriage until furnished with a sworn affidavit signed by such father, mother, other relative or guardian giving his or her consent to the marriage.'

Your second question concerns the validity of a marriage when the requirements of Section 20-24 have not been met. The South Carolina case of State v. Ward, 204 S.C. 210, 28 S.E.2d 785 (1944) is controlling in such a situation. The opinion in that case states in part:
'It is now generally held by the great weight of authority, that statutes prescribing the procurement of a license and other formalities to be observed in the solemnization of marriage, do not render invalid a marriage entered into according to the common law, but not in conformity with the statutory formalities, unless the statutes themselves expressly declare such marriage invalid; . . . Such being the case, we hold, upon principle and authority, that the marriage of a person who has not reached the age of competency as established by our statute, but is competent by the common law, is valid, provided such marriage is entered into in accordance with the rules of the common law.'

The court further stated in Johnson v. Johnson, 235 S.C. 542, 550 112 S.E.2d 677 (1960):
'It is essential to a common law marriage that there shall be a mutual agreement between the parties to assume toward each other the relation of husband and wife. Cohabitation without such an agreement does not constitute marriage. As was said in Lucken v. Wickman, 5 S.C. 411: 'The existence of a marriage is a question of fact. Whether founded on an express contract, or inferred from circumstances, which necessarily imply that the relation of husband and wife existed between the parties the result must be obtained through the medium of the evidence adduced in the cause. If it depends on an express contract, there will be less difficulty in ascertaining the fact, for there the evidence will refer to a particular transaction, and nothing is to be determined but its effect. If, however, it depends on cohabitation and repute, then the effect must be judged by a comparison of all the circumstances relied on by both sides, and even cohabitation and repute will not avail 'where the proof is clear that the parties were never married.''

***2** Thus, the marriage of minors which does not conform with the statutory requirements is not invalid if it can be shown that a common law marriage exists since each of these forms of marriage is recognized in South Carolina. The existence of a common law marriage is a factual determination, however, and cannot be made by this Office. State v. Ward, supra., simply construes the marriage statutes as being merely directory, and a marriage which meets the common law requirements is regarded as valid even though the provisions of the statutes are not met.

I trust the foregoing will be of assistance.
Sincerely,

Raymond G. Halford
Assistant Attorney General

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