

MARRIAGE LICENSES: IN RE: Filing of health certificates prior to the issuance of the licenses.

March 25, 1946



Honorable G. Derk Green
Judge 12th Judicial District
Marceline, Missouri

Dear Sir:

In answer to your recent inquiry regarding the issuance of marriage licenses and the filing of certificates of serological tests as provided for by the statutes, the primary rule of construction is found in the case of State ex rel. City of St. Louis v. Caulfield, 62 S. W. (2d) 818, 332 Mo. 270, where it was held that, in interpreting unambiguous statutes, the legislative intent is the primary consideration. For numerous cases to the same effect, see Mo. Digest, Statutes, Key 180 and following.

Your particular question concerns the interpretation of two sections of Missouri Statutes, Laws of 1943, which will be dealt with in order, guided by the rule of the Caulfield case, supra.

Section 3364, Laws of 1943, page 640, was an act to repeal the old section 3364 of Chapter 20, R. S. Mo. 1939, and enact a new section, the present one under discussion, relating to marriages and marriage licenses. In the new section, found in the Laws 1943, supra, the following parts are, we believe, pertinent to the discussion of the instant problem.

"Previous to any marriage in this state, a license for that purpose shall be obtained from the officer authorized to issue the same, and no marriage hereafter contracted shall be recognized as valid unless such license has been previously obtained, * * *. Before applicants for a marriage license shall receive a license, and before the Recorder of Deeds shall be authorized to issue a license, the parties to the marriage must, at least three days before the date they desire such license to be

issued, present an application for the license to the Recorder of Deeds. Upon the expiration of three days after the receipt of such application, duly executed and signed, the Recorder of Deeds shall issue the license, * * *"

The above quotation sets up the following requirements: One, that a marriage license must be obtained in order to marry, and second, that before the license is issued the application for same must have been on file at least three days before the date of issuance. There is no doubt or ambiguity in that statutory requirement.

The second section of the statutes that concern the present problem is Section 3364 A, found in Laws of 1943, page 641, this law became effective January 1, 1944, and in its pertinent parts, provides as follows:

"It shall be unlawful for the Recorder of Deeds of any County or City to issue a marriage license, to any person, unless such person presents and files with such Recorder of Deeds a report of a negative laboratory serological test for syphilis and an affidavit signed by the applicant that to his or her best knowledge and belief he or she is free from syphilis; or unless, in the case of an applicant with a positive test, such applicant presents and files a certificate from a physician duly licensed to practice in the State of Missouri stating that to his or her best knowledge and belief, after having made a thorough physical examination of such applicant, he or she is not infected with syphilis, or if so infected is not in the stage of the disease wherein it is communicable either to the spouse or the offspring, which said physician's certificate shall have attached thereto a laboratory report of the test of syphilis made by such laboratory; or unless a duly licensed physician presents a certificate stating that one of the applicants for a license to marry is on his or her deathbed and unlikely to consummate the marriage or that an applicant is pregnant. The laboratory report of the negative blood test and the affidavit

of the applicant, and the physician's certificate of health with the laboratory report of the test for syphilis attached thereto, shall be made not longer than fifteen (15) days before the date of the issuance of the license and said license shall be void after ten (10) days from the date of issuance."

A reading of said quotation shows that the person seeking to have a marriage license issued to said person must file, with the Recorder of Deeds, a report of a laboratory serological test and an affidavit signed by the applicant that "to his or her best knowledge and belief is free from syphilis". The statute provides for some exceptions with which we are not concerned in the present discussion. The quotation above goes on to state that the laboratory report and the affidavit of the applicant for the marriage license must not have been made more than fifteen (15) days before the date of issuance of the license and that, having complied with this and having had a license issued, said license will be void ten (10) days after the date of its issuance in the event it has not been acted upon.

There is no direction in the statutes regarding the specific time for filing said laboratory tests and affidavit of applicant with the County Recorder of Deeds. The County Recorder is an officer receiving his authority from the existing law and discharging his duties in accordance therewith. No public officer can exceed the duties or powers imposed upon or granted him by law; *Hastings v. Jasper County*, 282 S.W. 700, 314 Mo. 144.

An examination of the statutes under discussion will show that they contain no direction to the county recorder to require that the report of the laboratory and the applicant's affidavit be filed at any particular time, other than prior to the issuance of the license.

While the two sections of the statutes discussed relate to marriage and the issuance of licenses therefor, Section 3364 refers to the application for a license; and Section 3364 A refers to the certificate of the laboratory test and the applicant's affidavit, with provision for exceptions contained therein.

It might be pointed out that the two sections of the statutes, Sections 3364 and 3364 A, while belonging to the same chapter, Chapter 20, Marriages, were the subject of different House Bills and approved at different times, and enacted for different purposes as expressed in the body of the statutes. Section 3364 was originally House Bill No. 20, 1943, and was approved April 7, 1943. It is patent that the purpose was to prevent hasty marriages.

by requiring a three day waiting period between the application for the marriage licenses and its ultimate issuance. Sections 3364 A to D was Committee Substitute for House Bill 45, 1943, and were approved April 13, 1943, but did not become effective until January 1, 1944, as provided in the Act. The obvious purpose of these four sections of the statutes was to prevent the marriage of persons affected with venereal diseases. It is, therefore, seen that while these statutes, Section 3364 and Sections 3364 A to D, R. S. Mo., 1939, are found within the same chapter, Chapter 20, Marriages, and while they are construed together, they do have different purposes and each should be given credit.

CONCLUSION

Construing these statutes together, it is the opinion of this office that, one, under Section 3364, Laws 1943, page 640, an application for marriage license must be on file with the Recorder of Deeds at least three (3) days before the issuance of said license. Two, that the laboratory report and the affidavit of the applicant shall be filed with the Recorder of Deeds prior to the issuance of the license. Three, that the laboratory report and the applicant's affidavit be not made more than fifteen (15) days prior to the date of the issuance of said license. Four, there is no requirement, either express or implied, in the statutes cited, supra, that the laboratory report and the applicant's affidavit be filed at any specific time. Said laboratory report and affidavit of applicant may be filed at any time within the fifteen (15) day period prior to the issuance of the license. It is only necessary that the requirements of the statutes, in regard to the laboratory report and affidavit, be complied with before the Recorder of Deeds issues the said license, in fact.

Respectfully submitted,

WILLIAM C. BLAIR
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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