

Opinion No. 65-204

October 18, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Jane Rice, County Clerk, County Court House, Lovington, New Mexico

QUESTION

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Is it permissible for the county clerk to record, upon request, Mexican marriage licenses written in spanish even though such may have been obtained by minors who are not of legal age to obtain a New Mexico marriage license without parental consent?

CONCLUSION

Yes.

OPINION

{*332} ANALYSIS

In New Mexico a marriage is valid by specific statutory provision if it was valid where entered into. Section 57-1-4, N.M.S.A., 1953 Compilation:

"All marriages celebrated beyond the limits of this state, which are valid according to the laws of the country wherein they were celebrated or contracted, shall be likewise valid in this state, and shall have the same force as if they had been celebrated in accordance with the laws in force in this state."

This is also the common law of New Mexico. **Ferret v. Ferret**, 55 N.M. 565, 237 P. 2d 594. Therefore, if the Mexican marriage license was lawfully issued in Mexico it is a valid instrument in New Mexico also.

{*333} Section 71-1-3, N.M.S.A., 1953 Compilation, places the duty upon the county clerk to record any instrument of writing provided, with enumerated exceptions, said instrument is duly acknowledged and certified.

"Any instrument of writing, duly acknowledged and certified, may be filed and recorded. Any instrument of writing, not duly acknowledged and certified, may not be filed and recorded, nor considered of record, though so entered; Provided, however, that judicial decrees or certified copies, patents, land office receipts, certified copies of foreign wills duly authenticated, and instruments of writing in any manner

affecting lands in the state, when these instruments have been duly executed by an authorized public officer, need not be acknowledged but may be filed and recorded; and, Provided further, any financing agreement or security agreement required to be filed under the provisions of the Uniform Commercial Code is not required to be acknowledged in order to be filed and recorded." (Emphasis supplied).

The generally accepted meaning of the term "instrument," with the exception of the meaning of the word in the law of evidence includes formal or legal documents in writing. **Cardenas v. Miller**, 108 Cal. 250, 39 P. 783, 49 Am. St. Rep. 84; **Moore v. Diamond Dry Goods Co.**, 47 Ariz, 128, 54 P. 2d 553. By this definition an official marriage license would be the kind of "instrument" contemplated by Section 71-1-3, supra.

It does not appear that as a prerequisite to filing an instrument it must be written in the English language. Hence, the fact that the Mexican marriage license is written in the Spanish language would not prevent it from being eligible for recordation.

Nor is it a prerequisite to recordation that the license be valid. This would place an impossible burden on the county clerk by requiring that the clerk conduct an investigation in each case prior to recording the marriage license. The license need only be acknowledged and certified.