

Opinion No. 67-88

June 29, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mrs. Ann E. Dinegar Deputy County Clerk County Court House Los Alamos, New Mexico

QUESTION

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May a county clerk issue a marriage license when neither party has appeared personally to apply for the license?

CONCLUSION

See analysis.

OPINION

{*126} **ANALYSIS**

A serviceman stationed in another state and a co-ed attending school in another state wish to be married in Los Alamos. However, neither the serviceman nor the co-ed will be in Los Alamos long enough to make application for a marriage license and wait the required three days prior to the issuance of the license. We have been asked if both parties may fill out the application for marriage license without personally appearing before the county clerk.

Section 57-1-15, N.M.S.A., 1953 Compilation provides that in order to insure a uniform system of records and better preservation of records, the form of application for marriage license shall be substantially as provided in the form set forth in Section 57-1-16, N.M.S.A., 1953 Compilation. Section 57-1-16, provides that in part the application form shall be substantially as follows:

"Bride ____

Groom ____

County Clerk ____ County

By ____ Deputy

To the County Clerk: We the undersigned hereby make application to be united in marriage and certify that we are not related within the degree prohibited by the laws of this state; that neither is bound by marriage to another; that there exists no legal impediment to this marriage; and that the information contained herein is correct.

Male Applicant

Date of Birth ____

Place of Birth ____

Present Address ____ Signature

Female Applicant

Date of Birth ____

Place of Birth ____

Present Address ____ Signature

Subscribed and sworn to before me this ____ day of ____ A.D. 19 __. (seal)

____ Signature County Clerk

By ____ Deputy."

The following form has been submitted to this office for approval as complying with Section 57-1-16, supra:

"Received ____ 19 ____

License

Issued ____ 19 ____

APPLICATION

FOR MARRIAGE LICENSE

NO. ____

STATE OF NEW MEXICO)

) ss

COUNTY OF LOS ALAMOS)

{*127} I hereby make application for a license to unite in marriage with ___ whose age is ___ years. I certify I was born at ___ on the ___ day of ___, 19 ___; that I am now a resident of ___ and that we are not related within the degree prohibited by the laws of this State; that neither of us is bound by marriage to another; that there exists no legal impediment to said marriage.

___ Subscribed and sworn to before me this ___ day of ___ ___, A.D. 19 ___.

___ County Clerk, Notary Public, or other authorized official."

(SEAL)."

"I hereby make application for a license to unite in marriage with ___ whose age is ___ years. I certify I was born at ___ on the ___ day of ___ 19 ___; that I am now a resident of ___ and that we are not related within the degree prohibited by the laws of this State; that neither of us is bound by marriage to another; that there exists no legal impediment to said marriage.

___ County Clerk, Notary Public, or other authorized official."

(SEAL)

It is the opinion of this office that the above application submitted by Los Alamos County substantially complies with Section 57-1-16, supra. We believe that the only reason that the parties appear before the county clerk or the deputy clerk is to allow the clerk's office to determine if the parties are of legal age to be married in this state without parental consent. We see no reason that the parties cannot take an oath as to their age before a notary of any other state.

We wish, however, to emphasize that the county clerk is still under the duty under Section 57-1-10 to ascertain the ages of the applicants. If the county clerk is in doubt, an affidavit must be obtained from at least two reliable persons who are acquainted with the age of the applicant or applicants for the license. Any doubt could be alleviated when the parties are not present by the county clerks requiring the submission of certified copies of the applicants' birth certificates with the application.

Three days after receipt of the signed application, a physician's certificate, as required by Section 57-1-10, N.M.S.A., 1953 Compilation, and evidence of age of the parties, when required, the county clerk may issue the marriage license. See Attorney General's Opinion No. 67-65, issued May 2, 1967 on the method of counting the three day waiting period.

By: Gary O'Dowd

Assistant Attorney General