

Opinion No. 69-77

July 17, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Ethan K Stevens, Assistant Attorney General

TO: Honorable John E. Hobbes, District Attorney, Eighth Judicial District, P.O. Box 1017 Raton, New Mexico 87400

QUESTIONS

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1. Can a probate judge waive the 72 hour waiting period for a couple who desire to obtain a marriage license immediately?
2. Can a district judge, a probate judge or a Magistrate waive the requirement of a blood test before a marriage license can be issued?

CONCLUSIONS

1. Yes.
2. See analysis.

OPINION

{*119} ANALYSIS

Chapter 162, Section 1 of the Laws of 1969 amended Section 57-1-11.1, N.M.S.A., 1953 Comp. (being Laws 1967, Chapter 39 Section 1) to provide:

"57-1-11.1. SEVENTY-TWO HOUR WAITING PERIOD. -- No license to marry shall be issued by any county clerk unless an application therefor shall have been made and filed with the county clerk for at least seventy-two hours prior to its issuance. On application to a district judge or to a magistrate, the filing fee for which shall be five dollars (\$ 5.00), the court for good cause shown may order the provisions of this section {*120} waived and a certified copy of the order shall be filed with the county clerk."

The question to be decided is the meaning of the word "magistrate" as used in this section. Section 36-1-38, N.M.S.A., 1953 Compilation (1968 Interim Supp.) provides that all jurisdiction, powers and duties conferred by law upon justices of the peace are transferred to the magistrate court. The case of **Golden v. Golden**, 41 N.M. 356, 60 P.2d 928 is authority for the proposition that probate judges, justices of the peace and judges of the district court are civil magistrates within the meaning of Section 57-1-2,

N.M.S.A., 1953 Compilation providing that any civil magistrate may perform a marriage ceremony. Magistrates of magistrate courts are likewise specifically authorized under Section 36-3-2 (Chapter 62, Section 47, Laws of 1968) to perform marriages but shall charge no fee therefor. Under Opinion of the Attorney General No. 4133 dated August 10, 1942, a municipal magistrate of a municipal court is likewise deemed to be a magistrate for the purpose of performing marriage ceremonies. It follows that any of these may waive the waiting period by issuing a certificate which is to be filed with the county clerk upon the payment of a \$ 5.00 fee in order to waive the 72 hour waiting period for a couple who desires to obtain a marriage license immediately.

As to your second question, Section 57-1-10.2 (being Chapter 33, Section 2 of New Mexico Laws 1957) provides that on application to the judge of a **court of record** the court for good cause shown may order the provisions for a medical certificate for the parties intending to be married waived and a certified copy of the order shall be filed with the county clerk. District courts and probate courts are courts of record (see Art. VI, Sec. 23, N.M. Constitution) and either a district judge or a probate judge may waive the requirement of a blood test before a marriage license can be issued. Neither a magistrate's court nor a municipal magistrate's court is a court of record. Therefore, magistrates of these courts cannot waive the requirements of a blood test before a marriage license can be issued. Consequently your second question is answered in the affirmative as to district judges and probate judges and in the negative as to magistrates of either the magistrate court or the municipal court.