

Opinion No. 14-1329

September 17, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Honorable E. B. Merritt, Assistant Commissioner of Indian Affairs, Washington, D.C.

MARRIAGES.

As to the validity of common law marriages.

OPINION

{*189} Your letter of the 2nd instant was duly received just as I was about leaving Santa Fe to attend the National Tax Conference in Denver, and since my return I have had no earlier opportunity to answer.

You inquire as to the validity of common law marriages in the {*190} State of New Mexico, desiring especially to be advised of any decision which may have been rendered in the state courts on this subject. So far as I am aware there has been no decision in our courts on this question. The question would be somewhat complicated here by the fact that prior to the acquisition of this part of the country by the United States the civil law was the law of the country, and I have never had occasion to investigate the marriage status under the civil law prior to the cession to the United States, but my recollection is that while the law regarded marriage as a civil contract, it required certain formalities in the celebration of that contract entirely aside from any religious ceremony. To what extent the civil law has been superseded by the common law on this subject might be a matter of some dispute. There may also be room for some dispute based upon the legislation of 1905 which appears in Chapter 65 of the laws of that year. That act requires that all persons desiring to enter into the marriage relation in New Mexico shall obtain a license from the probate clerk of the county wherein they desire the marriage to occur. In the absence of any judicial decision it would not be safe to express any very positive opinion on this subject.