

**Opinion No. 43-4225**

February 6, 1943

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. Robert W. Reidy, Assistant District Attorney, Albuquerque, New Mexico

We are in receipt of your letter of February 2, 1943, in which you ask whether or not the County Clerk is obliged to record a marriage certificate which has been issued in that county, but the parties having been married in another county. This office has, on two former occasions, by Opinion No. 245, dated August 20, 1931, and Opinion No. 320, dated November 23, 1931, held that a marriage is valid even though performed outside the county where the license was issued. I see no reason to deviate from these opinions, as courts will not declare a marriage invalid unless absolutely compelled to do so. And, as said by the author in 38 C. J., 1306:

"Statutes in the various jurisdictions commonly required licenses to be obtained, but the general rule in regard to such statutes is that they are directory merely, and do not destroy the validity of a marriage contracted contrary to provision."

Thus, the marriage being valid, even though contrary to the direction of the Legislature, the same reason for recording the marriage certificate exists as would exist had the marriage been performed in the county where the license was issued.

By Section 65-113, the Legislature provided that

"The County Clerk shall, immediately upon receipt of said certificate, cause the same to be properly recorded and indexed in a permanent record book kept for that purpose as a part of the county records."

It is my opinion that by this section, the County Clerk is given the absolute duty of recording such certificate, and that the County Clerk cannot evade such duty simply because the marriage was not performed in the county specified, since, as is said above, the marriage is valid, and it is desirable that a certificate be placed of record.

By ROBERT W. WARD,

Asst. Atty. General