

March 26, 2004

RE: Official Attorney General Opinion

Recently, legal issues regarding marriage licenses have received national and local media attention. The Office of the Indiana Attorney General has received several requests for legal opinions relating to the issuance of marriage licenses in Indiana.

Pursuant to Indiana Code section 4-6-2-5, on April 14, 2003, this office issued an unpublished advisory letter on the solemnization of marriages in response to a request from Representative Kathy Richardson on behalf of the Association of Clerks of the Circuit Court of Indiana. Several additional inquiries have been received on the same subject matter and the release of this previously issued advisory letter as an official opinion may be useful to the public and to you in the performance of your official duties.

Sincerely,

Stephen Carter  
Attorney General

March 26, 2004

**OFFICIAL OPINION 2004-3**

The Honorable Kathy Richardson  
Indiana House of Representatives  
Third Floor, State House  
Indianapolis, IN 46204

RE: Solemnization of marriages under Indiana law

Dear Representative Richardson:

This letter responds to your request on behalf of the Association of Clerks of the Circuit Courts of Indiana for an advisory opinion on whether the ceremony solemnizing a marriage under a license issued by an Indiana circuit court must occur in Indiana.

**BRIEF ANSWER**

Indiana generally accepts the validity of a marriage that complies with the legal requirements of the jurisdiction in which it was performed. An exception is a marriage between persons of the same sex, which is “void in Indiana even if the marriage was lawful in the place where it was solemnized.”<sup>1</sup> Accordingly, a couple obtaining an Indiana marriage license but intending to be married outside of Indiana should be advised to check the legal requirements of the jurisdiction in which they will be married to determine what is necessary for a legally binding marriage in that jurisdiction. If a couple intends to use (or has used) an Indiana marriage license for an out-of-state marriage, it is advisable to recommend that the marriage be re-solemnized in Indiana to avoid future questions about its validity.

**ANALYSIS**

Indiana cases arising prior to 1958 frequently find a valid marriage absent full compliance with the statutory requirements based on Burns Indiana Statutes Annotated 44-302 (repealed 1958) which provided that “no marriage shall be void or voidable for want of a license or other formality

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<sup>1</sup> Indiana Code § 31-11-1-1.

required by law, if either of the parties thereto believed it to be a legal marriage at the time.” However, this law was repealed effective January 1, 1958 at the time the General Assembly abolished common law marriages.

Our law now requires that all couples wishing to marry in Indiana follow a number of statutory requirements:

Individuals who intend to marry must obtain a marriage license from the clerk of the circuit court of the county of residence of either of the individuals. If neither of the individuals who intends to marry is a resident of Indiana, the individuals must obtain the marriage license from the clerk of the circuit court of the county in which the marriage is to be solemnized.<sup>2</sup>

Obtaining a license is, however, only the first step a couple must take to ensure they enter into legally recognizable marriage in Indiana. They must, within 60 days after its issuance<sup>3</sup>, present the license “to an individual who is authorized by IC 31-11-6<sup>4</sup> to solemnize marriages,”<sup>5</sup> with the license being “the legal authority for an individual who is authorized to solemnize marriages to marry two (2) individuals.”<sup>6</sup> After the ceremony,

[t]he individual who solemnizes a marriage shall do the following:

(1) Complete the original and duplicate certificates described in section 15 of this chapter.

(2) Give the original certificate to the individuals who married each other.

(3) Not later than thirty (30) days after the date of the marriage, file the duplicate certificate and the license to marry with the clerk of the circuit court who issued the marriage license.<sup>7</sup>

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<sup>2</sup> Indiana Code § 31-11-4-3

<sup>3</sup> Indiana Code § 31-11-9

<sup>4</sup> Indiana Code § 31-11-6 states that “[p]ersons authorized to solemnize a marriage are (1) A member of the clergy of a religious organization (even if the cleric does not perform religious functions for an individual congregation), such as a minister of the gospel, a priest, a bishop, an archbishop, or a rabbi; (2) A judge; (3) A mayor, within the mayor's county; (4) A clerk or a clerk-treasurer of a city or town, within a county in which the city or town is located; (5) A clerk of the circuit court; (6) The Friends Church, in accordance with the rules of the Friends Church; (7) The German Baptists, in accordance with the rules of their society; (8) The Bahai faith, in accordance with the rules of the Bahai faith; (9) The Church of Jesus Christ of Latter Day Saints, in accordance with the rules of the Church of Jesus Christ of Latter Day Saints; and (10) An imam of a masjid (mosque), in accordance with the rules of the religion of Islam.”

<sup>5</sup> Indiana Code section 31-11-4-13

<sup>6</sup> Indiana Code § 31-11-4-14

<sup>7</sup> Indiana Code § 31-11-4-16 (a)

Since the 1958 abolition of common law marriages, Indiana courts have confirmed the importance of statutory compliance. *See, e.g., Williams v. Williams*<sup>8</sup>, finding that because the parties did not obtain a marriage license in 1968, they “did not enter into a legally recognized marriage”, and the court lacked subject matter jurisdiction to grant a divorce because it “cannot dissolve a marriage that is not a marriage because it is already void.”

What our statutes do not address is whether the marriage of a couple that has obtained an Indiana license must occur within the state of Indiana. This omission, however, does not seem to be a mere oversight. Indiana, with the notable exception of same-sex marriages, follows the general rule of marriage validation that the validity of a marriage is “governed by the law of the place of its celebration.”<sup>9</sup>

Thus, the question you raise involves not the “jurisdiction” of an Indiana license, but the license’s effect as part of the process constituting a valid marriage. The “regulation of marriage and divorce has been fully recognized as a matter within the exclusive province of the Legislatures of the States,”<sup>10</sup> and the legislature has full power to prescribe reasonable regulations relating to marriage because “the relations, duties, obligations, and consequences flowing from the marriage contract are so important to the peace and welfare of society.”<sup>11</sup>

The license and other formalities imposed by statute may be viewed as steps necessary to establish that a marriage has in fact occurred. *See, e.g., Sweigart v. State*<sup>12</sup> noting that one of the main purposes of requiring a marriage license is “to prevent hasty and secret marriages”. A legislative presumption that the celebration of the marriage will take place in this state is evidenced from the requirement of Indiana Code § 31-11-4-15 that the marriage certificate’s form contain language that includes the Indiana county in which the ceremony occurred:

I \_\_\_\_\_ (name) certify that on \_\_\_\_\_ (date) at \_\_\_\_\_ *in* \_\_\_\_\_ **County, Indiana**, \_\_\_\_\_ of \_\_\_\_\_ County, \_\_\_\_\_ (state) and \_\_\_\_\_ of \_\_\_\_\_ County, \_\_\_\_\_ (state) were married by me as authorized under a marriage license that was issued by the Clerk of the Circuit Court of \_\_\_\_\_ County, Indiana, dated \_\_\_\_\_.”)  
(emphasis added).

This is not to say that a couple that has obtained an Indiana marriage license cannot be legally married outside of Indiana. “On comity grounds, Indiana will accept as legitimate a

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<sup>8</sup> 460 N.E.2d 1226, 1228 (Ind. Ct. App. 1984)

<sup>9</sup> *Gunter v. Dealer’s Transportation Co.*, 91 N.E.2d 377, 379 (Ind. Ct. App. 1950), citing *Roche v. Washington*, 19 Ind. 53 (Ind. 1862). *See also Bolkovac v. State*, 98 N.E.2d 250, 254 (Ind. 1951) (the “validity of a marriage depends upon the law of the place where it occurs.”)

<sup>10</sup> *Sweigart v. State*, 12 N.E.2d 134, 138 (Ind. 1938) *citing Maynard v. Hill*, 125 U.S. 190 (1888)

<sup>11</sup> *Wiley v. Wiley*, 75 Ind. App. 456, 466, 123 N.E. 252, 255 (Ind. App. 1919).

<sup>12</sup> 12 N.E.2d at 139

marriage validly contracted in the place where it is celebrated,” even if the marriage could not be validly contracted in Indiana.<sup>13</sup>

To summarize, compliance with Indiana’s statutory requirements has no effect if the marriage does not comply with the legal requirements of the jurisdiction in which the marriage actually occurs.

Based upon the foregoing, we conclude that an Indiana marriage license will have only the weight and validity given it by the jurisdiction in which the marriage actually takes place.

### **CONCLUSION**

With the notable exception of same-sex marriages, Indiana generally accepts the validity of a marriage that complied with the legal requirements of the jurisdiction in which it was performed. A couple obtaining an Indiana marriage license but intending to be married outside of Indiana should be advised to check the legal requirements of the jurisdiction in which they will be married to determine what is necessary for a legally binding marriage in that jurisdiction. If a couple intends to use (or has used) an Indiana marriage license for an out-of-state marriage, it is advisable to recommend that the marriage be re-solemnized in Indiana to avoid future questions about its validity.

This advisory letter is based on the assumption that the license is issued to persons who have the right to marry under Indiana law and have otherwise satisfied all statutory requirements for issuance of an Indiana license.

Sincerely,

Stephen Carter  
Attorney General

Susan W. Gard  
Deputy Attorney General

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<sup>13</sup> *Mason v. Mason*, 775 N.E.2d 706, 709 (Ind. Ct. App. 2002) (recognizing a Tennessee marriage between first cousins that could not be validly contracted between residents of Indiana, but distinguishing recognition of foreign first cousin marriages from recognition of foreign same-sex marriages, which is explicitly precluded by statute).