

**Marriage, Age of Consent. Minors, Age of Consent to Marry.  
Dining Cars, Not Subject to Liquor License. Not Required of  
Dining Cars.**

Males under 18 years of age and females under 16 are not capable of consenting to a marriage contract, nor are they entitled to any license to marry even with the consent of their parents. Males over 18 and under 21, and females over 16 and under 18 are not entitled to a license to marry without the consent of their parents.

A dining car is not required to take out a liquor license in this state, and the sheriff, therefore, is not required to visit and report such dining cars, under Chapter 79. Laws of 1909.

Helena, Montana, January 8, 1910.

Hon. J. H. Stevens,  
County Attorney,  
Kalispell, Montana.

Dear Sir:

I am in receipt of your letter of January 3, requesting an opinion upon the following questions:

"If a male is under eighteen years of age and a female is under sixteen years of age can a marriage license be legally granted to them, with the consent of the parents or guardians. If so, under what age should a marriage license be refused if each of them have the consent of the parents or guardians?

"If the male is over the age of eighteen and under twenty-one and the female is over the age of sixteen and under the age of eighteen can a marriage license be granted without the consent of the parents or guardians?

"Should the sheriff, in making his report as to where liquor is sold in the county without a license, report the sale of liquor on the dining cars of the railroad company?"

In answer to your first question, you are advised that section 3608, revised codes, fixes the age at which persons are capable of entering into a marriage contract; that is, males of the age of 18 years, or upwards, and females of the age of 16 years, or upwards, and not otherwise disqualified, are capable of consenting to and consummating marriage. As the statute has thus fixed the age at which such parties are capable of consenting to such a contract, it follows that they have no legal capacity to enter into such a contract under such ages, for it is a well established rule of law that a person entering into a contract who has not reached the legal age of consent to contract is void, and therefore, males must be 18 years of age and females 16 years of age before they are competent to enter into a marriage contract, even with their parents' consent.

See:

Shafer v. State, 20 Ohio, 1;  
Fitzpatrick v. Fitzpatrick, 6 Nev. 63;  
Hardy v. State, 38 S. W. (Tex.) 615;  
26 Cyc. 842.

2. Section 3584, revised codes, defines minors as follows: Males under the age of 21 years of age; females under the age of 18 years of age. And section 3619 provides that no minor shall be granted a marriage license without the consent of the father, if living, if not, then, of the mother, or of the guardian or person under whose care and government such minor may be. The use of the word "minor" in this section clearly refers to male minors over the age of 18 years of age and under the age of 21 years, and to female minors over 16 and under 18 years of age. It cannot have any application to male minors under 18 years of age and female minors under 16, for the reason that such minors are not competent to enter into the marriage contract under any circumstances. And section 3621 expressly provides that if it appears to the

clerk of the district court that either party is legally incompetent to enter into a marriage contract that the clerk shall refuse to grant a license. Therefore, you are advised that the clerk has no authority to grant a marriage license to males under 18 or females under 16 years of age at all, and the written consent of their parents or guardians gives him no authority to issue such a license. On the other hand, he has no authority to grant a license to males 18 years of age and under 21, and to females 16 years of age and under 18 years, without the consent of their parents or guardians.

3. In answer to your third question, it is our opinion that the liquor license law does not apply to dining cars attached to railway trains passing to and fro through any county on the regular trains operated on any railroad passing through such county, and that, therefore, the sheriff is not required, under the provisions of chapter 79, laws of 1909, to visit or make report as to any such dining car, as he is only required to "visit every store or saloon in the county which is required by law to procure a liquor license."

Very truly yours,  
ALBERT J. GALEN,  
Attorney General.