

Marriage, Age for. Age of Consent to Marriage.

Under the laws of this state, a female under the age of sixteen years is not capable of consenting to marriage and the consent of parent or guardian is of no avail to make such a marriage valid.

March 19th, 1914.

Hon. M. L. Rickman,
Secretary Bureau of Child and Animal Protection,
Helena, Montana.

Dear Sir:

I am in receipt of your communication of the present date, submitting for my opinion the question of whether a girl under the age of sixteen is capable of contracting a valid marriage with the consent of her parent or guardian.

Sec. 3607, Revised Codes of Montana, 1907, defines marriage as follows:

"Marriage is a personal relation arising out of a civil contract, to which the consent of parties capable of making it is necessary."

Sec. 3608 of the code is as follows:

"Any unmarried male of the age of eighteen years or upwards, and any unmarried female of the age of sixteen years or upwards, and not otherwise disqualified, is capable of consenting to and consummating marriage."

The provisions of our code dealing with the consent of guardians to the marriage of minors is found in Sec. 3619:

"Where either party is a minor, no license shall be granted without the written consent of the father if living, if not, then of the mother of such minor, or of the guardian or person under whose care and government such minor may be, which written consent shall be proved by the testimony of at least one competent witness."

Under the common law the ages at which consent to marriage could be given were twelve years for females and fourteen years for males, and it was held in numerous cases that marriage by a person previous to the given age was merely incomplete or inchoate and not absolutely void. Some states under their codes have held that this rule of the common law was not abrogated by the enactment of the code, and that a marriage before the prescribed age was not necessarily void, such decisions being put upon the ground that where such marriages were not properly prohibited the common law rule would prevail.

Sec. 8060, Revised Codes of Montana.

However, the code of this state declares that:

"In this state there is no common law in any case where the law is declared by the code or the statute; but where not so declared, if the same is applicable and of a general nature, and not in conflict with the code or other statutes, the common law shall be the law and rule of decision."

As seen by the quotation of Sec. 3608, we have a rule in this state defining what persons may consent to marriage.

Since marriage is a relation arising out of contract, and a contract presumes a consent of the parties thereto, Sec. 3608 is in effect a rule defining those who may enter such contract. since it declares who may consent.

You are, therefore, advised that under the laws of this state a female under the age of sixteen years is not capable of consenting to marriage, and the consent of her parents or guardian could be of no avail in making such a marriage valid.

Yours very truly,

D. M. KELLY,

Attorney General.