

**Montana Soldiers' Home—Widow—Common Law Wife—
Admittance.**

Under Chapter 93 of the 1913 Session Laws a widow, who was the common law wife of an eligible soldier, may be admitted to the Montana Soldiers' Home.

February 22, 1919.

Mr. Chas. M. Settles,
County Auditor,
Helena, Montana.

Dear Sir:

I have your letter of February 20th, enclosing letter from the Commandant of the Montana Soldiers' Home relative to admitting the wife of George StClair to the Soldiers' Home. Section 1921 of the Codes, as amended by Chapter 93 of the 1913 Session Laws, provides for the admission to the Home of "the wives and widows of soldiers or sailors

who are inmates or who may have been eligible to admission as inmates and who were married prior to the year 1902." I gather from your letter that Mrs. St. Clair has been what is ordinarily known as the common law wife of Mr. St. Clair for the past twenty-five years, that is to say that these people have been living together for that time as man and wife, without going through the formality of a marriage contract. The question is whether the words "who were married prior to the year 1902" should properly include common law wives.

I am of the opinion that they should be so construed. Section 3607 of the Revised Codes of Montana, of 1907, defines marriage as a "personal relation arising out of a civil contract to which the consent of parties capable of making it is necessary." Consent alone will not constitute marriage; it must be followed by solemnization or by mutual and public assumption of the marital relation." In the case of O'Malley vs. O'Malley, 46 Mont. at page 558, our Supreme Court defines what is meant by mutual and public assumption of the marital relation as follows: "to use it means a course of conduct on the part of both man and wife toward each other and toward the world, as that people generally would take them to be married." I assume from your letter that the relations existing between Mr. and Mrs. StClair for some years prior to 1902 were such as to constitute "a mutual and public assumption of the marital relation. If that is the fact, it is my opinion that these people were "married" within the meaning of the laws of Montana and of Section 1921 above quoted. I return to you herewith the letter of Mr. Reiche, which you referred to me.

Respectfully,

S. C. FORD,

Attorney General.