

**Age of Consent—Clerk of District Court—Marriage—
Marriage License—Justice of the Peace.**

The Clerk of the District Court is not authorized to issue a marriage license in any case where either party is under the age of consent as fixed by Section 5696, Revised Codes of Montana, 1921, even though the parents give their written consent thereto.

A Police Magistrate as such has no authority to solemnize marriage. He may do so in his capacity as Justice of the Peace.

J. B. C. Knight, Esq.,
County Attorney,
Anaconda, Montana.

My dear Mr. Knight,

You have submitted to me for my opinion the following questions:

1. Is the Clerk of Court authorized to issue a marriage license in the case where either party is under the age of consent, if the consent of the proper parent or parents is given?
2. Can a police magistrate solemnize marriage?

To authorize the issuance of a marriage license, the male must be of the age of eighteen years or upwards, and the female must be of the age of sixteen years or upwards, and, in addition, if the male be under twenty-one years of age, or the female be under eighteen years of age, the consent of the parent or guardian of such person must be obtained as required by Section 5712, R. C. M. 1921. The Clerk is not authorized to issue a marriage license in any case where either party is under the age of consent as fixed by Section 5696, R. C. M. 1921, and this even though the parents give their written consent.

Your second question is answered by Section 5710, R. C. M. 1921, which is as follows:

“Marriage may be solemnized by either a Justice of the Supreme Court, Judge of the District Court, Justice of the Peace, priest, or minister of the gospel of any denomination, or the mayor of any city. Marriages may also be solemnized by religious societies according to the usage of such societies.”

It will be observed that a police magistrate is not one of the officers mentioned as being authorized to solemnize marriage. In some instances one person is both a Justice of the Peace and a Police Magistrate. Of course, such person could solemnize marriage in his capacity as a Justice of the Peace, but he has no authority to do so as a Police Magistrate.

It is, therefore, my opinion that a Police Magistrate has no authority to solemnize marriage.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.