

Marriage—Divorce—Females—Annulment—Children.

The marriage of a girl under 18 cannot be annulled because of lack of assent of the girl's parent or guardian, but the marriage of a girl under 16 may be annulled on such ground. Only the officers mentioned in section 10467 have the right to take possession of children without legal process.

Mrs. Maggie Smith Hathaway,
Secretary, Bureau of Child Protection,
Helena, Montana.

December 5, 1927.

My dear Mrs. Hathaway:

You have submitted the following questions:

1. Are we to infer from section 5696 and section 5712, R. C. M. 1921, that no girl under sixteen can be legally married, and that the marriage of a girl under eighteen without consent may be nullified?

2. Has a probation officer the same right to take possession of children as that given to officers of this bureau and to sheriffs, as under section 10467?

Section 5712 of the code provides that the consent of the father, or mother, or person under whose care the minor may be, is necessary before a marriage license can be procured.

Subdivision 1 of section 5729 provides that a marriage may be annulled in case the person contracting marriage was under the age of legal consent, and such marriage was contracted without the consent of his or her parent or guardian, unless, after attaining the age of consent, such party for any time freely cohabited with the other as husband or wife.

The marriage of a girl under **eighteen** without consent cannot, in my opinion, be annulled because of the lack of assent of the girl's parent or guardian to the marriage. The marriage of a girl under **sixteen** may, however, be annulled on the ground above stated.

As to your second question, the powers of probation officers are provided in section 12288, and have to do primarily with juvenile delinquency or minors against whom criminal charges have been preferred.

Section 10467 is a part of the law relating to the protection of dependent and neglected children, and it is my opinion that only the officers mentioned in said section have the right to take possession of children without legal procedure.

Very truly yours,

L. A. FOOT,

Attorney General.