

No. 315

MARRIAGE LICENSE AND CERTIFICATE OF MARRIAGE—CERTIFICATE—RECORDING—RETURN OF RECORDED INSTRUMENTS AFTER RECORDING—COURT, Clerk of, duty of

Held: The parties to a marriage are entitled to the marriage license and certificate of marriage after the same have been recorded by the Clerk of the District Court and the Clerk should, after the recording of the certificate of marriage, return the recorded marriage license and certificate of marriage to the parties to said marriage.

December 11, 1941.

Mr. John M. Comfort
County Attorney
Madison County
Virginia City, Montana

Dear Mr. Comfort:

You have submitted the following:

“The Clerk of the Court has recently come to me with regard to marriage licenses and certificates which are on file in his office. He has several inquiries as to persons who would like a certified copy of

their marriage license. The original license is still on file in his office and he wishes to know if there is any reason why the original marriage license could not be returned to the party requesting it as well as giving it to any proper parties after the same has been recorded."

Section 5716, Revised Codes of Montana, 1935, provides:

"No person authorized to solemnize marriages shall perform such ceremony until the parties have given him the license issued by the clerk of the district court for their marriage; and when he has completed any such ceremony he shall enter upon such license a certificate of such marriage, showing when and where it occurred, and such certificate shall be attested by two witnesses to such ceremony; he shall, within thirty days after such marriage has been solemnized, return said license and certificate to the clerk of the district court, who shall record the certificate in the same book where the said marriage license is recorded."

Section 5720, Revised Codes of Montana, 1935, provides:

"The original certificate of marriage, made as prescribed in this chapter, and the record thereof by the clerk of the district court, or a copy of such record duly certified by the clerk of the district court, shall be received by all courts in all places as presumptive evidence of such marriage."

The retention by the Clerk of the District Court of the marriage license and certificate of marriage after the recording thereof serves no useful purpose. It is my opinion the parties to a marriage are entitled to the marriage license and certificate of marriage, after the same have been recorded by the Clerk, and the Clerk should, after the recording of the certificate of marriage, return the recorded marriage license and certificate of marriage to the parties to said marriage.

Sincerely yours,

JOHN W. BONNER
Attorney General