

November 28, 1946.

Mr. J. J. McIntosh
County Attorney
Rosebud County
Forsyth, Montana

Dear Mr. McIntosh:

In your recent letter you submit the following:

The clerk of the court of Rosebud County has requested you to secure an opinion from our office as to whether or not the clerk of the court is required to record a marriage license where the license was issued in Rosebud County, but the marriage performed in Big Horn County, and sent by the minister performing the ceremony back to the clerk of the court of Rosebud County.

Our statute contemplates the use of a marriage license in the county where issued as Section 5711, Revised Codes of Montana, 1935, provides:

"Previous to the solemnization of any marriage in this state, a license for that purpose must be obtained from the clerk of the district court of the county wherein the marriage is to take place."

In Opinion No. 7, Volume 18, Report and Official Opinions of the Attorney General, this office held in regard to the above section:

"The words of the statute are plain and unambiguous and can only be interpreted to mean that a license is valid only in the county wherein it is obtained."

The minister or other person authorized to solemnize a marriage has the duty to examine the license and ascertain if the license is being used in the county where it was issued before performing the ceremony. However, if through inadvertence or mistake the license is used outside the county where issued, the provisions of Section 5719, Revised Codes of Montana, 1935, would be applicable. This section states:

"No marriage solemnized before any person professing to have authority shall be deemed or regarded void, nor shall the validity thereof

Opinion No. 100.

Marriage Licenses—Clerk of Court, Duty to Record Marriage Certificates—Counties—Record, Marriage Certificate.

Held: Marriage certificate, after the solemnization of the marriage, should be recorded by the clerk of the court who issued the license even though the marriage ceremony was performed in another county.

be in any way affected on account of any want of jurisdiction or authority, provided it be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage."

The latter section would make any marriage entered into by either or both of the parties in good faith valid, even though the marriage ceremony was performed outside the county that issued the license.

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.**" (Emphasis mine.)

It is apparent from the foregoing code section that the clerk of the court who issued the license should receive the license and certificate after the solemnization of the marriage as he has the prior record which was made at the time the license was issued. An additional reason why the license and certificate should be returned to the clerk's office where it was issued is that Chapter 44, Laws of 1945, makes it the duty to furnish information "from each certificate of marriage which was filed with him during the preceding calendar month" to the state registrar of vital statistics. The clerk who issued the license, upon the return of the certificate, would have the complete record before him in furnishing the necessary information.

To require the recording of the certificate by the clerk who issued the license is in accord with the emphasized portion of Section 5716, *supra*. Such an interpretation would satisfy the rule set out in *State v. Certain In-*

toxicating Liquors, 71 Mont. 79, 227 Pac. 472, in which case the court said:

"It is our duty to reconcile the statutes, if possible, and make them operative."

It is therefore my opinion that a marriage certificate, after the solemnization of the marriage, should be recorded by the clerk of the court who issued the license even though the marriage ceremony was performed in another county.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General