

Held: 1. (a) A girl under the age of 16 years, regardless of written consent, may not be legally married within the State of Montana.

(b) A parolee from, or an inmate of the Vocational School for Girls over the age of 16 years, but not having attained the age of 18 years, must have the consent of the school before legally obtaining a marriage license.

2. An inmate of the Vocational School for Girls may not be legally discharged until she has arrived at the age of 18 years and has departed herself in such a manner as to make it reasonably probable that she has reformed and is a proper person to be discharged. The girl in the factual situation presented could not in any event be released to her husband under the circumstances as presented.

3. The Vocational School for Girls may bring an action to annul this marriage at any time before this girl arrives at the age of legal consent.

4. The procedure to be followed by the Vocational School for Girls in PAROLING OR LEGALLY DISCHARGING an inmate is specified in Section 12539, Revised Codes of Montana, 1935. The procedure to be followed when an inmate is DISCHARGED OR RELEASED ON TRIAL OR PAROLE is specified in Section 12541, Revised Codes of Montana, 1935.

January 30, 1946.

Mrs. Elizabeth Steed, Superintendent
Vocational School for Girls
Helena, Montana

Dear Mrs. Steed:

You have presented the following factual situation to this office:

A girl 14 years of age ran away from the Vocational School for Girls on August 21, 1945. On December 1, 1945, she went to Chinook and falsely swore that she was 18 years of age in order to obtain a marriage

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license. She was picked up on or about December 8, 1945, and returned to the Vocational School for Girls. You submit the following questions: (1) If a girl under 18 years of age is paroled to her mother, who must give permission if she wishes to marry? (2) Could the school legally release the girl to her husband if he is determined to be a desirable person? (3) Would it be necessary to annul this marriage? (4) What procedure is to be followed when a parole is granted and a discharge is granted?

Section 5712, Revised Codes of Montana, 1935, provides:

"Where either party is a minor, no license shall be granted without the written consent of the father, if living; if not, than of the mother of such minor or of the guardian, or person under whose care and government such minor may be, which written consent shall be proved by the testimony of at least one competent witness."

Opinion No. 85, Volume 20, Report and Official Opinions of the Attorney General, held as follows:

"A clerk of the court is not authorized to issue a marriage license where either party is under the age of legal consent as defined by Section 5696, Revised Codes of Montana, 1935, which is 18 years for males and 16 years for females, regardless of the written consent of the parents. Such written consent of the parents does not enlarge the authority of the clerk where either party is under the age of consent."

A girl under the age of 16 years, regardless of written consent, could not be legally married under the Montana law.

The question then arises as to who will give consent to marriage for a girl over the age of 16 years and under 18 years of age when such girl is an inmate of the Vocational School for Girls.

Chapter 123, Laws of 1945, provides the court's jurisdiction of a child ceases when the child is committed to a state institution or agency.

Section 12520, Revised Codes of Montana, 1935, provides that the State

Vocational School for Girls is to be for the care, education, training and safe-keeping of girls between the ages of eight and twenty-one years, who are legally committed thereto by a court of record.

The jurisdiction over such inmate has passed from the court to the school. The inmate while on parole is subject to the legal custody of the school. The school, being charged with the care and government of inmates, is substituted in place of the parents as the person or agency exercising control over such inmates. This would void the parental consent for marriage when inmates are under 18 years of age and would place the school as the proper consenting party. This is based upon the fact that the girl inmate has been removed from the care and government of the parents by her commitment and such status governs until the girl inmate has been legally discharged.

Section 12539, Revised Codes of Montana, 1935, provides each girl committed to said school shall remain there until she arrives at the age of 21 years, unless paroled or legally discharged. The executive board may discharge any girl inmate who has arrived at the age of 18 years if, while as an inmate, she has deported and conducted herself in such a manner as to make it reasonably probable that she has reformed and is a proper person to be discharged. It, therefore, would not be proper to discharge the girl in question until she has arrived at the age of 18 years, and has so conducted herself while confined to indicate that she has reformed and is a proper person to be so discharged.

Section 12541, Revised Codes of Montana, 1935, provides the executive board of the school may discharge or release a girl inmate on trial or parole providing she has been in the school for a period of one year. The parolee must, under this section, report her conduct at stated intervals to the principal and present certificates of good behavior. Under such circumstances, the inmate's leave may be extended. It is further, the duty of the principal to recall any girl who is not conducting herself properly, or who may not have a suitable home.

It is evident under this section that the girl in question could not be properly paroled to her husband until

she had served a minimum period of one year, and, then, only if the board determines she was a proper subject for such parole and would have a proper home and surroundings during such trial period.

In the case of *State ex rel. Foot, Attorney General, Relator, v. District Court, et al, Respondents*, 77 Mont. 290, 250 Pac. 973, the following language was utilized:

"Under the juvenile delinquent law, a married female under the age of 18 may properly be committed to the State Vocational School for Girls until she attains the age of 21 years . . .

"The controlling feature in juvenile laws is age, not minority; hence the contention that a female cannot be held under a commitment in the State Vocational School for Girls after she reaches the age of majority fixed by Section 5673, Revised Codes of Montana, at eighteen years, cannot be sustained."

Section 5729, Revised Codes of Montana, 1935, provides that a marriage may be annulled for any of the following causes existing at the time of the marriage:

"1. That the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent and such marriage was contracted without the consent of his or her parents or guardian, or person having charge of him or her . . ."

Section 5730, Revised Codes of Montana, provides:

"An action to obtain a decree of annulity of marriage for causes mentioned in preceding section, must be commenced within the periods and by the parties, as follows:

"1. For causes mentioned in subdivision 1: . . . or by a parent, guardian or other person having charge of such non-aged male or female at any time before such married minor has arrived at the age of legal consent."

Section 12539, Revised Codes of Montana, 1935, governs the procedure to be followed in discharging an inmate of the Vocational School for Girls, and states as follows:

"Term of commitment — paroles. Each girl committed to the state vocational school for girls shall remain there until she arrives at the age of 21 years, unless paroled or legally discharged; provided, that it shall be lawful for the executive board to discharge therefrom any girl, an inmate thereof, who has arrived at the age of 18 years, if it be made to appear that while there as an inmate she deported and conducted herself in such a manner as to make it reasonably probable that she has reformed and is a proper person to be discharged." (Emphasis mine.)

Section 12541, Revised Codes of Montana, 1935, covers the procedure to be followed when an inmate is released on trial or parole, and states as follows:

"Release and discharge. The executive board may at any time, if a girl has been in the state vocational school for a period of one year, discharge or release such girl on trial or parole, but in all cases where she is released on trial or parole she must at stated intervals report her conduct to the principal and present certificates of good behavior, whereupon her leave may be extended. It shall be the duty of the principal to recall any girl who is not conducting herself properly, or who may not have a suitable home." (Emphasis mine.)

It is therefore my opinion:

1. (a) A girl under the age of 16 years, regardless of written consent, may not be legally married within the State of Montana.

(b) A parolee from, or an inmate of the Vocational School for Girls over the age of 16 years, but not having attained the age of 18 years, must have the consent of the school before legally obtaining a marriage license.

2. An inmate of the Vocational School for Girls may not be legally discharged until she has arrived at the age of 18 years and has deported herself in such a manner as to make it reasonably probable that she has reformed and is a proper person to be discharged. The girl in the factual situation presented could not in any event be released to her husband under the circumstances as presented.

3. The Vocational School for Girls may bring an action to annul this marriage at any time before this girl arrives at the age of legal consent.

4. The procedure to be followed by the Vocational School for Girls in **paroling or legally discharging** an inmate is specified in Section 12539, Revised Codes of Montana, 1935. The procedure to be followed when an inmate is **discharged or released on trial or parole** is specified in Section 12541, Revised Codes of Montana, 1935.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General