

Dear Mr. French:

You have requested my opinion as to whether or not Chapter 208, Laws of 1947, amended or affected sections 5724, 5725, 5726 of the Revised Codes of Montana, 1935, being the statutes dealing with the declaration of marriage procedure.

In answering your inquiry it is necessary to note that Chapter 208, Laws of 1947, deals only with the duties of the officer who is authorized to issue marriage licenses and the certificate or certificates required of the applicant or applicants therefor. The requirements contained in said Chapter 208 are necessary for all solemnized marriages.

However, our legislature by enacting sections 5724 through 5726, Revised Codes of Montana, 1935, has provided a separate and wholly different method of entering the marriage contract. Section 5724, Revised Codes of Montana, 1935, provides:

"Persons married without the solemnization provided for in section 5710 must jointly make a declaration of marriage substantially showing:

- "1. The names, ages and residences of the parties;
- "2. The fact of marriage;
- "3. The time of marriage;
- "4. That the marriage has not been solemnized.

Section 5726, Revised Codes of Montana, 1935, provides:

"Declarations of marriages must be acknowledged and recorded in a like manner as marriage certificates."

It is to be noted that these provisions have been the statutory law of Montana since 1895, without amendment, and are, in my opinion, in full force and effect.

In other words, the legislature has provided two methods of legally entering the marital relation:

- 1st. By solemnization—Sec. 5710, Revised Codes of Montana, 1935.

Opinion No. 49

**Marriage License and Certificate—
Declaration of Marriage—
Fees, Recording.**

Held: The marital relation may be legally entered into under the sections requiring solemnization, license and certificate, and under this procedure the requirements of Chapter 208, Laws of 1947, must be complied with. That the marital relation may also be entered under the provisions of Section 5724, Revised Codes of Montana, 1935, wherein no license, solemnization nor application of the provisions of Chapter 208, Laws of 1947, are necessary, and no fee is required for the filing and recording of the declaration.

July 24, 1947

Mr. John D. French
County Attorney
Lake County
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2nd. By declaration of marriage—
Sec. 5124, Revised Codes of
Montana, 1935.

Under the first above mentioned procedure a license and solemnization are required. Under the declaration of marriage statute no license nor solemnization are required, and no fee is provided for the recording of the declaration of marriage with the clerk of court.

The legislature has apparently made every provision for the protection of the marital relation under either procedure.

It might be well to point out that our sections 5724, 5725, 5726 and 5727, Revised Codes of Montana, 1935, were taken directly from the California civil statutes and since that time the California legislature has repealed their section 75, which is identical with our section 5724.

It is, therefore, my opinion, the marital relation may be legally entered into under the sections requiring solemnization, license and certificate, and under this procedure the requirements of Chapter 208, Laws of 1947, must be complied with. That the marital relation may also be entered under the provisions of Section 5724, Revised Codes of Montana, 1935, wherein no license, solemnization nor application of the provisions of Chapter 208, Laws of 1947, are necessary and no fee is required for the filing and recording of the declaration.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General