

**Opinion No. 17**

**MARRIAGE AND DIVORCE; Divorce waiting period after; Judgment rendered prior to July 1, 1963—SECTIONS 12-201, 21-101, 21-102, 48-111, 48-151, REVISED CODES OF MONTANA, 1947.**

**HELD: A person, a party to a divorce action in Montana or a Montana resident who is a party to a divorce action in another jurisdiction, may marry again within a six month period after judgment of divorce granted prior to July 1, 1963.**

August 30, 1963

Robert J. Boyd, Esq.  
Deer Lodge County Attorney  
Anaconda, Montana

Dear Mr. Boyd:

You have requested my opinion on whether or not a person, a party to a divorce action in Montana, or a Montana resident who is a party to a divorce action in another jurisdiction, may marry again within a six month period after judgment of divorce granted prior to July 1, 1963.

Your question arises out of the interpretation to be given Section 48-151, R.C.M., 1947, as amended (Section 12, Chapter 232, Laws of 1963). That section reads as follows:

“It is unlawful for any person who is a party to an action for divorce in any court in this state, or for any Montana resident who is a party to an action for divorce elsewhere, to marry again until six months after judgment of divorce is granted, and the marriage of any such person solemnized before the expiration of six months from the date of the granting of judgment of divorce shall be void.”

This section became effective July 1, 1963.

Section 48-111, R.C.M., 1947, states in pertinent part:

“A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any other person than such former husband or wife, is illegal and void from the beginning, unless:

“1. The former marriage has been annulled or dissolved.”

Section 21-101, R.C.M., 1947 states in pertinent part:

“Marriage is dissolved only:

\* \* \*

“2. By a judgment of a court of competent jurisdiction.”  
Section 21-102, R.C.M., 1947, states:

“The effect of a judgment of divorce is to restore the parties to the state of unmarried persons.”

It thus appears that, until July 1, 1963, the waiting period contemplated by Section 48-151, supra, could not be exacted of a divorced person. Nothing in Chapter 232 of the Laws of 1963 specifically amends, repeals, or even refers to Section 48-111, 21-101 or 21-102, supra.

Section 12-201, R.C.M., 1947, states:

“No law contained in any of the codes or other statutes of Montana is retroactive unless expressly so declared.”

In *Butte and Superior Mining Co. v. McIntyre*, 71 Mont. 254, 263, our Supreme Court stated:

“\* \* \* A statute which takes away or impairs vested rights, acquired under existing laws, or creates a new obligation, imposes a new duty or **attaches a new disability in respect to transactions already past, is deemed retroactive.** (Citing cases) \* \* \*” (Emphasis supplied)

Does Section 48-151, supra, “attach a new disability in respect to a transaction already past?”

In *Berkin v. Marsh*, 18 Mont. 152, 161, our Supreme Court noted and relied on various law dictionary definitions of “disability” including:

“ ‘Disability: The want of legal ability or capacity to exercise legal rights either special or ordinary, or to do certain acts with proper legal effect, or to enjoy certain privileges or powers of free action. At the present day disability, is generally used to indicate an incapacity for the full enjoyment of ordin-

ary legal rights; thus married women, persons under age, insane persons, and felons convict are said to be under disability. Sometimes the term is used in a more limited sense, as when it signifies an impediment to marriage \* \* \* (Black LawDictionary)”

Under this definition of “disability” falls the impediment to marriage imposed by Section 48-151, supra.

Under the facts of the question presented herein, the occurrence or transaction giving rise to the disability is the granting of a judgment of divorce prior to July 1, 1963, a **past** occurrence or transaction.

Of like import is a test employed in *Abrams v. Stone*, 315 Pac. 2d. 453, 458, by the California court to determine the retroactive character of a statute:

“\* \* \* it must give the previous transaction to which it relates some different legal effect from that which it had under the law when it occurred. \* \* \*”

Section 48-151, supra, contains no express declaration that it be retroactive. While I recognize that the legislative intent that an act be retroactive may be shown otherwise than by the use of the expression “this statute shall be retroactive” or one of similar import (see *Davidson v. Love*, 127 Mont. 366, 369), I cannot construe any of the language of the subject section as manifesting a clear legislative intent that the act be applied retroactively.

It is therefore my opinion that a person, a party to a divorce action in Montana or a Montana resident who is a party to a divorce action in another jurisdiction, may marry again within a six month period after judgment of divorce granted prior to July 1, 1963.

This, of course, necessarily presumes absence of impediment other than that contemplated by Section 48-151, supra.

Very truly yours,

FORREST H. ANDERSON  
Attorney General