S T A T E O F T E N N E S S E E
OFFICE OF THE
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July 12, 2006

Opinion No. 06-110

Legality of Marriage Without Tennessee License

QUESTIONS

1. Would the marriage of an immigrant solemnized in a religious ceremony in Tennessee without a marriage license be valid under Tennessee law?

2. Would the marriage of an immigrant solemnized in a religious ceremony in Tennessee with a license issued in another state be valid under Tennessee law?

OPINIONS

1. No. An immigrant may not be legally married in Tennessee without first obtaining a valid marriage license.

2. Under Tenn. Code Ann. § 36-3-103(a), a valid marriage requires a license be issued by a county clerk in this state. Accordingly, a marriage performed in Tennessee with a license from another state would not be valid under Tennessee law. If, however, such marriage would be valid under the laws of the state issuing the license, Tennessee would recognize the marriage as valid as long as the marriage is not in conflict with the public policy of Tennessee.

ANALYSIS

In Tennessee, the law of marriage is governed by statute rather than the rules of common law. *Bryant v. Townsend*, 188 Tenn. 630, 221 S.W.2d 949, 950 (1949). While the Tennessee legislature has authorized numerous persons, including ordained ministers of every denomination, to conduct ceremonies to solemnize marriages, a marriage license obtained from a Tennessee county clerk is a condition precedent to the solemnization of a valid marriage under Tennessee law. Tenn. Code Ann. § 36-3-103(a). Tennessee courts have recognized that obtaining a marriage license is a requirement for a valid marriage. *See Harlow v. Reliance Nat'l.*, 91 S.W.3d 243, 245-46 (Tenn. 2002) (putative widow not entitled to worker's compensation benefits as surviving spouse due to invalid marriage based on lack of marriage license); *Stovall v. City of Memphis*, 2004 WL 1872896 (Tenn. Ct. App. 2004) (marriage consummated by ceremony held invalid due to lack of marriage

license). Thus, the marriage of an immigrant, even if it is consummated by a religious ceremony, will not be valid in Tennessee without a marriage license.

Under the provisions of Tenn. Code Ann. § 36-3-103(a), a license must be issued "under the hand of a county clerk in this state" before a marriage ceremony is performed in Tennessee. As noted above, Tennessee appellate courts have recognized that this statute is mandatory rather than directory. Accordingly, a marriage performed in Tennessee with a license from another state would not be valid under Tennessee law, with the exception noted below.[1]

A marriage performed in Tennessee with a license from another state may, however, be valid under the laws of the state issuing the license. The validity of such marriage would depend upon the laws of the state issuing the license. Therefore, this Office is not able to opine upon the validity of such marriage. Assuming, *arguendo*, that a marriage performed in Tennessee by a license from another state would be valid under the laws of that state, such marriage would be regarded as legal in Tennessee as long as the marriage is not in conflict with the public policy of Tennessee. Tennessee courts have long recognized that marriages contracted in another state, valid under the laws of that state, may be regarded as legal in Tennessee even though the marriage would have been invalid under the laws of this state. *Keith v. Pack*, 182 Tenn. 420, 187 S.W.2d 618 (1945). As long as such marriage would not be considered void in Tennessee due to a statute prohibiting the marriage on the basis of settled public policy regarding public morals or good order in society, it will be considered valid in Tennessee. *Rhodes v. McAfee*, 224 Tenn. 495, 457 S.W.2d 522 (1970).

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Requested by:

Honorable Janis Sontany
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[1] As a marriage performed in this state without a license issued by a Tennessee county clerk cannot be completed and filed as required by Tenn. Code Ann. § 68-3-401, it should not be recorded with the office of vital records.

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