S T A T E O F T E N N E S S E E
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August 16, 2007

Opinion No. 07-122

Authority of Jewish Cantor to Perform Marriage

QUESTION

Does a Jewish cantor who is not ordained but leads a Jewish congregation have authority under Tenn. Code Ann. §36-3-301 to perform a marriage?

OPINION

Absent a showing that Judaism recognizes that a cantor who is not ordained is qualified to perform marriage ceremonies, a Jewish cantor who is not ordained does not have authority under Tenn. Code Ann. §36-3-301 to perform a marriage.

ANALYSIS

In Tennessee, the inception of a marriage is subject to state legislative power and control. *Guzman v. Alvares*, 205 S.W.3d 375, 379 (Tenn. 2006). Accordingly, it has long been recognized that a marriage ceremony must be performed by a person authorized under Tennessee law in order to be valid. *Id.; Smith v. North Memphis Savings Bank*, 115 Tenn. 12, 89 S.W. 392 (1905).

The Legislature has designated the persons who may solemnize marriages. Tenn. Code Ann. §36-3-301. This statute provides, in pertinent part:

> All regular ministers, preachers, pastors, priests, rabbis and other spiritual leaders of every religious belief, more than eighteen (18) years of age, having the care of souls, ... may solemnize the rite of matrimony.

Id.

This Office has previously opined that "regular ministers" as used in this statute refers to persons who have been ordained in conformity with the customs of any organized denomination. Op. Tenn. Att'y Gen. No. 87-151 (September 17, 1987). Similarly, this Office has also opined that "other spiritual leaders" of religious belief refers to persons who are ordained in conformity with

the customs of any denomination and authorized to perform religious functions. Op. Tenn. Att'y Gen. No. 04-157 (October 25, 2004).

To determine whether a particular individual is qualified to solemnize a marriage as a "spiritual leader" of a religious belief under Tenn. Code Ann. §36-3-301, the courts look to the tenets of the particular religion. *Aghili v. Saadatnejadi*, 958 S.W.2d 784, 787 (Tenn. Ct. App. 1997). In *Aghili*, the Court of Appeals recognized that, unlike most Western religious teaching and practice, Islam has consistently rejected the distinction between clergy and laity. *Id.* at 788. An individual is not required to be ordained in order to be qualified to perform a marriage ceremony under Islamic law. *Id.* Thus, a marriage was held to be valid when performed by an individual who was not an imam as he had established his competence to perform Muslim ceremonies under Islamic law. *Id.*

In the Jewish religion, a cantor is the person who leads the congregation in prayer. Rabbi Dr. Shmuel Himelstein, The Jewish Primer 239-40 (1990). A cantor may be a layman or may be ordained as a professional cantor based upon completion of educational requirements.[1] *Id.* Accordingly, absent a showing that Judaism recognizes that a cantor who is not ordained is qualified to perform marriage ceremonies, a Jewish cantor who is not ordained does not have authority under Tenn. Code Ann. §36-3-301 to perform a marriage.

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[1]Similarly, under modern Jewish standards, rabbis are also ordained based upon completion of educational requirements. Himelstein 237-38.

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