

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

September 30, 2014

Opinion No. 14-90

Authority of Certain Religious Leaders to Perform Weddings

QUESTIONS

1. May an elder in a Church of Christ solemnize the rite of matrimony?
2. Is an individual who helps create a religious organization, as well as the official criteria for ordination within that religious organization, and who undergoes the process to become ordained authorized to solemnize the rite of matrimony?

OPINIONS

1. As each congregation of a Church of Christ is autonomous, whether its elders are authorized to solemnize the rite of matrimony under Tenn. Code Ann. § 36-3-301 is dependent upon the practice and tradition of each particular congregation.

2. So long as no improper methods of choosing a religious leader are proven and the leader's designation is by a considered, deliberate, and responsible act, that spiritual leader would be authorized to solemnize the rite of matrimony regardless of whether he or she participated in the creation of the religious organization or the criteria for ordination.

ANALYSIS

1. The persons eligible to solemnize marriages are set forth in Tenn. Code Ann. § 36-3-301, which specifies in relevant part that:

(a)(1) *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*, and all members of the county legislative bodies, county mayors, judges, chancellors, former chancellors and former judges of this state, former county executives or county mayors of this state, former members of quarterly county courts or county commissions, the governor, the speaker of the senate and former speakers of the senate, the speaker of the house of representatives and former speakers of the house of representatives, the county clerk of each

county and the mayor of any municipality in the state *may solemnize the rite of matrimony. . . .*

(2) In order to solemnize the rite of matrimony, *any such minister, preacher, pastor, priest, rabbi or other spiritual leader must be ordained or otherwise designated in conformity with the customs of a church, temple or other religious group or organization; and such customs must provide for such ordination or designation by a considered, deliberate, and responsible act.*

(emphasis added).

Courts look to the tenets of the particular religion to determine whether a particular person is a regular minister or other spiritual leader having the care of souls under Tenn. Code Ann. § 36-3-301(a). *Aghili v. Saadatnejadi*, 958 S.W.2d 784, 787 (Tenn. Ct. App. 1997). See, e.g., *id.* at 787-88 (considering evidence that Islam had consistently rejected the distinction between clergy and laity to determine that challenged Islam religious leader, who was not an imam, had authority to administer Islamic blessings). In Tenn. Att'y Gen. Op. 04-157 (Oct. 25, 2004), this Office opined that a police chaplain would not have authority to perform a marriage under the “other spiritual leaders” language of the statute if such officer were not ordained or otherwise designated in conformity with the customs and practices of any religious denomination and authorized to perform religious functions. Further, in Tenn. Att'y Gen. Op. 07-122 (Aug. 16, 2007), this Office observed that in the Jewish religion, a cantor may be a layperson or may be ordained. Accordingly, the Office opined that an unordained Jewish cantor would not have authority to perform a marriage under the statute in the absence of a showing “that Judaism recognizes that a cantor who is not ordained is qualified to perform marriage ceremonies.” *Id.* at 2.

Churches of Christ are autonomous Christian congregations, who associate with one another based upon common faith and beliefs but have no outside centralized oversight. Typically a congregation of a Church of Christ is governed by its elders, who are spiritual leaders selected by the congregation on the basis of qualifications set forth in the scriptures. See generally Richard T. Hughes, *Reviving the Ancient Faith: The Story of Churches of Christ in America*, at 1-8, 18 (1996).¹ Accordingly, whether an elder in a particular congregation of a Church of Christ may perform weddings, which is a function typically performed by a minister,² would

¹ See also Churches of Christ Internet Ministries <http://church-of-christ.org/>; Lebanon Road Church of Christ, Nashville, TN, <http://www.lebanonroadchurchofchrist.org/elders/>; The Church of Christ at Creekwood, Mobile, AL, <http://www.creekwoodcc.org/eldersdeacons.htm> (#Scriptural Qualifications of Elders) (each last visited Sept. 30, 2014).

² See, e.g., Columbia Church of Christ, Edon, OH, Wedding Minister Guidelines, <http://columbiachurchofchrist.org/p025.do> (stating that any ordained minister on staff at CCC may officiate a wedding); Oregon City Church of Christ Wedding Information,

depend upon the custom and practice of that particular congregation. Absent a showing that the congregation's custom and practice authorizes elders to solemnize the rite of marriage, those elders would not be authorized to do so under Tenn. Code Ann. § 36-3-301.

2. The United States Supreme Court has recognized that the “[f]reedom to select the clergy [or other religious leaders], *where no improper methods of choice are proven*,” is “part of the free exercise of religion” protected against government interference by the First Amendment’s Free Exercise Clause. *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 116 (1952) (emphasis added) (stating that the power of the Supreme Church Authority of the Russian Orthodox Church to appoint the ruling hierarch of the archdiocese of North America is “strictly a matter of ecclesiastical government”); *see also Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 132 S. Ct. 694, 702-10 (2012) (reviewing the controversy between church and state over control of religious offices from the Magna Carta to the First Amendment’s Free Exercise Clause and holding that a religious group may control who works as a “called teacher” at its school under the “ministerial exception” to employment laws).

The Court explained in *Watson v. Jones*, 80 U.S. 679 (1872), that “whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of [the] church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them.” 80 U.S. at 727. The Court later noted that its opinion in *Watson* “radiates . . . a spirit of freedom for religious organizations, an independence from secular control or manipulation—in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Kedroff*, 344 U.S. at 116. The Court reaffirmed these principles in *Serbian Eastern Orthodox Diocese for United States and Canada v. Milivojevich*, 426 U.S. 696 (1976), again finding that the First Amendment “permit[s] hierarchical religious organizations to establish their own rules and regulation for internal discipline and government,” in a case involving a dispute over control of the American-Canadian Diocese of the Serbian Orthodox Church, including its property and assets. 426 U.S. at 714.

Therefore, so long as no improper methods of choosing a religious leader are proven and the leader’s ordination or designation to perform marriages is by a considered, deliberate, and responsible act, that spiritual leader would be authorized to solemnize the rite of matrimony under Tenn. Code Ann. § 36-3-301(a)(1) and (2),

<http://www.oregoncitychurch.org/?n>Main.Weddings> (stating that “a minister from the church of Christ shall officiate at all marriages in the building”); *but see* Northwest Church of Christ, San Antonio, TX, <http://northwestchurch.faithsite.com/uploads/894/99208.pdf> (stating that while the Family Minister is the primary person to perform wedding ceremonies, an elder may also if requested to do so) (each site last visited Sept. 30, 2014)

regardless of whether he or she participated in the creation of the religious organization or the criteria for ordination.

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