COMMONWEALTH of VIRGINIA

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May 18, 2010

The Honorable Michele B. McQuigg
Prince William County Circuit Court Clerk
9311 Lee Avenue
Manassas, Virginia 20110

Dear Ms. McQuigg:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask if a valid marriage exists where: (a) the bride and groom are issued a marriage license by a clerk of a Virginia circuit court; (b) the ceremony is performed by a minister or other person authorized in Virginia to celebrate the rites of marriage; and (c) the solemnization of the marriage occurs in a state other than Virginia.

Response

It is my opinion that the authority vested in a minister or other person authorized to perform the rites of matrimony in Virginia does not extend to a celebration of marriage under a Virginia marriage license when the ceremony is conducted outside the territorial boundaries of the Commonwealth of Virginia.

Background

You advise that a couple obtained a marriage license from your office. You relate that the couple travelled to Bethesda, Maryland, and were married in a ceremony conducted in Maryland. You note that the individual who performed the marriage ceremony was properly authorized to do so within the Commonwealth of Virginia under an order issued by the Circuit Court of Fairfax County.[1]

[1]You did not specify whether the person celebrating the marriage was a minister, performing the rites of matrimony pursuant to § 20-23, or a person other than a minister, performing the rites of matrimony pursuant to § 20-25. This distinction, however, is irrelevant for the purposes of this opinion.

Applicable Law and Discussion

There are two mandatory steps for a valid marriage in the Commonwealth: licensure and solemnization. Section 20-13 states that "[e]very marriage in this Commonwealth shall be under a license and solemnized in the manner herein provided." In this instance, there is no question regarding the propriety of the license issued by your office. The issue concerns the solemnization of the marriage.

The General Assembly has authorized three distinct classes of persons to celebrate the rites of matrimony in the Commonwealth. The first class consists of ministers of any religious denomination who present to the circuit court, or a judge or clerk of such court, the credentials listed in § 20-23 and receive an order "authorizing such minister to celebrate the rites of matrimony in this Commonwealth."[2] The second class consists of persons, other than ministers, to whom a circuit court judge has issued an order permitting them "to celebrate the rites of marriage in the Commonwealth."[3] The third class, which is not relevant to your inquiry, consists of certain active or retired judges or justices who "may celebrate the rites of marriage anywhere in the Commonwealth without the necessity of bond or order of authorization."[4]

In interpreting statutes, "[w]e must ... assume that the legislature chose, with care, the words it used when it enacted the relevant statute, and we are bound by those words as we interpret the statute."[5] The authorization granted to a minister of any religious denomination, pursuant to § 20-23, specifically limits that authority to the celebration of the "rites of matrimony in this Commonwealth." Likewise the authorization granted to a person, other than a minister, pursuant to § 20-25, extends only "to celebrate the rites of marriage in the Commonwealth." In the facts you present, the individual performing the marriage ceremony was properly authorized by either § 20-23 or by § 20-25. As such, his authority to perform the rites of matrimony is limited to the Commonwealth of Virginia.

The inquiry does not end with §§ 20-23 and 20-25. The General Assembly has enacted "an exception to the requirement of celebrating the marriage in the state where the license is issued."[6] Section 20-37.1 provides that:

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[2]Section 20-23 (2008).

[3]Section 20-25.

[4]*Id.*

[5]Barr v. Town & Country Props., Inc., 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990).

[6]1982-1983 Op. Va. Att'y Gen. 336, 337. In the 1983 opinion, the Attorney General addressed whether the marriage of a couple who had obtained a Virginia marriage license, but were married by a celebrant who was not qualified in Virginia, was valid. *Id.* at 336. The facts presented in the opinion were not clear regarding whether the marriage ceremony took place in Virginia or North Carolina. *Id.* The Attorney General concluded that the exception in § 20-37.1 did not apply because the section "expressly states that the marriage must be performed by a minister authorized to celebrate the rites of marriage in this State." *Id.* at 337. The 1983 opinion is distinguishable from the facts you present since you indicate that the celebrant was authorized to celebrate the rites of marriage in the Commonwealth. Prior to the enactment of § 20-37.1 and in response to a question by the patron of the bill that

> All marriages heretofore solemnized outside this Commonwealth by a minister authorized to celebrate the rites of marriage in this Commonwealth, under a license issued in this Commonwealth, and showing on the application therefor the place out of this Commonwealth where said marriage is to be performed, shall be valid as if such marriage had been performed in this Commonwealth.

The term "heretofore" "'in its common acceptation, means before: before and up to the present time; before, or down to, this time; hitherto; in time past, previous time, or previously; up to this time; and it may mean in times before the present; formerly.'"[7] Therefore, it is my opinion that § 20-37.1 is limited in its application to marriages performed before this statute went into effect. To read the statute otherwise would render the term "heretofore" superfluous. "Words in a statute should be interpreted, if possible, to avoid rendering words superfluous."[8] Section 20-37.1 was enacted in 1952.[9] Of course, a couple wishing to be married outside of the boundaries of Virginia by a minister licensed in Virginia has any number of avenues to ensure their marriage is valid in Virginia.[10]

Conclusion

Accordingly, it is my opinion that the authority vested in a minister or other person authorized to perform the rites of matrimony in Virginia generally does not extend to a celebration of marriage under a Virginia marriage license when the ceremony is conducted outside the territorial boundaries of the Commonwealth of Virginia.

With kindest regards, I am

Very truly yours,

Kenneth T. Cuccinelli, II
Attorney General

6:1058; 6:310; 1:941/10-025

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became § 20-37.1, the Attorney General concluded that a marriage celebrated in West Virginia by a minister qualified to perform marriages in Virginia was not valid. *See* 1951-1952 Op. Va. Att'y Gen. 101, 101.

[7]Two-Way Tronics, Inc. v. Greater Wash. Educ. Television Ass'n, Inc., 206 Va. 110, 117, 141 S.E.2d 742, 747 (1965) (citation omitted).

[8]Cook v. Commonwealth, 268 Va. 111, 114, 597 S.E.2d 84, 86 (2004).

[9]*See* 1952 Va. Acts ch. 133, at 140, 140 (enacting statutory language codified at § 20-37.1; also providing that emergency exists and act is in force from its passage on February 27, 1952).

[10]For example, the marriage may be separately solemnized in Virginia, however briefly, by a minister or other person authorized to do so under § 20-23 or § 20-25 or by otherwise ensuring the marriage is valid under the law of the marriage site.