

# MAINE STATE LEGISLATURE

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December 27, 1963

Robert R. Washburn, Commissioner

Veterans Services

George C. West, Deputy

Attorney General

**Validity of a Marriage**

**FACTS:**

Mary Rogers participated in a marriage ceremony August 8, 1954. Two children were born of her marriage to Alfred S. Gomm, Jr. On November 25, 1959, Mary R. Gomm obtained a divorce from Alfred S. Gomm for cruel and abusive treatment. Care and custody of the two children were given to the mother.

On December 3, 1963, Mary Gomm was retested at the Bangor State Hospital for intellectual evaluation. The tests show her to be functioning at a lower level with an I.Q. of 54 and a mental age of 8 years, 10 months. Diagnosis is Mental Deficiency, Moderate Degree.

Mary R. Gomm meets certain mental requirements for Veteran Administration pension benefits. The benefits are not available to a person who is or has been married. If her marriage was void or voidable, then she would be eligible for such benefits.

**QUESTION:**


Was the marriage of Mary R. Gomm void or voidable because of her mental condition?

**ANSWER:**

See opinion following.

**OPINION:**

A marriage performed by a proper official when presented with the proper papers from a municipal clerk is presumed valid. A marriage consummated in good faith by the parties is valid even though the person performing the marriage had no authority or even though there was an error in the intentions. R.S. 1954, c. 166, § 13.



The same chapter in section 2 states that "no insane or feeble-minded person or idiot is capable of contracting marriage." Section 51 of the same chapter states:

"Marriages prohibited in sections 1, 2 and 3, if solemnized in this state, are absolutely void and . . . ; without legal process in either case."

There can be no question that on December 3, 1963, Mary R. Gomm had a mental deficiency, moderate degree. Undoubtedly she was feeble-minded at the time of the marriage on August 8, 1954. It would seem most probable that were the marriage attacked in a court action it would be declared void.

There are two factors which this office must take into account.

- (1) A divorce was granted Mary R. Gomm on November 25, 1959 by the Superior Court in Penobscot County, and
- (2) The lack of authority of this office to make a judicial determination concerning the rights of a person.

(1) The granting of a divorce presupposes a valid marriage. At the least, it raises a presumption that a valid marriage took place. It is probably a rebuttable presumption and the court in some other appropriate action might consider the validity of the marriage. However, a divorce having intervened only a court could now determine, if it would consider the question, whether the marriage was valid, void or voidable.

(2) The Attorney General shall give his written opinion upon questions of law submitted to him by the Governor and Council, State department heads, or either branch of the legislature. R.S., c. 20, § 5. This office can give an opinion, but not make a judicial determination.

A judicial determination as to the status of the marriage of August 8, 1954, can be given only by a court in an appropriate action.

George C. West  
Deputy Attorney General