

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date April 12, 1974

o Peter M. Damborg, Deputy Dept. Secretary of State  
From Jon A. Lund, Attorney General Dept. Attorney General  
Subject Registration for Motor Vehicle or Voting Purposes or Obtaining  
Motor Vehicle Operator's License by Married Woman.

## SYLLABUS:

When registering to vote or registering a motor vehicle or obtaining a motor vehicle operator's license, a married woman is not required to use her husband's surname, but may use her maiden name.

## FACTS:

The Department of State requests interpretation whether 21 M.R.S.A. § 638 and 29 M.R.S.A. § 546 require a married woman to use the surname of her husband when registering to vote, or obtaining an automobile registration or motor vehicle operator's license.

## QUESTION:

Is a married woman required to use the surname of her husband when obtaining an operator's license, a motor vehicle registration or when registering to vote?

## ANSWER:

No.

## REASONS:

Under common law, upon marriage the identity of the wife was suspended or merged in that of the husband during coverture [See Perkins v. Blethen, 107 Me. 443 (1911)]. Consistent with this principle, it has been the custom of English speaking people for the wife to take the surname of her husband upon marriage.

On September 5, 1973, Justice Wernick of the Maine Supreme Judicial Court, writing for a unanimous court in Moulton v. Moulton, 309 A2d 224, (Me. 1973), stated that inroads had been made upon the common law fiction of husband and wife as a single legal entity. Although Moulton is limited in its holding to a procedural issue, Justice Wernick's opinion casts grave doubt upon the continued validity of the common law fiction of unity of the husband and wife:

Peter M. Damborg, Deputy  
Secretary of State

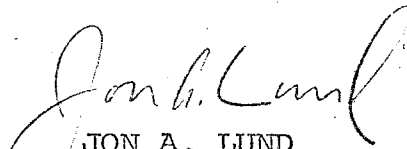
Page Two

April 12, 1974

"The common law doctrine of unity in marriage has been so eroded during the years by positive legislation that in modern times the status of the spouses has been practically equalized and the unity of marriage concept remains more theory than fact." Moulton v. Moulton, Me., 309 A.2d 224, 228.

To the extent that 21 M.R.S.A. § 638 and 29 M.R.S.A. § 546 are based upon a legislative assumption that at common law a woman automatically takes the surname of her husband upon marriage, such assumption is no longer valid.

Based upon the language of the Court in Moulton, in our opinion a married woman today is an entity separate and distinct from her husband. Hence, the cited statutes do not require her to register to vote, register an automobile or apply for a motor vehicle operator's license using the surname of her husband. The appropriate public officials, in administering the cited statutes, may require proof from a married woman of her election to use her maiden name.

  
JON A. LUND  
Attorney General

JAL/jwp

