

MAINE STATE LEGISLATURE

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Feb.
80-112

RICHARD S. COHEN
ATTORNEY GENERAL



STEPHEN L. DIAMOND
JOHN S. GLEASON
JOHN M. R. PATERSON
ROBERT J. STOLT
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

July 14, 1980

Honorable Dana C. Devoe
P.O. Box 764
Bangor, Maine 04401

Dear Senator Devoe:

This will respond to your letter of July 10, 1980 in which you inquire whether, in the circumstances described below, a local town clerk may issue a marriage certificate pursuant to 22 M.R.S.A. §2801 (1980).

You have informed us of the following facts. A local town clerk within your Senate District anticipates that a particular couple will apply for a marriage certificate in the near future. One of the parties is a resident of the Maine town where the marriage ceremony will be performed. The other party is currently a resident of Alabama and expects to receive an Alabama divorce from his present spouse on or about July 16, 1980. You have also orally advised us that the Alabama resident is a Canadian citizen awaiting naturalization who is a member of the United States Armed Forces assigned to Fort Rucker, Alabama and intends to return to Alabama after the planned marriage in Maine. Under Alabama law, an appeal from a judgment of divorce must be taken within 42 days of the entry of judgment. See Rule 4(a), Ala. R. App. Proc. (1979 Supp.). See also Seale v. Seale, 339 So.2d 1028 (Ala. Civ. App.), cert. denied, 339 So.2d 1029, 1030 (1976). Additionally, §30-2-10 of the 1975 Alabama Code provides, in relevant part, that "[w]hen a judgment has been entered granting a divorce in this state, the court shall order that neither party shall again marry, except to each other, until 60 days after the judgment is entered...." Assuming that the Alabama divorce decree is issued, as expected, on July 16, 1980, the 42 day appeal period will expire on August 27, 1980. You have advised us that the parties wish to marry in Maine on September 6, 1980, which

will be after the 42 day appeal period but prior to the expiration of the 60 day prohibition against remarriage.

Based upon the foregoing facts, you have inquired "whether or not a local Town Clerk in Maine may lawfully issue, under 22 M.R.S.A. §2801, a marriage license to the parties who will apply for such license after the divorce of one of the parties has become final under Alabama law but before the expiration of the 60 day period prohibiting remarriage."

19 M.R.S.A. §61 (1979-80 Supp.) specifies that individuals intending to be married shall record notice of their intentions with the town clerk "at least 5 days before a certificate of such intentions is granted." Section 62 of Title 19 then provides that "[o]n or after the 5th day from the filing of notice of intentions of marriage...the clerk shall deliver to the parties a certificate specifying the time when such intentions were entered with him." However, the first paragraph of 22 M.R.S.A. §2801 (1980) provides:

"Before issuing a marriage certificate to a person who resides and intends to continue to reside in another state, the town or city clerk shall satisfy himself by requiring affidavits or otherwise that such person is not prohibited to marry by the laws of the state where he or she resides."

The obvious purpose of 22 M.R.S.A. §2801, ¶1 (1980) is to require a town clerk, prior to the issuance of a marriage certificate to an individual "who resides and intends to continue to reside in another state," to determine whether that individual is permitted to marry under the laws of the state of his residence. Based upon the information you have provided to us, it seems apparent that the prospective "groom" in question is a resident of Alabama and will continue to be such a resident after his planned marriage in Maine. Under the laws of Alabama, this individual will be prohibited from remarrying for a period of 60 days after entry of a judgment of divorce. See 1975 Ala.Code, §30-2-10. See also Krug v. Krug, Ala., 296 S0.2d 715 (1974); Brand v. State, 242 Ala. 15, 6 So.2d 446 (1941). As noted earlier, the couple in question wish to marry on September 6, 1980, prior to the expiration of the 60 day prohibition against remarriage mandated by Alabama law. Since one of the parties will be "prohibited to marry by the laws of the state where he...resides...", 22 M.R.S.A. §2801 (1980) forbids the town clerk to issue a marriage certificate to that individual.

I hope this information is helpful to you. Please feel free to call upon me if I can be of further assistance.

Sincerely,


RICHARD S. COHEN
Attorney General