

RECORDER
MARRIAGE LICENSES:

A man may marry his step-daughter.

February 9, 1939



Mr. Gerald J. Donworth
Recorder of Deeds
St. Louis County
Clayton, Missouri

Dear Sir:

This department is in receipt of your request for an official opinion which reads as follows:

"The following question arose in this office, and we would appreciate having your opinion on it.

"'Is it legal for a man to marry his step-daughter, she being the daughter of his deceased wife.'"

Section 2974, R. S. Missouri, 1929 (Mo. St. Ann. 2974, page 5040) provides in part as follows:

"All marriages between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters of the half as well as the whole blood, between uncles and nieces, aunts and nephews, first cousins, white persons and negroes or white persons and Mongolians, and between persons either of whom is insane, mentally imbecile, feeble-minded or epileptic, are prohibited and declared absolutely void;
* * * * *

Marriage is defined in State v. Bittick, 103 Mo. 183, l.c. 191, as:

"The civil status of one man and one woman, capable of contracting, united by contract and mutual consent for life, for the discharge, to each other and to the community, of the duties legally incumbent on those whose association is founded on the distinction of sex. * * * * *

It is, however, a civil contract (Section 2974, R. S. Missouri, 1929) in which "The state is deeply concerned and over which the state exercises a jealous and exclusive domain." *Knost v. Knost*, 229 Mo. 170, 129 S. W. 665.

In the United States the degree within which marriages are forbidden has been governed almost exclusively by statute.

It may be well to point out at this time that the term "consanguinity" is "relationship by blood" (14 R. C. L. 32). Affinity is "the relationship resulting from marriage" (Keezer, *Marriage and Divorce*, 109).

The origin of all such laws forbidding the marriage of those related is the so-called "horror of incest" which is supposed to be in all of us. Coke on Littleton, 235 A., G. E. Howard, *History of Matrimonial Institutions*. However, there is not the same physical reason for making affinity marriages illegal as exists in the case of consanguinity for there is no enfeebling of offspring, mental or physical, resulting from such marriages. Neither is there a natural repugnance to sexual intercourse between one and his relatives by marriage, especially where the relation is somewhat remote. As Schouler says in his *Marriage, Divorce, and Separation*, Vol. 2, par. 1090:

"* * * * It is shown that while the marriage of persons allied by blood produces offspring feeble in body and tending to insanity, that of persons connected by affinity leads to no such result; and further, that consanguinity has been everywhere recognized as an impediment, but not affinity. The worst that can probably

be said of the latter is, that it leads to confusion of domestic rights and duties. * * * * *

We now examine our own statutes in order to ascertain the view of this state in regard to this question since there are no cases which deal directly with this subject. It is well settled that statutes relating to marriages between those related by affinity are strictly construed. Keezer's Marriage and Divorce, p. 109. For example, a statute prohibiting marriage between a man and his son's wife does not prohibit marriage with his son's widow. *Houston Oil Company v. Griggs* (Tex. Civil App.) 181 S. W. 833.

It will be noted that Section 2974, supra, provides that marriages "between parents and children" are void. Ballentine's Law Dictionary defines "parent" as a "word which refers primarily to the father of a child but sometimes to the mother or to the two jointly. Step-parents, grandparents and other relatives do not come within the scope of the word." Children are defined in *Keeney v. McVoy*, 206 Mo. 42, as "Offspring, issue of descendants generally." Therefore, when the statute provides that parents and children shall not marry, it means parents and children related by consanguinity and does not refer to those related only collaterally or by affinity, the statute being strictly construed.

Moreover, our incest statute, the avoidance of which crime is a basis for all statutes such as Section 2974, provides as follows: (Section 4261, R. S. Missouri, 1929, Mo. St. Ann., Section 4261)

"Persons within the following degrees of consanguinity, to-wit: Parents and children, including grandparents and grandchildren of every degree, brothers and sisters of the half as well as of the whole blood, uncles and nieces, aunts and nephews, who shall intermarry with each other, or who shall commit adultery or fornication with each other, or who

shall lewdly and lasciviously cohabit with each other, shall be adjudged guilty of incest, and be punished by imprisonment in the penitentiary not exceeding seven years."

The statute above only includes certain degrees of consanguinity and does not mention affinity and, therefore, the latter does not come within the inhibition of the statute.

Other states that have statutes which specifically include the term "affinity" hold that "In the case of a marriage between a man and his step-daughter that the relationship of affinity which existed during the continuance of the marriage relation between the man and the girl's mother terminated when the latter procured a divorce or died and after that time the step-daughter was not the daughter of the man's wife and marriage between them is valid." Back v. Back, 148 Iowa 223, 125 N. W. 1009; State v. Brown, 47 Iowa State 102, 23 N. E. 747; Wilson v. State, 46 S. W. 451; Johnson v. State, 20 Tex. App. 609; Tagert v. State, 143 Ala. 88, 39 So. 293. The only discrepancy between them is that the Alabama case modifies the rule by declaring that the relationship of affinity continues after the dissolution of the marriage if and so long as there is surviving issue of such marriage.

CONCLUSION

It is, therefore, the opinion of this department that Section 2974, R. S. Missouri, 1929, does not prohibit the marriage of a man and his step-daughter.

Respectfully submitted

APPROVED:

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