

*Memo.*

MARRIAGE: Under blood test law, person with negative laboratory report need not have physician's certificate that he is free from syphilis; definition of "public health laboratory" as respects free tests.

---

December 15, 1943.

Mr. John P. Sherrod,  
Recorder of Deeds  
Jackson County,  
Kansas City, Missouri.

FILED  
81

Dear Sir:

This will acknowledge receipt of your letter of December 10, 1943, as follows:

"From a reading of the title of C.S. for H.B. No. 45, effective January 1, 1944, and from a reading of Section 3364-A of the Act, it seems to me that no physician's examination is required as a prerequisite for issuance of a marriage license if applicant presents:

"1. A report of a negative laboratory serological test for syphilis, and

"2. An affidavit signed by the applicant that, to his or her knowledge and belief, he or she is free from syphilis.

"Will you kindly advise if this is correct?

"If this is correct, then why should the laboratory make its report to a 'physician', as set out in printed form of State Board of Health enclosed, and not to the Recorder of Deeds. Why should applicants be forced to go to the expense of employing a physician when the act does not so state?

"Is the laboratory at the City General Hospital in the City of Kansas City, Missouri a public health laboratory as defined in the Act, and can it be required to furnish these laboratory tests free of charge?"

Committee Substitute for House Bill No. 45 of the Sixty-second General Assembly appears in Laws, 1943, page 641. As we read said bill, Section 3364-A thereof provides for the issuance of a license to marry under three conditions. The first is when the applicants have a negative serological test for syphilis. The second is when the applicants have a positive serological test for syphilis. The third is when no serological tests for syphilis have been made of the applicants. Section 3364-A (broken down for a better understanding) provides as follows:

"It shall be unlawful for the Recorder of Deeds of any County or City to issue a marriage license to any person -

(Negative Test)

(1) unless such person presents and files with such Recorder of Deeds a report of a negative laboratory serological test for syphilis, and

(2) an affidavit signed by the applicant that to his or her best knowledge and belief he or she is free from syphilis; or

(Positive Test)

(1) unless, in the case of an applicant with a positive test, such applicant presents and files a certificate from a physician duly licensed to practice in the State of Missouri, stating that to his or her best knowledge and belief, after having made a thorough physical examination of such applicant, he or she is not infected with syphilis, or

(2) if so infected is not in the stage of the disease wherein it is communicable either to the spouse or the offspring,

(3) which said physician's certificate shall have attached thereto a laboratory report of the test of syphilis made by such laboratory; or

(No Test)

(1) unless a duly licensed physician presents a certificate stating that one of the applicants for a license to marry is on his or her deathbed and unlikely to consummate the marriage or that an applicant is pregnant.\* \* \*

This statute is so clear that interpretation is not necessary nor even permissible. As has been said: "It is, of course, fundamental that where the language of a statute is plain and admits of but one meaning there is no room for construction." *Cummins v. Kansas City P.S. Co.*, 66 S.W. (2d) 920, 931 (Mo. Sup.). The statute under consideration clearly and definitely authorizes the issuance of the license to applicants with a negative test, upon presentation of the laboratory report of that test, together with the applicant's own affidavit, that he or she does not believe that he or she has syphilis. No requirement is made in the law that applicants with negative tests must get a physician's certificate that they are free from syphilis, and the State Board of Health has no authority to make that requirement. Its authority to make rules and regulations "concerning the affidavits, certificates and other forms necessary" does not grant it license to amend the law and attach an additional restriction on the issuance of marriage licenses to persons having negative tests. Nor can any process of liberal interpretation be invoked in construing the rule making power vested in the Board of Health that will let it accomplish that purpose, for this law is one in derogation of the common<sup>law</sup> right to marry, and must be strictly construed. *Bostic v. Workman*, 31 S.W. (2d) 218, 220 (Mo. App.).

The certificate of the physician is required when the laboratory test is positive. Where that is so, then the applicant may receive a license, if a physician, irrespective of the positive test, shall, on physical examination, determine and so certify that said person is not infected with syphilis, or shall determine on such examination and certify that said person, even though infected, does not have the disease in a communicable stage. To either of these certificates must be attached the report of the positive laboratory test. Also, in death-bed cases, and cases of pregnancy, a physician's certificate is required in order that the license to marry may be issued without a laboratory serological test for syphilis. All these physicians' certificates are to be made by physicians licensed to practice in the State of Missouri.

Your other question turns on what constitutes a "public health laboratory". Section 3364-A does not define that term but only provides:

"Laboratory tests shall be made free of charge by the laboratory of the State Board of Health or by such other public health laboratory wherever maintained in the State of Missouri, upon the request of a physician or by an applicant.

"For the purpose of this act 'Laboratory' shall mean any private or public health laboratory duly approved by the State Board of Health of Missouri, or by the State Board of Health of any other state of the United States, or by the United States Public Health Service."

We find that the word "public" is defined in 50 C.J. page 845, Section 1, as follows:

"A thing may be said to be public when owned by the public, and also when its uses are public. Thus it has been defined as pertaining to, or belonging to, the people\* \* \*."

In 30 C.J. page 462, Section 2, it is said:

"\* \* \* a public hospital may be defined in general as an institution owned by the public and devoted chiefly to public uses and purposes."

In 32 C.J. page 943, Section 7, it is said:

"A public institution is any organized activity created or established by law or public authority."

We think, under these definitions, that a laboratory maintained in the City General Hospital of Kansas City is a public health laboratory. It is something belonging to the people of Kansas City and created and established by public authority. As such it would be subject to the terms of Section 3364-A respecting free serological tests for syphilis when made in connection with application for a marriage license.

Respectfully submitted,

LAWRENCE L. BRADLEY  
Assistant Attorney-General.

APPROVED:

---

ROY MCKITTRICK  
Attorney-General.

LLB/LD