

MARRIAGE LICENSE: Requirement of marriage health certificate that certificate of physician be obtained by all persons applying for a marriage license and that laboratory report be rendered to a physician; held invalid under the present law.

September 21, 1946



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Division of Health
Department of Public Health and Welfare
Jefferson City, Missouri

Attention: Dr. C. F. Adams

Gentlemen:

Reference is made to your communication of recent date requesting the official opinion of this department and enclosing a letter dated August 29, 1946, written to your department by W. H. Bartleson, Executive Secretary, Jackson County Medical Society, and reading as follows:

"A difference of opinion has arisen concerning the interpretation of sections 3364 a b c and d Missouri Statutes adopted by the legislature in 1943.

"It is our interpretation that the section provides that the recorder of deeds is privileged and permitted to issue a marriage license upon receipt of a negative serological report of syphilis from an approved laboratory. It is our further interpretation that in the event a positive report is furnished by an approved laboratory, then the recorder of deeds is permitted to issue a marriage license to the applicant upon receipt of a certification by the examining physician that in his opinion the applicant is not infected with syphilis in a communicable stage, and that he has made a physical examination of the applicant.

"It is our further opinion that the form #L45-500M-11-43 provided by the Division of Health to the recorder of deeds does not conform to the provisions of the statutes in respect to the instructions on the reverse side stating that each applicant must obtain a medical examination from a physician duly licensed, and furthermore that the information issued from the recorder's office that they require the signature of a physician on the lower half of the certificate before it can be accepted is in error.

"We believe that the certification by an approved laboratory of a negative examination is sufficient in accordance with the wording of the statutes for the recorder of deed to accept the report of the laboratory of a negative serological examination, and accordingly issue the marriage license.

"As provided in the statutes in the event that there is a positive finding by the approved laboratory, then it shall become necessary for the applicant to obtain a certificate from the physician in accordance with the provisions of the statutes.

"If you concur in the above observations, then we believe that the form now in use should be recalled and new forms prepared which would conform to the wording of the statutes, and also the interpretation of the law in providing the acceptance of the laboratory examination, with the exception and provided that a positive report from the laboratory shall require that the applicant obtain a physical examination from a licensed physician of the State.

"May we further suggest that this be submitted for an opinion of the Attorney General's Office."

In regard to the form L45-500M-11-43, an official opinion was rendered by this department on December 15, 1943, to Mr. John F. Sherrod, recorder of deeds, Jackson County, Missouri, in which questions raised in the letter of Mr. Bartleson are fully discussed. A copy of this opinion is enclosed.

It can be seen from a reading of the opinion rendered Mr. Sherrod that the Resolution adopted by the State Board of Health of Missouri at a meeting held at St. Louis, Missouri, on the 6th day of December, 1943, in so far as it requires that the laboratory shall make a report of its findings to a physician and that each applicant shall sign every laboratory report and physician's certificate, is arbitrary and capricious and there is no statutory authority or basis giving the State Board of Health the power to make such requirements. The requirement on the marriage health certificate form L45-500M-11-43 that each applicant shall have a physical examination by a physician in addition to the blood test, is also arbitrary and capricious action which is beyond the power of your department to require except in cases where the laboratory test is positive. The requirement that the laboratory report be rendered to a physician is also arbitrary and capricious.

The power given to your department in Section 3364a, Laws of Missouri, 1943, page 642, is confined to the drawing of rules and regulations concerning the procedure and methods of making such laboratory examinations and the filing of the reports of such examinations with the State Board of Health, and concerning the affidavits, certificates and other forms necessary for an efficient administration of Section 3364a through Section 3364c. Under this authority you have the power to make a requirement that all blood specimens of applicants for license to marry shall be drawn by a physician. This authority is due to the fact that the drawing of blood samples could not be properly done by one who was not qualified. However, any further rules made by your department in this regard will have to be authorized by the provisions of Section 3364a to Section 3364c, inclusive. We are enclosing forms which conform to the law as found in Section 3364a to Section 3364c, found on pages 641 and 642, Laws of Missouri, 1943.

Conclusion

It is the opinion of this department that the requirement of form L45-500M-11-43 that all applicants for a license

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to marry shall have a certificate signed by a licensed physician and the requirement of said form that the laboratory report be rendered to a physician, is invalid and not based on any law, and such requirement is arbitrary and capricious and cannot be upheld.

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

CEB Jr.:EG