

MARRIAGES: Right of Probate or Circuit Court to order the issuance of marriage license to minors.

July 9, 1946



Mr. George L. Stemmler
City Counselor
234 City Hall
St. Louis, Missouri

Dear Sir:

We hereby acknowledge receipt of your letter requesting an opinion of this department, which reads as follows:

"Mrs. Ruby Koelling, the Recorder of Deeds, has requested this Department to advise her as to the meaning of Section 3370 R. S. Mo., 1939.

"Her specific inquiry is whether the statute authorizes the Court to order a marriage license issued without the consent of the parents when the applicant is a minor over fifteen years of age.

"We informed her that the statute ought to receive a uniform construction throughout the State, and that she ought to be guided by the advice of the Attorney General.

"We would appreciate it if you will rule on the question and address your opinion to George L. Stemmler, City Counselor, 234 City Hall, or to Mrs. Koelling, whose office is also in the City Hall, and send a copy to Mr. Stemmler for our files in case the question comes up again."

Your specific question for opinion is whether or not the Probate or Circuit Court has the authority to order the Recorder of Deeds to issue a marriage license to minors be-

Mr. George L. Stemmler

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tween the ages of fifteen and eighteen for females, and fifteen and twenty-one for males. We direct your attention to Section 3370, R. S. No. 1939, which reads as follows:

"No recorder shall in any event except as herein provided issue a license authorizing the marriage of any person under fifteen years of age: Provided, however, that said license may be issued on order of the circuit or probate court of the county in which said license is applied for, such license being issued only for good cause shown and by reason of such unusual conditions as to make such marriage advisable, and no recorder shall issue a license authorizing the marriage of any male under the age of twenty-one years or of any female under the age of eighteen years, except with the consent of his or her father, mother or guardian, which consent shall be given at the time, in writing, stating the residence of the person giving such consent, signed and sworn to before an officer authorized to administer oaths. The recorder shall state in every license whether the parties applying for same, one or either or both of them, are of age, or whether the male is under the age of twenty-one years, or the female under the age of eighteen years, and if the male is under the age of twenty-one years or the female is under the age of eighteen years, the name of the father, mother or guardian consenting to such marriage."

It is a fundamental principle of statutory construction that if possible we must ascertain and give effect to the legislative intent. *Mo. Pac. RR. Co. v. Hellmich*, 12 Fed. (2d) 978; *State v. Naylor*, 40 S.W. (2d) 1070. In determining the legislative intent it is proper that we look to the legislative history of the act in question. *American Bridge Co. v. Smith*, 179 S.W. (2d) 12. The section in question was originally enacted in 1881 and reads as follows:

"No recorder shall issue a license authorizing the marriage of any male person under

the age of twenty-one years, or female under eighteen, except with the consent of his or her father, or if he is dead or incapable, or not residing with his family, or his or her mother, or guardian, as the case may be, if he or she have one, which consent, if not given at the time in person, shall be evidenced by a certificate in writing, subscribed thereto and duly attested. The recorder shall state in every license, whether the party applying for the same, one or either or both of them are of age, or whether either or both are minors, and if either party is a minor, the name of the father, mother or guardian consenting to such marriage."

Before the enactment of this act, under the common law infants were able to contract in marriage if the male was fourteen or over and the female was twelve or over. Although the state is not a party to marriage contracts, it is vitally interested in family relations. Believing the common law age to be too low, it enacted this act setting up restrictions on the marriage of minors, but still, the General Assembly did not set a minimum age, leaving that question to the parents. Then, in 1919, after parents had abused their privileges, the General Assembly again asserted the state's right to regulate marriage contracts and passed what is now Section 3370, supra. From an examination of this statute it is noted that they have set a minimum age of fifteen, but they have granted the circuit or probate court authority to order an issuance of a marriage license only under unusual conditions. We do not believe they intended to invade the family relation and go so far as to allow the courts to order the issuance of a license to applicants between the ages of twenty-one and fifteen, but rather, that this proviso would make this statute flexible and not cause any undue hardship should the occasion arise that for public policy it would be expedient for a person under the age of fifteen to become married.

The general rule of statutory construction relating to provisos is that they apply to the immediately preceding parts of a clause to which they are attached. The Supreme Court of Missouri in the case of *Brown v. Patterson*, 224 Mo. 639, states, at l. c. 658:

"* * * The purpose of a proviso is not to create new rights or make new law or to take away old rights existing under the law or to repeal a part of existing substantive law, but to restrict or restrain the preceding portion of the statute of which it forms a part. * * *"

Although like all general rules of statutory construction, the courts have applied many exceptions they have based the exceptions on their interpretation of the intention of the Legislature. For the reasons set out in the first part of this opinion, we believe the intention of the Legislature would further strengthen this general rule in its application to our problem. In applying the principle to Section 3370, supra, the proviso would be an exception to the first clause of the statute relating to persons under fifteen years of age and not to the part subsequent to the proviso, which relates to minor females between the ages of fifteen and eighteen and minor males between the ages of fifteen and twenty-one.

Conclusion

Therefore, it is the opinion of this department that Section 3370, R. S. Mo. 1939, does not authorize the probate or circuit court to order a marriage license issued without the consent of the father, mother or guardian, when the applicant is a minor over fifteen years of age.

Respectfully submitted,

PERSHING WILSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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