MARRIAGE: Marriage between aunt and nephew of half
RECORDER OF DEEDS: blood valid. Documents relating to corporations can be recorded by making photostatic copies thereof.

November 21, 1947

Mrs. Ruby Koelling
Recorder of Deeds
City of St. Louis
St. Louis, Missouri

Dear Mrs. Koelling:

This is in reply to your letter of recent date wherein two questions were presented for our consideration, the first of which is whether or not an aunt and a nephew of the half blood can legally marry, and the second concerns the authority of the Recorder of Deeds of the City of St. Louis to record articles of incorporation and other documents relating to corporations by the making of photostatic copies.

With reference to your first question, we direct your attention to Section 3561, R.S. Mo. 1939, which prohibits certain marriages. Said section 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; * * *"

It will be noted that the first prohibition is against marriages between parents and children, including grandparents and grandchildren of "every degree," and the second is against marriages between brothers and sisters "of the half as well as the whole blood." The next prohibition is against marriages between uncles and nieces, aunts and nephews, but there is no mention of half blood or degree of relation. Such a phrase

cannot be interpolated or injected into the statute. This rule is set out in Kendron v. Dwight Chapin Co., 37 S.W. (2d) 486, where the court said at page 488:

> " * * * we (the court) have no right, by construction, to substitute any ideas concerning legislative intent contrary to those unmistakably expressed in the legislative words (Clark v. Railroad Co., 219 Mo. loc. cit. 534, 118 S.W. loc. cit. 44)." (Words in first parenthesis ours.)

See also Kateman v. Mink, 180 S.W. (2d) 253, l.c. 256.

It is evident that the Legislature thought it necessary to mention the half blood in order to include that degree of relationship in the application of the statute. In State v. Hartley, 263 S.W. 95, it was held that uncles and nieces of the half blood were not in the degrees of relationship prohibited by Section 4649, R.S. Mo. 1939, which defines incest and uses almost identical language to that of Section 3361. The Supreme Court, in adopting the appellant judge's dissenting opinion in which he treated Section 3361 as in the same category as Section 4649, said at page 96:

> " * * * We cannot interpolate into the statute the words 'uncles and aunts of the half blood.' State v. Owens, 268 Mo. 481, 485, 187 S.W. 1189. We might, with equal propriety, interpolate the words 'first cousins' into the statute, because section 7299, R.S. 1919, forbids their intermarriage. The statute cannot be 'regarded as including anything not within its letter, as well as its spirit; which is not clearly and intelligibly described in the words of the statute, as well as manifestly intended by the Legislature.' State ex inf. Collins v. St. Louis, etc., R. Co., 238 Mo. 605, 612, 142 S.W. 279, 281.
>
> "After quoting sections 3511 and 7299, R.S. 1919, supra, Judge Bland, in his dissenting opinion, said:
>
> "'Both of these statutes mention brothers and sisters of the half, as well as the whole, blood. It is apparent that the Legislature, in enacting these statutes, had in

> mind relationships of the half, as well as the whole, blood, and if it intended the statutes to cover aunts and nieces of the half blood, why did it not say so? I think that the well-established canon of statutory construction, "expressio unius est exclusio alterius," applies to these statutes. When the Legislature mentioned brothers and sisters of the half blood, it necessarily excluded all other relationships of the half blood.'
>
> "We concur in Judge Bland's opinion. * * *"
>
> (Section 7299, R.S. Mo. 1919, now Section 3361, and Section 3511, R.S. Mo. 1919, now Section 4649.)

The above case was cited approvingly in State v. Light, 189 S.W. (2d) 162, l.c. 165.

We believe the Bartley case is authority for holding that aunts and nephews of the half blood are not within the prohibited degrees of relationship. This conclusion is in harmony with the purpose of the statute which is to prohibit marriages within the same blood strain, except where the degree of relationship is very remote.

With regard to the legality of recording articles of incorporation and other documents relating to corporations by making photostatic copies; we will quote Section 4997.51, Mo. R.S.A., which deals generally with the recording of such documents:

> "The articles of incorporation, in duplicate, signed, sworn to and acknowledged by all the incorporators as required in section 49 shall be delivered to the office of the Secretary of State. If the Secretary of State finds that the articles of incorporation conform to law, he shall, when the required organization taxes or fees have been paid, file the same, and one of such copies shall be retained by the Secretary of State as a permanent record. The Secretary of State thereupon shall issue a certificate of incorporation under the seal of the State that said corporation has been duly organized, such certificate to set forth

> the name of the corporation, the amount of its authorized shares, the period of its existence and the address of its initial registered office. Said Secretary of State shall also issue a certified copy of such certificate, which shall be attached to the other copy of the articles of incorporation so filed with him and such certificate of incorporation, together with the certified copy thereof attached to the copy of said articles of incorporation, shall be delivered by him to the incorporators who shall cause such certified copy of the certificate of incorporation and attached articles of incorporation to be filed and recorded in the office of the Recorder of Deeds of the county or city in which the registered office of the corporation is situated."

The above section provides that said documents must be recorded in the office of the Recorder of Deeds in the county or city. No method of recordation is specified, so we must look to the recordation statutes for authority.

Section 13188, R.S. Mo. 1939, found in the chapter relating to the Recorder of Deeds, provides as follows:

> "Wherever the statutes require deeds, mortgages, conveyances, deeds of trust, bonds, covenants, documents, marriage contracts, certificates of marriage, commissions, official bonds, statements, records, plats, surveys, schedules, papers, patents, or other instruments of writing to be recorded, <u>the making of photographic copies</u> of such deeds or other instruments of writing <u>shall be deemed recording within the meaning of this chapter</u>. Such photographic copies shall be bound, paged and indexed wherever it is so provided for deeds or other instruments recorded by hand, and such photographic copies when bound together shall be deemed record books within the meaning of this chapter."
>
> (Underscoring ours.)

Section 13166, Mo. R.S.A., a special statute relating to recorders in cities of 600,000 inhabitants or more and counties of the first class, provides:

> "In all cities in this state which now have or which may hereafter have or contain 600,000 inhabitants or more and in all counties in class one, the recorder shall record, without delay, every deed, mortgage, conveyance, deed of trust, bond, commission or other writing delivered to him for record, with the acknowledgment, proofs and certificates written on or under the same, by writing them, word for word, in a fair hand, or by typewriting them <u>or by photostating them</u>, noting at the foot of such record all interlineations and erasures, and the words visibly written on erasures, and noting, at the foot of the record, the day and time of the day, month and year when the instrument so recorded was delivered to him, or brought to his office for record; and the same shall be considered as recorded from the time it was so delivered. Except when otherwise provided by law it shall be the duty of the recorder to deliver to the person holding his receipt therefor every instrument so recorded within sixty days from the date upon which it was presented for recording."
> (Underscoring ours.)

In view of the foregoing statutes, it is quite clear that the Recorder of Deeds in the City of St. Louis is authorized to choose one of three optional methods of recording articles of incorporation and other documents relating to corporations, and that the recordation of said documents by the making of photostatic copies fully meets the requirements of the statute.

Conclusion.

It is the opinion of this department that marriages between aunts and nephews of the half blood are not within the prohibited degrees of relationship. It is our further opinion that the

Recorder of Deeds for the City of St. Louis is authorized to record articles of incorporation and other documents relating to corporations by the making of photostatic copies of such documents.

Respectfully submitted,

DAVID DONNELLY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

DD:ml