

Impediment to marriage license

Number: AGO 78-07

Date: January 22, 1998

Subject:
Impediment to marriage license

MARRIAGE LICENSES--APPLICATIONS FOR ISSUANCE--ACCEPTANCE

To: Arthur H. Beckwith, Jr., Clerk, Circuit Court, Sanford

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QUESTION:

Should an application for a marriage license be accepted if at the time of application there appears to be an impediment to the marriage?

SUMMARY:

An application for a marriage license must be accepted by the county court judge or the clerk of the circuit court. If, however, upon consideration of the application, there appears to be an impediment to the marriage, the judge or clerk, as the issuing officers of marriage licenses, cannot be compelled to issue a license until the applicant, when called upon to do so, has demonstrated that there is no impediment to the marriage.

Section 741.01, F. S., states in pertinent part:

"Every marriage license shall be issued by a county court judge or clerk of the circuit court under his hand and seal. Said county court judge or clerk of the circuit court shall issue such license, upon application therefor, if there appears to be no impediment to the marriage."

This office has previously considered the authority of the Legislature to regulate the marriages of its citizens; see AGO 078-5 in which I stated that the courts possess only such jurisdiction over marriage and its incidents as has been granted by the Legislature. Section 741.01, F. S., represents a delegation of some of the Legislature's power by clearly designating the county court judge and the clerk of the circuit court as the issuing officers of marriage licenses. Section 741.01 does not, however, appear to grant the clerk or the judge any discretion in accepting or refusing to accept an application for a marriage license. Rather, once the application is on file, it appears that the clerk or judge upon consideration of the application may determine whether there appears to be an impediment to the marriage. In AGO 074-338 I concluded that it is the duty of a judge or clerk to issue a license to marry when, upon consideration of the application, there appears to be no impediment to the marriage and all legal requirements for the issuance of a license have been met. See *also* AGO 076-60 which sets forth the general procedure in issuing these licenses. The judge or clerk cannot, however, be compelled to issue a marriage

license until the applicant, when called upon to do so, has demonstrated to the judge's or clerk's satisfaction that there is no impediment to the marriage; *see also* State *ex rel.* Richardson v. Lawrence, 163 So. 231 (Fla. 1935) in which the Florida Supreme Court stated that a county court judge is authorized and required to issue a marriage license *only* in the event that there appears to be no impediment to the marriage; moreover, it is the duty of the parties seeking a marriage license to demonstrate, if the judge so requires, that there is no impediment to the marriage.

Accordingly, I am of the opinion that a county court judge or clerk of the circuit court must accept an application for a marriage license. He is not, however, required to issue a marriage license unless there appears to be no impediment to the marriage. Moreover, he may require a showing by the applicant that no such impediment exists. However, if there does not appear to be any impediment to the marriage, it is the duty of the clerk or county court judge to issue a marriage license upon application therefor, provided all legal requirements for a license have been met.