

## 48 Op. Att'y Gen. No. 10

COURTS, DISTRICT - Marriage license application confidentiality;  
MARRIAGE AND DIVORCE - Marriage license application confidentiality;  
PRIVACY - Marriage license application confidentiality;  
PUBLIC RECORDS - Marriage license application confidentiality;  
RIGHT TO KNOW - Marriage license application confidentiality;  
VITAL STATISTICS - Marriage license application confidentiality;  
MONTANA CODE ANNOTATED - Sections 1-2-107, 15-6-201(1)(c), 40-1-107, 50-5-101(23), -101(33), -1103(2), 50-15-101(15), -114, -121, -122, 70-30-102(6), 72-3-606(2), -613, 72-16-331(7);  
ADMINISTRATIVE RULES OF MONTANA - Rule 37.8.126;  
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 159 (1978);  
REVISED CODES OF MONTANA, 1947 - Sections 48-305, 69-4401.

HELD:

1. Subject to the provisions of Mont. Code Ann. §§ 50-15-121 and -122, applications for marriage licenses should be treated as confidential records once they have been completed and filed with the clerk of the district court.
2. Once a marriage has been reported to the Department of Public Health and Human Services on the form prescribed by the Department, the Department or the clerk of the district court may disclose to the public the names of the bride and groom, the date and place of the marriage, the name of the officiant and whether the ceremony was religious or civil.
3. The clerk of court may not divulge or provide copies of applications for marriage licenses under Mont. Code Ann. § 50-15-121(1) unless the requestor is the applicant, the applicant's spouse, child, parent, or guardian, or an authorized representative. For purposes of this statute, "authorized representative" has the meaning provided in Mont. Code Ann. § 50-5-1103(2).

March 23, 2000  
Mr. Jeffrey A. Noble  
Powder River County Attorney  
P.O. Box 240  
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Dear Mr. Noble: You have requested my opinion on the following question:

Should Montana applications for marriage licenses be treated as confidential records once they have been completed and filed with the clerk of the district court, or may such applications be divulged to or open to inspection by any person?

Individuals wishing to obtain a marriage license in the state of Montana must complete an application for marriage license prior to the issuance of the license. You have asked whether the information contained in the application for a marriage license is confidential or open to review by the public.

I.

Marriage license applications contain information known as vital statistics. Vital statistics are "the data derived from certificates or reports of birth, death, fetal death, induced termination of pregnancy, marriage, and dissolution of marriage and related reports." Mont. Code Ann. § 50-15-101(15). See also 37 Op. Att'y Gen. No. 159 at 657 (1978), wherein Attorney General Greely determined that Rev. Codes Mont. 1947 § 69-4401 (predecessor to Mont. Code Ann. § 50-15-101(15)) and Rev. Codes Mont. 1947 § 48-305 (predecessor to Mont. Code Ann. § 40-1-107), authorized the Department of Health and Environmental Sciences (a predecessor of the Department of Public Health and Human Services) to gather vital statistics in marriage license applications. While holding that state agencies had a sufficient interest

to justify the accumulation of private information from individuals seeking to marry, that opinion did not address the release to the public of vital statistics information gained from marriage license applications.

Mont. Code Ann. § 50-15-114 states that it is unlawful to disclose records of vital statistics maintained by the Department of Public Health and Human Services ("DPHHS"), local registrars, or county clerks and recorders, except when disclosure is authorized by law. Vital statistics maintained by clerks of court are not mentioned in this statute, although other provisions of law create similar confidentiality requirements for marriage-related vital statistics held by the district court clerks.

"Local registrar" is defined at Mont. Code Ann. § 50-15-101(8) as a person appointed by DPHHS to act as its agent in administering vital statistics in the area set forth in the letter of appointment. District court clerks are not appointed by DPHHS to receive vital statistics. Rather, the legislature has decreed that the district court clerk must accept marriage license applications (Mont. Code Ann. § 40-1-202), issue marriage licenses (Mont. Code Ann. §§ 40-1-201(1) and -202), and report marriage certificates to DPHHS (Mont. Code Ann. § 50-15-301). Thus, a court clerk has some of the same duties and responsibilities as does a local registrar, compare, e.g., Mont. Code Ann. § 50-15-109(2) (local registrars to forward original certificates to DPHHS), and is bound by statutory requirements to retain the confidentiality of the vital statistics in the court clerk's possession. Mont. Code Ann. § 50-15-122.

## II.

The 1995 legislature provided that vital statistics constitute confidential information which should not be disseminated to the public absent statutory or regulatory authorization, or court order:

It is the policy of the state to protect the integrity of vital records and vital reports, to ensure their proper use, and to ensure the efficient and proper administration of the system of vital statistics. In furtherance of the policy, it is unlawful for any person to permit inspection of or to disclose information contained in vital records or in vital reports or to copy or issue a copy of all or a part of a record or report unless authorized by this chapter, by administrative rule, or by order of a court of competent jurisdiction. Rules adopted under this chapter must provide for adequate standards of security and confidentiality of vital records.

Mont. Code Ann. § 50-15-122(1).

Mont. Admin. R. 37.8.126 establishes to whom vital statistics may be given and under what circumstances. The rule does not generally allow the public dissemination of this information unless all identifying information is removed, or disclosure is otherwise authorized by law.

Pursuant to these laws, neither the clerk of the district court nor DPHHS may disseminate marriage license applications to the public unless authorized to do so by some other provision of law. Mont. Code Ann. § 50-15-122(5) provides that "immediately upon the filing of a record with [DPHHS], . . . a record of marriage . . . may be released to the public without restriction." The phrase "record of marriage" is not defined, but in my opinion the interpretation that best gives effect to all the provisions of these laws is that the term refers to the information relating to the marriage filed by the district court clerks with DPHHS on prescribed forms.

According to Mont. Code Ann. § 50-15-301, district court clerks are to report marriage certificates filed with them for the preceding calendar month to DPHHS. The reports must be "on forms and contain information provided by the department." Id. From information provided by DPHHS, it is my understanding that the marriage certificate itself is not customarily filed with DPHHS. Rather, DPHHS has prescribed a "yellow copy" of the top portion of the marriage license application to be sent to its Vital Statistics Bureau. The "yellow copy," read from top to bottom, contains two sections providing detailed background information about the bride and groom. The bottom portion of the "yellow copy" includes the information about the marriage itself: a record of the date and place of the marriage, the officiant, a statement of whether the marriage ceremony was religious or civil, and the name of the local official submitting the form and date of its submission. Vital Statistics Bureau personnel enter the names of the bride and groom, the date the marriage took place, and the county where the marriage occurred into an

index, then either file or microfiche the "yellow copy." People seeking marriage information from DPHHS are given the indexed information and advised to direct further inquiries to the county where the marriage occurred.

Clearly, not all of the "yellow copy" can fairly be said to be a "record of marriage." The background information in the top two portions of the form relates to the bride and groom, but also includes information that exists independent of whether they actually go forward with the wedding. Those portions of the form record nothing about the marriage itself beyond the names of the bride and groom. The bottom portion, in contrast, sets forth the record of the wedding--the date and place, the name of the officiant, and the type of ceremony. In my opinion, this information, taken together with the names of the bride and groom, constitutes the "record of marriage" that may be released to the public under Mont. Code Ann. § 50-15-122(5).

This interpretation is most consistent with the overall intent of the legislature in dealing with vital records. The legislature recognized that vital records include information of a personal nature that affects the privacy interest of the person to whom the information relates. The general scheme of Mont. Code Ann. § 50-15-122 is that information can be released if (1) the personally identifiable information is removed, Mont. Code Ann. § 50-15-122(3); (2) the information is released to a government agency having need for it for official business, Mont. Code Ann. § 50-15-122(6) and (7); (3) the information is released to a private researcher who enters into a written agreement to maintain the confidentiality of personally identifiable information, Mont. Code Ann. § 50-15-122(2); or (4) the information only contains the limited facts set forth in subsection (5) discussed above.

An interpretation that would release all of the detailed background information found in the marriage license application--the birthplace and family background of the bride and groom, whether either had been married before and to whom, and the circumstances surrounding termination of a prior marriage--would be a marked contrast to the other provisions of the law which jealously safeguard the privacy of persons providing the information. In my opinion, the most likely legislative intent was to provide general information about the fact of the marriage, while protecting the privacy interests of the bride and groom by not allowing release of this detailed background information.

These statutes were enacted in 1995, and they are hardly a model of clarity. The legislature has the power to revise them to clearly state its intention if it differs from my interpretation. In the meantime, I believe the better course is to adopt the interpretation most consistent with the overall structure of the statute and most protective of individual privacy. I must emphasize, finally, that this opinion addresses only the question presented, concerning disclosure of information contained in a marriage license application form and not the question whether the marriage license itself is available for public disclosure as a "record of marriage."

### III.

Mont. Code Ann. § 50-15-121(1) allows either DPHHS or a local clerk and recorder to provide copies of vital records "to the registrant, the registrant's spouse, children, parents, or guardian, or an authorized representative. Other individuals may obtain certified copies when the individual demonstrates that the record is needed for the determination or protection of the individual's personal or property rights." Mont. Code Ann. § 50-15-121. Thus, DPHHS and clerks and recorders may provide copies of the marriage license application to the named individuals, but to no other requestor unless it is determined that the document is required to determine or protect the requestor's personal or property rights. As I have previously found a district court clerk's duties to be similar to that of a clerk and recorder with respect to vital records, the district court clerk may also release the marriage license application under the above-stated circumstances.

The term "authorized representative" is not defined in title 50, part 15 of the Montana Code Annotated. DPHHS, while authorized to issue regulations further defining persons entitled to disclosure under § 50-15-121(1), has not done so. "Authorized representative" also is not defined elsewhere in the Montana Code Annotated for use other than in specific sections not including title 50, chapter 15. It is defined, however, for purposes of the Montana Long-Term Care Residents' Bill of Rights, Mont. Code Ann. §§ 50-5-1101 to -1107, as follows:

(2) "Authorized representative" means:

- (a) a person who has a general power of attorney for a resident;
- (b) a person appointed by a court to manage the personal or financial affairs of a resident;
- (c) a representative payee;
- (d) a next of kin; or
- (e) a sponsoring agency.

Id. § 50-5-1103(2). Prior to the Supreme Court's decision in Richter v. Rose, 1998 MT 165, ¶¶ 17-21, 289 Mont. 379, 962 P.2d 583, I would have been bound to adhere to this definition by virtue of Mont. Code Ann. § 1-2-107, which states that "[w]henver the meaning of a word or phrase is defined in any part of this code, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention appears." In Richter, the Court deemed a district court's reliance on the definition of "farm" in Mont. Code Ann. § 72-16-331(7) improper where the issue was whether a lot was a "farm" for eminent domain purposes under Mont. Code Ann. § 70-30-102(6) because the definitions in § 72-16-331 were preceded by the introductory phrase "[a]s used in 72-16-331 through 72-16-349, the following definitions apply." It reasoned that "[t]he legislature having clearly expressed its intention that the definition of 'farm' contained in § 72-16-331(7), MCA, applies only to certain sections within the Montana Probate Code, that definition cannot properly be applied in the context of § 70-30-102, MCA." Richter, ¶ 18; accord Billings Firefighters Local 521 v. City of Billings, 1999 MT 6, ¶ 19, 293 Mont. 41, 973 P.2d 222. Richter appears to conflict with Department of Revenue v. Gallatin County, 234 Mont. 425, 763 P.2d 1128 (1988), where the Court held a health care facility was an "outpatient facility" and not a "hospital" and therefore was not entitled to a "hospital" tax exemption from personal property taxes under Mont. Code Ann. § 15-6-201(1)(c). In so concluding, it applied the definitions of "hospital" and "outpatient facility" appearing, respectively, in Mont. Code Ann. § 50-5-101(23) and -101(33) and rejected an argument identical to the analysis found in Richter:

The use by the legislature in § 50-5-101, MCA, of the phrase "as used in parts 1 through 4 of this chapter" does not show the legislature's plain intent that the definitions were only to be applied in those parts of the code. Those words only indicate that the legislature intended the particular application of the definitions in those parts of the code, without limitation to the general use of the definitions in other parts of the code, pursuant to § 1-2-107, MCA.

234 Mont. at 430, 763 P.2d at 1131; accord SJL of Mt. Assoc. Ltd. Partnership v. City of Billings, 263 Mont. 142, 147, 867 P.2d 1084, 1087 (1993). The Richter opinion did not refer to the decision in Department of Revenue.

Even if it is assumed that Richter overruled Department of Revenue sub silentio, I am not precluded from viewing the definition of "authorized representative" in § 50-5-1103(2) as a manifestation of legislative intent concerning the meaning of the same term in § 50-15-121(1). Cf. Newman v. Wittmer, 277 Mont. 1, 7, 917 P.2d 926, 930 (1996) ("agree[ing] that statutory definitions provide guidance in interpreting the ordinary and popular meaning of undefined terms in a restrictive covenant"). I choose that course here because the definition in § 50-5-1103(2) adequately addresses the range of representatives who possess the requisitely clear authority to act in the stead of a living registrant for purposes of securing a vital record. My reliance on § 50-5-1103(2) in this respect does not limit the ability of a deceased registrant's estate by operation of law to request a vital record through the estate's personal representative for probate administration use. See Mont. Code Ann. §§ 72-3-606(2), -613.

I must observe, finally, that genealogists are not entitled to copies of vital records unless they otherwise qualify for such entitlement under § 50-15-121(1) or one of the other statutory exceptions to the nondisclosure obligation applies. The question whether genealogists, as a class, should be given access to vital records or statistics should be addressed to the legislature.

IV.

I express no opinion with respect to any questions regarding the constitutionality of the statutes cited in this opinion. Such issues are beyond the scope of your request and would not, in any event, be appropriate for resolution through an Attorney General's Opinion.

THEREFORE, IT IS MY OPINION:

1. Subject to the provisions of Mont. Code Ann. § 50-15-121 and -122, applications for marriage licenses should be treated as confidential records once they have been completed and filed with the clerk of the district court.
2. Once the marriage has been reported to the Department of Public Health and Human Services on the form prescribed by the Department, the Department or the clerk of the district court may disclose to the public the names of the bride and groom, the date and place of the marriage, the name of the officiant and whether the ceremony was religious or civil.
3. The clerk of court may not divulge or provide copies of applications for marriage licenses under Mont. Code Ann. § 50-15-121(1) unless the requestor is the applicant, the applicant's spouse, child, parent, or guardian, or an authorized representative. For purposes of this statute, "authorized representative" has the meaning provided in Mont. Code Ann. § 50-5-1103(2).

Sincerely,

JOSEPH P. MAZUREK  
Attorney General

jpm/mas/dm