

48 Op. Att'y Gen. No. 17

COURTS, DISTRICT - Dissemination of marriage records;
MARRIAGE AND DIVORCE - Confidentiality of marriage records;
PRIVACY - Confidentiality of marriage records;
PUBLIC RECORDS - Dissemination of marriage records;
RIGHT TO KNOW - Dissemination of marriage records;
VITAL STATISTICS - Confidentiality of marriage records;
ADMINISTRATIVE RULES OF MONTANA - Rule 37.8.126;
MONTANA CODE ANNOTATED - Sections 40-1-201, -202, -321, 50-15-122(1), -122(5), -301;
OPINIONS OF THE ATTORNEY GENERAL - 48 Op. Att'y Gen. No. 10 (Mar. 23, 2000).

HELD:

1. The holding in 48 Op. Att'y Gen. No. 10 applies to all marriage applications on file with a clerk of the district court, not only to those filed after the date of the opinion.
2. Pursuant to Mont. Code Ann. § 50-15-122(5), a clerk of the district court may allow public inspection and copying of the marriage certificate filed pursuant to Mont. Code Ann. § 40-1-321, but not of the marriage license.

July 5, 2000

Mr. Jeffrey A. Noble
Powder River County Attorney
P.O. Box 240
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Dear Mr. Noble:

On March 23, 2000, I issued a revised opinion to you on the question of the confidentiality of information contained in Montana marriage license applications. 48 Op. Att'y Gen. No. 10. You have since submitted a second request for opinion on the following related questions:

1. Is the effect of 48 Op. Att'y Gen. No. 10 (Mar. 23, 2000) limited to marriage license applications filed after the effective date of the opinion?
2. Should Montana marriage licenses on file with the clerk of the district court be treated as confidential records?

In Montana, a couple wishing to obtain a marriage license must file an application with the clerk of the district court. Mont. Code Ann. § 40-1-201. After processing the application, the clerk then issues a marriage license and a marriage certificate. Mont. Code Ann. § 40-1-202. The license form used by most district court clerks actually combines these two documents in a single form, including both the marriage license itself and the certificate of marriage. The officiant fills out and returns the marriage certificate to the clerk of the district court within 30 days after the marriage. Mont. Code Ann. § 40-1-321. Since the form generally used contains both the license and the certificate, compliance with this statute results in the filing with the clerk of both the license and the certificate. Your request touches on the issue of the confidentiality of these documents.

I.

In 48 Op. Att'y Gen. No. 10, I provided guidance on the confidentiality of information contained in marriage license application forms submitted to the clerks of the district court pursuant to Mont. Code Ann. § 40-1-201. Your letter informs me that some clerks have adopted the view that the holdings of that opinion apply only to applications filed after the issuance of the opinion. That view is incorrect. The opinion

did not create new law, but rather only interpreted statutes that have been on the books for years. Nothing in the statutes suggests that vital statistics information should be treated differently depending on when the information was collected by a government agency. Clerks should therefore be applying the guidance provided in that opinion to all marriage applications in their files, regardless of when the applications were filed.

II.

In my earlier opinion, I noted that vital statistics information is confidential unless release is specifically authorized by law. 48 Op. Att'y Gen. No. 10 at 3-4; Mont. Code Ann. § 50-15-122(1); Mont. Admin. R. 37.8.126. I found authorization in Mont. Code Ann. § 50-15-122(5) for release of a "record of marriage" upon filing by the clerk of the district court of the report of the marriage required by Mont. Code Ann. § 50-15-301. I further held that for purposes of this statute the "record of marriage" consisted only of limited information relating to the identities of the bride and groom, the date and place of the ceremony, the name of the officiant, and the type of ceremony. 48 Op. Att'y Gen. No. 10 at 4-5.

Mont. Code Ann. § 50-15-122(5) states that "[i]mmediately upon the filing of a record with the [D]epartment of [Public Health and Human Services] . . . a record of marriage . . . may be released to the public without restriction." I held in 48 Op. Att'y Gen. No. 10 that this statute is not confined to release of information by the Department of Public Health and Human Services ("DPHHS"), but also governs release of information by the clerks of district court. It follows from that opinion that those portions of the license and certificate that constitute a "record of marriage" may be released to the public upon the filing with DPHHS of the report referred to in Mont. Code Ann. § 50-15-301.

In 48 Op. Att'y Gen. No. 10, I held that the "record of marriage" includes only that information which relates to the marriage itself--the identities of the bride and groom, the date and place of the marriage, the name of the officiant, and the type of ceremony. Reviewing the form of marriage license and marriage certificate used by most district court clerks in Montana, it appears to me that the "record of marriage" information is found in the marriage certificate form, which constitutes the bottom third of the document. The marriage license portion, constituting the top two-thirds of the form, includes personal and background information about the bride and groom that does not directly relate to the marriage itself--the race, addresses, and ages of the bride and groom, whether either had been previously married, and the identities of their parents. As I held in 48 Op. Att'y Gen. No. 10, this information is not part of the record of marriage, and its release is not authorized by Mont. Code Ann. § 50-15-122(5).

In my opinion, the best course for court clerks to follow would be as follows: Upon the filing of the report with DPHHS required by Mont. Code Ann. § 50-15-301, the clerk may disclose to the public or provide the public with a copy of the marriage certificate portion of the license/certificate form, but not the marriage license portion of the form. The certificate contains all of the information on the form that can be said to constitute a "record of marriage" under Mont. Code Ann. § 50-15-122(5), as I have interpreted it in 48 Op. Att'y Gen. No. 10.

I note that nothing in statute requires that the license, as opposed to the certificate of marriage, be filed with the clerk of the district court. Mont. Code Ann. § 40-1-202 requires the clerk, upon receipt of the required information, to "issue a license to marry and a marriage certificate form," suggesting that two different documents may be involved. Mont. Code Ann. § 40-1-321 then requires the officiant to file with the clerk the "marriage certificate," without reference to the marriage license. I am not suggesting that the inclusion of both the license and the certificate on one form is unlawful. I do believe, however, that the happenstance of inclusion of both forms in a single document should not serve as a basis for disclosure of information from the license that otherwise would clearly be confidential.

III.

As in 48 Op. Att'y Gen. No. 10, I express no opinion herein on the constitutionality of the statutes cited in this opinion.

THEREFORE, IT IS MY OPINION:

1. The holding in 48 Op. Att'y Gen. No. 10 applies to all marriage applications on file with a clerk of the district court, not only to those filed after the date of the opinion.

2. Pursuant to Mont. Code Ann. § 50-15-122(5), a clerk of the district court may allow public inspection and copying of the marriage certificate filed pursuant to Mont. Code Ann. § 40-1-321, but not of the marriage license.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/cdt/dm