



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

April 15, 1975

The Honorable Hank Anderson
Wichita County Attorney
Wichita County Courthouse
Wichita Falls, Texas 76301

Opinion No. H- 581

Re: The authority of a county clerk to issue a marriage license to a recently divorced party before the expiration of the 30-day waiting period set out in section 3.66 of the Texas Family Code?

Dear Mr. Anderson:

You have requested our opinion with regard to the issuance of marriage licenses, observing that you are:

. . . concerned with the County Clerk's authority to issue a marriage license to an individual who has been divorced within the 30 days prior to applying for a new license to marry a third party.

An example of a situation giving rise to your inquiry is set out in your request as follows:

. . . an individual plans a marriage on the 31st day after his divorce; that day being a Sunday or holiday when the County Clerk's Office is closed.

You then ask:

Does the County Clerk have the authority to issue the marriage license during the 30-day waiting period when the marriage is planned after the waiting period has expired?

This required "30-day waiting period" is found in section 3.66, Texas Family Code, which section provides as follows:

Neither party to a divorce may marry a third party for a period of thirty days immediately following the date the divorce is decreed, but the parties divorced may marry each other at any time. (Emphasis supplied).

Notice is made that section 3.66 prohibits only remarriage by a divorced person (except to his former spouse) and does not speak to the matter of issuing a license for a contemplated marriage. Other sections of the Family Code must be consulted to determine the propriety of issuing a license within a 30-day period following a divorce.

Section 1.03(b) requires the county clerk to furnish an application form to be executed by an applicant for a marriage license, the form to include (among other things):

(4) spaces for indicating whether each applicant has been divorced within the last 30 days,

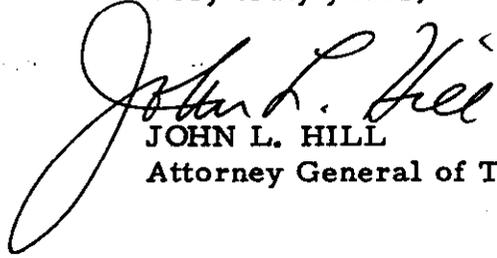
The County Clerk is mandated by section 1.06 to obtain the information called for by the application form including information as to whether either party contemplating marriage has been divorced within 30 days.

However, section 1.07 provides the only authority for a county clerk to refuse to issue a marriage license and the fact of divorce within 30 days of the date of the application is not a ground for refusal. Accordingly, a county clerk has the authority to issue a marriage license in the situation you pose. Of course, the parties are not entitled to marry prior to the expiration of the 30-day period.

S U M M A R Y

Although the parties are not entitled to marry prior to the expiration of the 30-day period, a county clerk has the authority to issue a marriage license where it appears from the application that one or both applicants have been divorced within 30 days of the date of the application.

Very truly yours,



JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee