

August 27, 2007

The Honorable David L. Thomas
Senator, District No. 8
23 Wade Hampton Boulevard
Greenville, South Carolina 29609

Dear Senator Thomas:

In a letter to this office you questioned the possible penalty that could be imposed against an individual if that individual provides incorrect information, such as a name, in association with an application for a marriage license.

S.C. Code Ann. § 20-1-230(A) states that “[t]he judge of probate or clerk of court with whom a marriage license application was filed shall issue a license upon:...(4) the filing of a statement, under oath or affirmation, to the effect that the persons seeking the contract of matrimony are legally entitled to marry, together with the full names of the persons, their ages, and places of residence.” (emphasis added). Therefore, there is the requirement that the full name of an individual seeking a marriage license be given under oath in order to obtain the license. S.C. Code Ann. § 20-1-280 states that “[a]ny person furnishing the probate judge or any other officer authorized under the law to issue marriage licenses with a false affidavit shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in the sum of one hundred dollars.” Therefore, such penalty could be applicable to an individual providing an incorrect name in association with an application for a marriage license. Of course, the facts of an individual situation would have to be addressed in determining the applicability of such penalty to a particular situation.

In association with your question regarding providing an incorrect name in association with applying for a marriage license, you also asked whether providing such an incorrect name would nullify the marriage. Sections 20-1-230 and 20-1-280 cited above are included in Article 3 of Title 20 of the State Code. S.C. Code Ann. § 20-1-360, also included in Article 3, states that “[n]othing contained in this article shall render illegal any marriage contracted without the issuance of a license.” A prior opinion of this office dated May 24, 1984 stated that

...it is generally held that statutes prescribing procurement of a license or other formalities to be observed in solemnization of marriage do not render invalid a marriage entered into according to the common law, but not in conformity with these statutory formalities...(citing State v. Ward, 204 S.C. 210, 28 S.E.2d 785 (1944)).

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See also: Op. Atty. Gen. dated August 25, 1975; 55 C.J.S. Marriage, § 36 (“...a mistake as to name or status induced by false personation of the party will not vitiate the contract.”); Chipman v. Johnston, 130 N.E. 65, 66 (Mass. 1921 (“[t]he validity of the marriage has been upheld where one of the parties has assumed a false name....”)); Christensen v. Christensen, 14 N.W.2d 613, 616 (Neb. 1944) (“...the fact that the license required was wrongfully or fraudulently procured may subject the parties to the pains and penalties of the law for violation thereof, but it does not alone affect the validity of the marriage itself.”). Therefore, assuming that the marriage entered into was proper in other respects, the fact that an incorrect name was used in applying for a marriage license would not appear to nullify the marriage.

You also questioned the consequences to an individual for providing erroneous information for a death certificate, such as an incorrect maiden name. S.C. Code Ann. §§44-63-10 et seq. provide for the issuance of birth and death certificates by the Bureau of Vital Statistics of the Department of Health and Environmental Control. See also: DHEC Regulation 61-19 et seq. In particular, Section 18 of such regulation states that “[a] death certificate for each death which occurs in this State shall be filed with the county registrar of the county in which the death occurred within five (5) days after such death....” Section 44-63-161 states that “[i]t is unlawful for a person...to wilfully make a false statement in a certificate, record, or report required to be filed by this chapter or a regulation or in an application for an amendment to or for a certified copy of the certificate, record, or report or to wilfully supply false information intending that the information be used in the preparation or amendment of the certificate, record, or report....” (emphasis added). A violation of such provision is a felony punishable by a fine of not more than ten thousand dollars or imprisonment for not more than five years, or both. The applicability of such provision to the situation addressed by you involving the providing of erroneous information for a death certificate would be dependent upon the facts in a given situation, especially with regard to the wilfulness of the supplying of erroneous information. I would note that Section 44-63-150 provides for the correction of mistakes in death certificates.

With kind regards, I am,

Very truly yours,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General