

The State of South Carolina



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October 20, 1994

The Honorable Evelyn J. Fulton
Probate Judge of York County
Post Office Box 219
York, South Carolina 29745

Dear Judge Fulton:

You had inquired as to what should be required of emancipated seventeen-year-old applicants for marriage licenses, to prove that they are in fact emancipated. You inquired as to keeping the certified copy of the minor's birth certificate, a copy of the emancipation papers, and perhaps obtaining consent of either a parent or grandparent.

As you are well aware, S.C. Code Ann. § 20-1-260 requires that a minor applicant file a birth certificate or other document listed in the statute showing that he (she) is of lawful age to apply for a marriage license. As to applicants under the age of consent, certain consent may also be required by § 20-1-250 for a license to be issued; that section provides:

No such license shall be issued when the woman or child woman is under the age of fourteen or when the male is under the age of sixteen, provided that when the female applicant is between the ages of fourteen to eighteen and when the male applicant is between the ages of sixteen to eighteen and when the applicant resides with father or mother, or other relative or guardian, the probate judge or other officer authorized to issue marriage licenses shall not issue a license for the marriage until furnished with a sworn affidavit signed by such father, mother, other relative or guardian giving his or her consent to the marriage.

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This Code section has been interpreted in opinions of this Office dated August 2, 1961 and July 18, 1957, copies of which are enclosed. The 1957 opinion stated:

The requirement imposed by this section is that if the applicants are within the designated ages and also reside with certain persons, the written consent in the form of an affidavit by such person must be furnished to the Probate Judge.

....

The law contemplates that Probate Judges have authority to require proof in affidavit form not only as to the age of the applicants, but as to their family status -- that is, with whom they reside and the relationship to the applicant of the person with whom they reside.

The law makes no provision with respect to applicants who establish to the satisfaction of the Probate Judge that they do not reside with a father, mother, relative or guardian. Instead, the statute refers to applicants who are within certain designated ages "and" who reside with father or mother, etc. In such cases, it is doubtful if a license may be refused upon the grounds that the consent of other parties is lacking. This is a serious defect in the law, but one which the Legislature alone can remedy. There do not appear to be any persons who are authorized by law to give their consent to a proposed marriage other than the ones specifically named in the statute, and the statute specifically states that the applicant reside with such person so as to make consent a prerequisite.

I observe that § 20-1-250 has not been amended since the 1957 opinion was rendered.

Based on the 1957 opinion and the relevant statutes, it is our opinion that the Probate Court could require the minor, allegedly emancipated applicant to execute an affidavit as to his/her age, family status, and the facts relative to emancipation. The court could most probably require a copy of the emancipation documents to be produced. The court could attempt to have a parent or guardian furnish a sworn affidavit of consent, but as noted in the 1957 opinion, due to the use of the word "and" in the statute, it is doubtful that the court could refuse to issue a license on the grounds that such consent is lacking.

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(This response assumes that the court is satisfied that the minor applicant is indeed emancipated.)

I hope that the foregoing will be helpful. Please advise if additional assistance should be needed.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:



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Executive Assistant for Opinions