

1982 WL 189200 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 10, 1982

*1 Charles E. Curry, Esquire
P. O. Box 191
Dillon, S. C. 29536

Dear Mr. Curry:

You have requested an opinion of this office concerning the operation of the Dillon Marriage Chapel which is owned and operated by the Dillon County Probate Judge. In your letter, you describe the manner of operation of the marriage chapel and question the propriety of such manner of operation.

As to the practice of marriage license applications being taken by phone, [Section 20-1-220, Code of Laws of South Carolina, 1976](#), provides as to marriage licenses that:

‘[n]o license shall be issued unless a written application therefor shall have been filed with the probate judge . . . at least twenty-four hours prior to its issuance. Such application must be signed by both of the contracting parties . . .’

Therefore, pursuant to such provision, the practice of marriage license applications being taken by phone is improper. I would further advise that such statute also provides that any probate judge issuing a license contrary to such provisions shall, upon conviction, be punished by a fine of not more than one hundred dollars nor less than twenty-five dollars or by imprisonment for not more than thirty days nor less than ten days.

You also stated that a fee is charged for conducting a marriage ceremony which includes a four dollar fee for the license, such four dollars being paid to the County. You indicated that the remainder of the fee is retained by the Probate Judge. It was also stated that in the past the Probate Judge did not conduct the marriage ceremonies at the Marriage Chapel, but instead had a notary public conduct such. However, you indicate that presently the Acting Probate Judge conducts such ceremonies for a fee.

Pursuant to Act No. 603 of 1948,

‘[t]he judge of probate of Dillon County, when requested, shall perform marriage ceremonies during official office hours. He shall charge and collect four dollars for each marriage license issued by him, regardless of whether it is issued during office hours or not. He shall make no charge for issuing certified copies of marriage certificates. He shall make no charge for the performance of marriage ceremonies during office hours. He or someone acting in his behalf shall collect such fees and they shall, together with all other fees and commissions received by the probate judge, be turned over monthly to the treasurer of said county.’

Such statute was construed to be constitutional by the South Carolina Supreme Court in [Dillon County v. Maryland Casualty Company, 217 S.C. 66, 59 SE 2d 640 \(1950\)](#). While the assertion may be made that presently there exists a question of constitutionality in light of the provisions of Article V of the State Constitution which establish a unified judicial system in this State¹, the statute must be presumed to be constitutional until otherwise determined by a court.

Pursuant to the provisions of the above-referenced statute, the Dillon County Probate Judge ‘. . . when requested, shall perform marriage ceremonies during official office hours.’ In an earlier opinion of this office, 1969 Opinion of the Attorney General

No. 2775 at page 265, reference was made to almost identical language in a statutory provision relating to the duties of the York County Probate Judge. See: Act No. 809 of 1969. It was determined in such opinion that the word 'shall', as used in the provision relating to the York County Probate Judge,

*2 '... is used in its mandatory sense, and whenever requested, it would be his duty to perform the ceremony.'

The previously quoted provision pertaining to the Dillon County Probate Judge also explicitly provides that the Probate Judge '... shall make no charge for the performance of marriage ceremonies.'

Referencing the above, it would appear that the practice of the Acting Probate Judge performing marriage ceremonies during office hours for a fee is improper. Act No. 603 of 1948 obligates the Dillon County Probate Judge to perform a marriage ceremony as a function of the office of Probate Judge during office hours. For such service, no fee may be charged. The only fee prescribed is a four dollar fee for issuing a marriage license which is turned over to the county treasurer. It would also appear that the Probate Judge could not remove himself from the requirements of the Act by performing marriage ceremonies as a notary public. Again, the duty to perform marriage ceremonies is a prescribed function of the Dillon County Probate Judge.

As to the matter of the county employees who are employed in the Dillon County Probate Judge's office, working during and after regular office hours in the Marriage Chapel, such is more properly a matter for the County to resolve. While you indicate the practice is no longer continuing, should the practice reoccur, you may wish to contact the State Ethics Commission, 1000 Assembly Street, Columbia, S. C. 29201. The individuals working in the Probate Judge's office would be included within the definition of 'public employee' as defined by the State Ethics Act. See: [Section 8-13-20\(d\), Code of Laws of South Carolina, 1976](#).

This opinion has not discussed any possible violation of judicial ethics with regard to the operation of the Dillon County Marriage Chapel in the manner described above. I would only advise that any such questions be referred to the Advisory Committee on Standards of Judicial Conduct. Any such questions may be sent to the Honorable C. Victor Pyle, 312 County Courthouse, Greenville, S. C. 29601. Judicial officers do not come within the provisions of the State Ethics Act. See [Section 8-13-20\(e\), supra](#).

If there are any further questions concerning the above, please contact me.

Sincerely,

Charles H. Richardson
Assistant Attorney General

Footnotes

- 1 See: [State ex rel. McLeod v. Court of Probate of Colleton County, 266 S.C. 279, 223 S.E.2d 166 \(1975\)](#); [Kramer v. County Council for Dorchester County et al.](#), Opinion No. 21566, Filed September 21, 1981; [Douglas et al. v. Ex rel. McLeod as Attorney General, et al.](#), Opinion No. 21567, Filed September 21, 1981; [Sections 14-23-10 et seq., Code of Laws of South Carolina, 1976](#), as amended.
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