

1975 WL 29325 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

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*1 If a woman upon marriage expresses an intent to retain her maiden name and does in fact use her maiden name consistently and non-fraudulently following her marriage, such maiden name will be her legal name and she may be issued a driver's license in that name.

Emory P. Austin, Jr.
Director
Motor Vehicle Division

QUESTION PRESENTED

Should the South Carolina Highway Department issue a driver's license in the maiden name of a married woman?

AUTHORITIES CITED

[Walker v. Jackson](#), 391 F. Supp. 1395 (D.C.E.D. Ark., 1975)

[Forbush v. Wallace](#), 341 F. Supp. 217 (D.C. Ala. 1971)

[Brayton v. Beale](#), 73 S.C. 308, 53 S.E. 641 (1905)

[City Council v. King](#), 15 S.C.L. (4 McCord) 487 (1828)

[Custer v. Bonadies](#), 30 Conn. Supp. 385, 318 A2d 659 (1974)

[Wilty v. Jefferson Parish Democratic Executive Committee](#), 245 La. 145, 157 So. 2d 718 (1963)

[Stewart v. Bd. of Supervisors of Elections for Howard County](#), 266 Md. 440 245 A2d 223 (1972)

[Application of Lawrence](#), 133 N.J. Sup. 408, 337 A2d 51 (1975)

[Application Halligan](#), 76 Misc. 2d 190, 350 N.Y.S. 2d 63 (1973)

[In Re Mohlman](#), 26 N.C. App. 220, 216 S.E. 2d 147 (1975)

[State, ex rel Krupa v. Green](#), 144 Ohio App. 497, 177 N.E. 2d 616 (1961) [Kruzel v. Podell](#) (Wisconsin Supreme Court March 6, 1975 U.S. Week April 1, 1975)

Code of Laws of South Carolina, Section 1-19, 1962 (as amended)

Code of Laws of South Carolina, Section 48-51, 1962 (as amended)

Code of Laws of South Carolina, Section 46-158, 1962 (as amended)

Code of Laws of South Carolina, Section 46-163, 1962 (as amended)

65 C.J.S. Names § 3(c) (1966)

[35 A.L.R. 417 \(1925\)](#)

Am. Ju. 2nd Names § 9 (1971)

DISCUSSION

The Highway Department has a duty to require that any person be issued a driver's license in his or her legal name. Code of Laws of South Carolina, §§ 46-158, 46-163, 1962 (as amended). The state has a significant interest in maintaining a close watch over the license which it issues. Therefore, in an effort to police the administration of issuance of licenses and to preserve the integrity of the license as a means of identification, it is reasonable to require each driver to secure a license only in his legal name. See, [Forbush v. Wallace](#), 341 F. Supp. 217 (D.C. Ala. 1971).

The principle case in South Carolina dealing with names is [Brayton v. Beale](#), 73 S.C. 308, 53 S.E. 641 (1905). In this case the court recognized that South Carolina follows the common law rule that an individual may lawfully change his or her name by general usage as long as such usage is consistent and non-fraudulent. Section 48-51 Code of Laws of South Carolina, 1962 (as amended), providing the statutory means by which a person may change his or her name, is in aid of the common law and not in derogation thereof. It has been stated that 'it surely will not be contended here that a man may not take any name he pleases and if he by his own conduct renders it doubtful what his real name is, the fault is his and let the consequences be also his.' [City Council v. King](#), 15 S.C.L. (4 McCord) 487, 489 (1828). Therefore it is obvious that in South Carolina a person's legal name can be the name given at birth, a name assumed by custom and usage or a name taken as a result of following the statutory procedure.

*2 It is now necessary to apply these principles to the factual situation in which a woman marries. First of all, it should be recognized that there is no statutory requirement that a woman change her maiden name upon marriage. Also, there are no cases in South Carolina holding that upon marriage a woman loses her maiden name. However, immemorial custom holds that a woman upon marriage abandons her maiden name and assumes her husband's surname. See, [Am. Jur. 2nd Names § 9 \(1971\)](#); [35 A.L.R. 417 \(1925\)](#); 65 C.J.S. Names § 3(c) (1966); [Custer v. Bonadies](#), 30 Conn. Supp. 385, 318 A2d 659 (1974); [Application of Halligan](#), 76 Misc. 2d 190, 350 N.Y.S. 2d 63 (1973); [Stewart v. Bd. of Supervisors of Elections for Howard County](#), 266 Md. 440, 295 A2d 223 (1972); [Wilty v. Jefferson Parish Democratic Executive Committee](#), 245 La. 145, 157 So. 2d 718 (1963) and [State, ex rel. Krupa v. Green](#), 144 Ohio App. 497, 177 N.E. 2nd 616 (1961). However, while these last cited cases recognize the above custom, they also stand for the proposition that such custom merely creates a presumption, a presumption that may be overcome if the woman chooses to retain her maiden name when married. If a woman upon marriage manifests an intent to retain her maiden surname and uses such such maiden surname consistently and without intent to defraud or deceive, then that is her legal name. See also [Kruzel v. Podell](#) (Wisconsin Supreme Court March 6, 1975, U.S. Law Week April 1, 1975). Moreover if a woman on marriage does not retain her maiden name, she legally adopts her husband's surname by repute. This becomes her legal name. See, [Application of Lawrence](#), 133 N.J. Sup. 408, 337 A.2d 51 (1975).

Recently the Court of Appeals of North Carolina considered this very issue in the case of [In Re Mohlman](#), 26 N.C. App. 220, 216 S.E. 2d 147 (1975). Therein the court reviewed the English precedent from which we derive our common law. It was determined that in England there is no common law requirement that a wife assume her husband's name upon marriage. It was also recognized that at common law a person may change his name at will. It was the conclusion of the Court in [In Re Mohlman](#) that in North Carolina a married woman voluntarily assumes her husband's surname but is

under no legal compulsion to do so. Of course the common law of England is in effect in South Carolina. See Section 1-19, South Carolina Code of Laws, 1962 (as amended). Therefore these principles of the common law are applicable in this state.

There is an additional compelling reason why a married woman may retain her maiden name as her legal name. As previously noted it is the common law and the law of this state that a person may assume a legal name by merely manifesting an intent to be known by that name. See, Brayton v. Reale, supra. Therefore regardless of whether a woman assumes her husband's surname upon marriage or retains her maiden name, if she chooses to nonfraudulently assume her maiden name by usage and custom, that assumed name will be her legal name. To deny a woman this right has been held to be a violation of the equal protection clause of the Constitution of the United States. See Walker v. Jackson, 391 F. Supp. 1395 (D.C.E.D. Ark., 1975).

*3 Therefore, it is the conclusion of this office that where a woman upon marriage expresses an intent to retain her maiden name and does in fact use her maiden name consistently and non-fraudulently following her marriage, such maiden name will be her legal name and she may be issued a driver's license in that name.

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