

1974 S.C. Op. Atty. Gen. 177 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3796, 1974 WL 21303

Office of the Attorney General

State of South Carolina

Opinion No. 3796

June 6, 1974

*1 Ms. Victoria L. Eslinger
Legal Aid Service Agency
P. O. Box 1056
Columbia, South Carolina 29202

Dear Ms. Eslinger:

You have requested an opinion of this office as to the right of married women in South Carolina to retain their own surnames.

There are two procedures that may be followed in changing your name in South Carolina; either pursuant to statute (South Carolina Code of Laws, 1962, as amended, Section 48-51) or by the common law right to adopt a name you desire by general usage. South Carolina is, as I am sure you are aware, a common law state. The South Carolina case of [Brayton v. Beall](#), 73 S.C. 308 (1906) states

When a name is changed under the method prescribed by statute, the time of the change is fixed with certainty, and thereafter the person so changing his name may be sued, plead and be impleaded by his new name, and no other. This, however, does not otherwise affect the common-law right of a person to change his name. At common law a man may lawfully change his name, or by general usage or habit acquire another name than that originally borne by him, without the intervention of court of Legislature.

See also [City Council v. King](#), 4 McCord 487 (1827); [Converse v. Converse](#), 30 S.C. Eq. 535 (1856); [Miller v. George](#), 30 S.C. 528, 9 S.E. 659, Attorney General Opinions 1941-1942 p. 277.

The controversy ensues over exactly what constituted the common law approach to a woman retaining her own name. See [State ex rel Krupa v. Green](#), 177 N.E.2d 616 (1961); [Stuart v. Board of Supervisors of Elections](#), 295 A.2d 223 (1972); 57 Am.Jur.2d [Names](#) L 9 (1971); 35 ALR 417; G5 C.J.S. [Names](#) L 3(c) 1966. Apparently the common law would not deny a woman the right to retain her own name if she so desired. [State ex rel Krupa v. Green](#), supra.

Therefore, it is the opinion of this office that a woman may retain her own surname at the time of her marriage as long as this is not done for a fraudulent purpose and does not interfere with the rights of others. If the woman has already adopted her husband's name and now prefers to again assume her maiden name she may do so either through a court proceeding or by simply reverting to the use of her maiden name. However, again the change must be done for a non-fraudulent purpose and one that will not operate to interfere with the rights of another. It should also be pointed out that this opinion cannot be free from doubt in light of the conflict in case law and would probably need court determination.

Sincerely,

Treva Ashworth
Assistant Attorney General

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