



STATE OF KANSAS

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December 10, 1980

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ATTORNEY GENERAL OPINION NO. 80- 261

The Honorable Sam K. Bruner  
Associate District Judge, 10th Judicial District  
Johnson County Courthouse  
Olathe, Kansas 66061

Re: Domestic Relations--Marriage--Performance of Ceremony  
Using a Proxy

Synopsis: In the absence of statutory or case law prohibition, marriages in which one party is represented by a proxy at the time of the ceremony are legal in Kansas. In addition to complying with general statutory requirements established by K.S.A. 23-101 et seq., the party who is to be represented by a proxy at the ceremony must confer a power of attorney on the latter to act on his or her behalf. Cited herein: K.S.A. 23-104a, K.S.A. 1979 Supp. 23-106, 23-301, L. 1980, ch. 106, §1.

\* \* \*

Dear Judge Bruner:

As an associate district judge in the 10th Judicial District, you have requested the opinion of this office on the subject of marriages by proxy. Specifically, you wish to know whether such marriages would be legal in this state. Although you indicate that you do not intend to perform ceremonies of this type, you have received inquiries from clergymen and so request an updated opinion from this office.

As you note, there are previous opinions of this office which have been issued on this subject. Our research has uncovered opinions issued by six previous attorneys general dating back to 1944. Without

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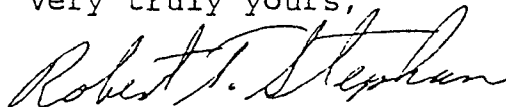
exception, these opinions hold that marriage ceremonies in which one party is represented by a proxy are legal in Kansas. In the absence of any statutes which speak to the matter, these opinions are based on case law precedents which view marriage by proxy as a form of common-law marriage. United Sates v. Layton, 68 F.Supp. 247 (D. Fla., 1946), Great Northern Ry. Co. v. Johnson, 254 Fed. 683 (8th Cir., 1918). As there can be no question that Kansas recognizes the latter [State v. Johnson, 216 Kan. 445 (1975), Schrader v. Schrader, 207 Kan. 349 (1971)], the former have also been recognized as legally sufficient, once certain other steps have been taken. We would affirm these prior opinions.

Chief among these requirements is the need for a valid power of attorney to be made by the party who is to be absent at the time the ceremony is performed. While the specifics of the document are left to the drafter, it clearly must identify the proxy, and confer upon him or her the power to enter into the marriage contract. The need for this type of legal proceeding is apparently to supply the "consent" element which is required for a valid common-law marriage, and at the same time to satisfy the provision of K.S.A. 23-104a that the parties to be wed make mutual declarations of their intent.

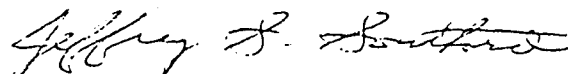
Additionally, prior opinions are unanimous in holding that it is necessary for the statutory requirements for marriage to be met prior to the proxy ceremony. These requirements include: (1) the application by one of the parties for a marriage license, (2) the payment of the prescribed fee, (3) observance of the three-day waiting period (all as set out by K.S.A. 1979 Supp. 23-106), and (4) passage of a premarital medical examination (K.S.A. 1979 Supp. 23-301). A new requirement, first enunciated by statute this year, also requires the parties to be of the opposite sex, and the fact that a marriage is by proxy does not avoid the effect of this enactment (L. 1980, ch. 106, §1).

In conclusion, in the absence of statutory or case law prohibition, marriages in which one party is represented by a proxy at the time of the ceremony are legal in Kansas. In addition to complying with general statutory requirements established by K.S.A. 23-101 et seq., the party who is to be represented by a proxy at the ceremony must confer a power of attorney on the latter to act on his or her behalf.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Jeffrey S. Southard  
Assistant Attorney General