



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 10, 2012

The Honorable Tom Maness
Jefferson County Criminal District Attorney
1001 Pearl Street, 3rd floor
Beaumont, Texas 77701

Opinion No. GA-0982

Re: Whether a senior status federal judge who has been designated and assigned to hold court in Texas is authorized to conduct a marriage ceremony in Texas (RQ-1079-GA)

Dear Mr. Maness:

You ask whether a senior status federal judge who has been designated and assigned to hold court in Texas is authorized to conduct a marriage ceremony in Texas.¹

Section 2.202 of the Family Code describes those judges and justices who may conduct a marriage ceremony:

(4) a justice of the supreme court, judge of the court of criminal appeals, justice of the courts of appeals, judge of the district, county, and probate courts, judge of the county courts at law, judge of the courts of domestic relations, judge of the juvenile courts, retired justice or judge of those courts, justice of the peace, retired justice of the peace, judge of a municipal court, or *judge or magistrate of a federal court of this state*.

TEX. FAM. CODE ANN. § 2.202(a)(4) (West Supp. 2012) (emphasis added). In Attorney General Opinion GA-0948, this office concluded that a “retired federal judge” is not authorized to conduct a marriage ceremony in Texas. Tex. Att’y Gen. Op. No. GA-0948 (2012) at 2. The opinion reasoned that the term “retired judge or justice of those courts,” as used in subsection 2.202(b), does not include a retired federal judge. *Id.*

Your question presents additional facts not before us in Opinion GA-0948. You describe a “senior status federal judge” as one who “has not resigned from the bench,” but has retired only

¹Request Letter and Brief from Honorable Tom Maness, Jefferson Cnty. Criminal Dist. Att’y, to Honorable Greg Abbott, Tex. Att’y Gen. at 1 (Aug. 30, 2012), <http://texasattorneygeneral.gov/opin> (“Brief”).

“from regular active duty service but [has continued] rendering substantial judicial service as a senior judge.” Brief at 2. You indicate that in December 2011, the Honorable Edith Jones, Chief Judge of the Fifth Circuit Court of Appeals, designated and assigned the judge about whom you inquire “to hold court in the Eastern District of Texas” during 2012, and that Judge Jones thereafter “certified that [the judge] performed judicial and court-related duties equal to the work of an average judge in active service.” *Id.* at 1–2. Moreover, the judge was allocated a full staff through fiscal year 2013 “based upon his caseload disposition record.” *Id.* at 2.

When construing statutes, we look to the common meaning of the words used by the Legislature. *Traxler v. Entergy Gulf States, Inc.*, 376 S.W.3d 742, 747 (Tex. 2012) (courts “ordinarily rely on the common meaning of the words chosen by the Legislature”). Your question requires us to determine whether the Legislature’s use of the phrase “judge or magistrate of a federal court” includes a senior status federal judge. The Family Code does not define the phrase, nor do any decisions of Texas courts shed light on the question. Thus, we naturally look to federal law for guidance on the common meaning of the phrase “judge or magistrate of a federal court.”

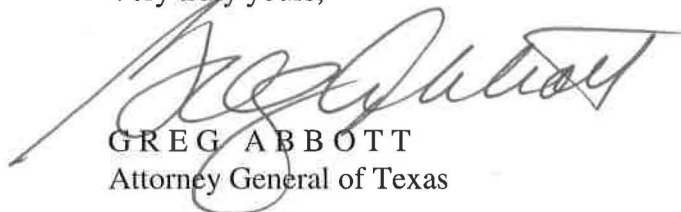
Under federal law, a federal judge who has retired from regular active service “may retain the office” so long as he or she meets the requirements of federal law. 28 U.S.C.A. § 371 (2012). Such an individual “shall have all the powers of a judge of the court,” with only minor restrictions.² In a 1934 case, the United States Supreme Court held that a judge who has retired but accepted senior status under federal law “does not surrender his commission, but continues to act under it.” *Booth v. United States*, 291 U.S. 339, 350–51 (1934); *see also United States v. Moore*, 101 F.2d 56, 58 (2d Cir. 1939) (“When a United States judge retires without resigning, he retains his office.”). More recently, the Supreme Court has observed that a senior judge serving on an appellate court three-judge panel is “of course” a life-tenured federal judge. *Nguyen v. United States*, 539 U.S. 69, 72 (2003). Thus, both federal law and long-standing federal judicial authority confirm that a senior status federal judge meeting the requirements of 28 U.S.C.A. § 371 continues to be a “judge or magistrate of a federal court of this state” and is therefore authorized by subsection 2.202(a)(4) of the Family Code to conduct marriage ceremonies in Texas.

²The judge may lack “the power to appoint any person to a statutory position or to designate permanently a depository of funds or a newspaper for publication of legal notices.” 28 U.S.C.A. § 296 (2012). Even this restriction is limited, however: If the judge has “performed in the preceding calendar year an amount of work equal to or greater than the amount of work an average judge in active service on that court would perform in 6 months,” he or she “shall have the powers of a judge of that court to participate in appointment of court officers and magistrate judges, rulemaking, governance, and administrative matters.” *Id.* In the situation you pose, Judge Jones has so certified. Brief at 1–2.

S U M M A R Y

A senior status federal judge meeting the requirements of 28 U.S.C.A. § 371 is authorized to conduct a marriage ceremony in Texas.

Very truly yours,



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