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OPINION COMMITTEE

August 20, 2002

RQ-0590-JC

Honorable John Cornyn
Attorney General
Office of the Attorney General
Attn: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

VIA: CMRRR #7001 0320 0000 0398 3088

FILE # ML-42753-02
I.D. # 42753

Re: Request for opinion on issues regarding Issuance of Marriage License to Two Absent Applicants

Dear Attorney General Cornyn:

Our office is in receipt of a letter dated March 13, 2002, from the Bexar County Clerk requesting a legal opinion regarding whether the county clerk is required to issue a marriage license to two absent applicants. The Bexar County Clerk had received such a request from an inmate of the Texas Department of Criminal Justice Institutional Division who is currently incarcerated. The inmate's fiancé is also incarcerated and they desire to be married.

Our office has consulted with the Dallas and Harris County Clerks about how they would handle this situation. Both offices indicated that they would not grant a marriage license to two absent applicants, based upon direction found in the County Clerk's manual. Section C of the County Clerk's manual pertains to marriage licenses and states in (C) (1) the following information relative to Applications for Marriage Licenses:

"Persons applying for a license must:

- Appear together or separately before the county clerk
- Submit proof of identity and age. The county clerk shall require proof of identity and age of each applicant to be established by a certified copy of the applicant's birth certificate or by some other certificate, license or document issued by this state or another state, the United States, or a foreign government."

The manual references Family Code §2.002 and §2.005 as the authority, which supports these rules.

Furthermore, the County Clerk's manual provides in (C) (4) the following information relative to Proxy Marriages and Absent Applicants:

“Under a proxy marriage or absent applicant, one of the applicants must appear before the clerk. There cannot be a proxy for both applicants of a marriage license...”

The manual references Family Code §2.006 as the authority that supports these rules.

While we believe the intent is meant to be consistent with the interpretation found within the County Clerk's manual, the Family Code currently does not contain any limiting language within Section 2.006 (a) to clearly restrict two absent applicants from obtaining a marriage license:

“If an applicant is unable to appear personally before the county clerk to apply for a marriage license, any adult person or the other applicant may apply on behalf of the absent applicant.”

When reading this exception under the Family Code, it appears to presume that one applicant will be present, which is consistent with the County Clerk's Manual. Unfortunately, the County Clerk's Manual does not present an interpretation of how their opinion came to be. Our question is can both applicants be absent to apply for a marriage license? We wish to request the opinion of the Attorney General on this matter for clarification.

The Office of Court Administration is responsible for drafting the County Clerk's Manual. Our office spoke with Lesley Ondrechen of the Office of Court Administration who consulted with several staff attorneys. While they indicated they are unable to issue a formal legal opinion or to give legal advice, they conceded that, in their opinion, the statute does currently provide that two absent applicants can be granted a marriage license, as both would have the ability to have each other or any other adult apply on their behalf. When the Texas Family Code was recodified, some of the language within the previous statute of Section 1.05 changed to reflect the current language in Section 2.006 (a), which in their opinion made it possible that both applicants could be absent. The Office of Court Administration suspects that the conclusion reached by the Bexar County Clerk, in which they believed it was not possible for two absent applicants to apply for a

marriage license, was based upon the prior version of the statute. It appears that there may not be any restriction now existing.

While the act of recodifying the Family Code was not intended to change the substantive value of the laws, the current language does not address the issue that at least one of the parties to a marriage license should be present before the county clerk.

In conclusion, we request the Attorney General's opinion whether under the current law, two absent applicants may be granted a marriage license if they both have another adult applying on their behalf.

Respectfully submitted,

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By:



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