

AG Opinion Number 94-009

January 30, 1995
Mr. Frank V. Smith III
Acting Chief Counsel for Region VIII
Social Security Administration
Federal Office Building
1961 Stout Street
Denver, CO 80294

Re: Interpretation of U.C.A. 30-1-4.5
Time Period to Establish A "Common-Law" Marriage
Attorney General Opinion No. 94-009

Dear Mr. Smith:

This letter responds to your request for an Attorney General's opinion regarding 30-1-4.5, Utah Code Annotated, Validity of Marriage Not Solemnized. Your request asks whether the judicial or administrative order regarding the "determination of establishment of a marriage" must be made and entered before one year following the termination of the relationship if it is to have any effect. Utah Code Ann. 30-1-4.5(1) sets forth the substantive requirements of when a relationship may constitute a valid non-solemnized marriage, including that a non-solemnized marriage is "legal and valid" only if it is "established by" a court or administrative order. Section 30-1-4.5(2) goes on to provide:

The determination or establishment of a marriage under this section must occur during the relationship described in subsection (1), or within one year following the termination of that relationship.

As your letter request indicated, that section may be interpreted to require the order determining or establishing the relationship to be made and entered within one year or that the process to obtain that order must start within one year.

There are a number of rules which guide the interpretation

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of any statute. As stated in *Millet v. Clark Clinic Corp.*, 609 P.2d 934, 936 (Utah 1980):

[The] primary responsibility in construing legislative enactments is to give effect to the Legislature's intent.

The best indication of the legislative intent may be a statute's plain language. *Berube v. Fashion Center Limited*, 771 P.2d 1033 (Utah 1989).

However,[If] there is doubt or uncertainty as to the meaning or application of the provisions of an act, it is appropriate to analyze the act in its entirety, in the light of its objective, and to harmonize its provisions in accordance with the legislative intent and purpose. *Osuala v. Aetna Life and Casualty*, 608 P.2d 242, 243 (Utah 1980).

Utilizing these principles for guidance, we conclude, based upon both the plain language of the statute and the legislative intent and purpose that the one year time limitation for the "determination or establishment" of a marriage means that the court or administrative process for finding that a marriage relationship exists must be begun within one year after the relationship is ended, not that the order establishing the relationship needs to be entered within one year.

The ordinary and excepted meanings of the words "determination" and "establishment" refer to an ongoing process, rather than result of a process. The word determination is defined as "the resolving of a question by argument or reasoning . . . the act of deciding definitely or affirmably . . .", *Webster's New Collegiate Dictionary* 310 (1973). Another definition states "the act of making or arriving at a decision . . . the act of settling a dispute, suit, or other question by an authoritative decision or pronouncement, esp. [sic] by a judicial body", *Webster's II New Riverside Dictionary* 369 (1994). Both of these definitions indicate that "determination" is an active process, and not the end of that process. The word "establishment", as used in this context, is also defined as a process or state of being established. See *Webster's New Collegiate Dictionary* 391; *Webster's II New Riverside Dictionary* 444. The use of the word "occur", (The determination or establishment . . . must occur . . .") implies an active, on going process. Thus, the language of the statute indicates that the "process" must be begun within one year to satisfy the time limit, not its conclusion.

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The intent and purpose of the Legislature is realized if the time limitation applies to initiating the process to obtain the order, and not to the conclusion of the process and the rendering of the order. The initial Bill to recognize common law

marriage relations, Senate Bill 156, contained no time limitation for establishing the marriage relation. During the debate on S.B. 156, hypotheticals were raised of a second family being denied legitimacy because of a twenty-year old previous common law marriage which was unknown to the second family. A subsection 2 was then proposed as an amendment, and subsequently adopted as 30-1-4.5(2), to provide a time limitation on when the marriage relation could be established in order to protect a potential second family and to provide a finality of when a "marriage" can no longer be established from a prior relationship. This section was also intended to allow an un-solemnized marriage to be proven, allowed, and declared valid.

Some benefits and liabilities are allowed or imposed only if persons are married. Examples of such benefits include worker's compensation benefits and insurance coverage; liabilities include welfare reimbursements and support obligations. If the final order establishing the marriage must be "entered" within one year, the awarding of those benefits or the imposing of those liabilities may depend upon whether the parties were able to move their case through the administrative or court system within that one year, rather than the merits of the case. Such capricious results may be avoided by interpreting the statute to require that the process to establish the relation be initiated within one year of the termination of the relation, not that the order establishing the relation be entered within that year.

To interpret the statute as requiring an actual order to be entered within one year would create an additional problem - it would effectively deny review from any determination that the marriage relationship had not been established. If an administrative agency or court, in a proceeding properly and timely instituted to establish the relationship, rules that the substantive requirements have not been met, an aggrieved party would ordinarily have a right to seek review of that decision through agency or appellate review. See e.g., Utah Code Ann. 63-46b-13 and 14, and Rule 3, Utah Rules of Appellate Procedure. Such agency, judicial, or appellate review could easily extend the process beyond the one year from the termination of the relationship. To interpret the statute to require the order to be entered within one year would deny agency, judicial, or

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appellate review, since the reviewing entity may be unable to enter an order reversing and establishing the relation within the time period. It would be improper to interpret the statute as potentially denying review, in the face of statutory and possibly constitutional rights of review, absent a clear and express denial of such a right of review in the statute.

In summary, based upon the established rules of statutory construction, the intent and purpose of the legislature, and the history of the statute's enactment, this office believes that a court would interpret the statute to only require the process of finding a relationship to be a valid unsolemnized marriage to be initiated within one year after the termination of the relation, not the entry of the actual order establishing the marriage.

If you have any further questions, or if we may be of additional assistance regarding this matter, please contact this office.

Sincerely,
THOM D. ROBERTS
Assistant Attorney General
TDR\bbs