

DOMESTIC RELATIONS: MARRIAGE GENERALLY.

Judges or justices of foreign courts, or of federal courts within or without Commonwealth, irrespective of active or retired status, may not celebrate rites of marriage in Commonwealth; only active or retired judges or justices of courts of record of this Commonwealth may perform marriage ceremony.

The Honorable Thomas D. Horne

Judge, Twentieth Judicial Circuit

June 12, 1996

You ask whether judges or justices of foreign courts are authorized pursuant to § 2025 of the *Code of Virginia* to celebrate the rites of marriage in the Commonwealth.¹ Specifically, you ask whether a marriage in Loudoun County may be performed (1) by an active or retired justice of (a) the Supreme Court of the United States or (b) the Maryland Supreme Court, or (2) by an active or retired judge of (a) a Maryland court of record or court not of record, or (b) a federal court of record located within or without the Commonwealth of Virginia.

A 1992 opinion of the Attorney General notes that "[t]he interest of a state in the institution of marriage and in prescribing exclusive measures for its creation is well established."² The Supreme Court of the United States has held:

[M]arriage involves interests of basic importance in our society. It is not surprising, then, that the States have seen fit to oversee many aspects of that institution. Without a prior judicial imprimatur, individuals may freely enter into and rescind commercial contracts, for example, but we are unaware of any jurisdiction where private citizens may covenant for or dissolve marriages without state approval.^[3]

Section 2025, like § 2023,⁴ is "an exercise by the General Assembly of its legislative power to delegate the authority to celebrate marriages" and to establish licensing requirements for persons to whom that authority is delegated.⁵ A person so appointed performs the marriage ceremony on behalf of the Commonwealth, and is there to represent the interests of the Commonwealth in the proper solemnization of marriage vows.⁶

Given the interest of the Commonwealth in the institution of marriage, it is my opinion that § 2025 authorizes only active or retired judges and justices of the courts of the Commonwealth to celebrate the rites of marriage. The

Commonwealth may require an individual who performs the marriage ceremony to fulfill specific duties as proof that the marriage was performed.⁷ Therefore, I am of the opinion that it is not the intent of the legislature to permit individuals having no knowledge of these statutory requirements to perform marriages within the Commonwealth.

The primary goal of statutory construction is to give effect to the legislative intent behind the enactment of a statute.⁸ In addition, words are to be given their common meanings unless a contrary legislative intent is manifest.⁹ The ascertainment of legislative intention involves appraisal of the subject matter, purposes, objects and effects of the statute, in addition to its expressed terms.¹⁰

A review of the legislative history of this statute suggests that the General Assembly did not intend to permit judges from outside the Commonwealth to perform marriages. Before 1981, there was no statutory authorization for a judge to perform a marriage ceremony.

The circuit and corporation courts of this State, the clerks of which are authorized to issue marriage licenses, shall appoint one or more persons, resident in the county or city for which such court is held, to celebrate the rites of marriage within the same, and upon any person, so appointed, giving such bond as is required of an ordained minister, shall make a like order authorizing him to celebrate the rites of marriage in such county or city, as the case may be. Any order made under this or the preceding section may be rescinded at any time by the court or by the judge thereof in vacation.^[11]

This version of the statute was recodified as § 2025 during the 1950 reorganization of the Code and remained intact until 1981. During its 1981 Special Session, the General Assembly added a paragraph to § 2025 permitting judges of "this State" to perform marriage ceremonies:

Any circuit court judge or general district court judge of this State may celebrate the rites of marriage either within or without the county or city wherein his court is situated without the necessity of bond.^[12]

With this enactment, the General Assembly clearly and unambiguously intended to authorize only judges of the Commonwealth to perform marriages. Accordingly, § 2025 could not be read as authorizing a judge of a foreign court to perform a marriage ceremony.

At its 1983 Session, the General Assembly modified the first sentence of § 2025 by deleting the reference to corporation courts and changing the reference to Virginia from "this State" to its appropriate status as "the Commonwealth."¹³ The second paragraph was amended as follows:

Any ~~circuit court~~ judge or ~~general~~ justice of a court of record and any judge of a district court judge of this State Commonwealth may celebrate the rites of marriage either within or without the county or city wherein his court is situated without the necessity of bond or order of authorization.^[14]

The legislative intent reflected by these amendments may be construed to address three specific points. Initially, the amendment removes the reference to the corporation court, presumably because the corporation courts of the Commonwealth were abolished along with the Hustings Courts when the courts were reorganized in 1973.¹⁵ Secondly, in both paragraphs, the amendment replaces the identification of Virginia as a "state" with the term "Commonwealth." Finally, in an effort to include the justices of the Supreme Court of Virginia among those authorized to perform a marriage ceremony, the General Assembly deleted the term "circuit court" in the second paragraph and added "justice of a court of record" to the statute. Such a change in the text is understandable since only a judge would preside over a circuit court, while both judges and justices would preside over courts of record-circuit and appellate courts. Accordingly, the statute still reveals no indication that the General Assembly intended to expand the authorization provided under § 20-25 to foreign judges.

Additionally, a 1985 opinion of the Attorney General concludes that § 2025 provides no authorization for a retired circuit court judge of this Commonwealth to perform a marriage ceremony.¹⁶ Subsequently, in 1987, the General Assembly amended the second paragraph of § 2025¹⁷ to address the narrow issue of permitting retired judges and justices of the courts of this Commonwealth to perform marriages, since that was the issue in the 1985 opinion of the Attorney General. It appears, however, that in attempting to address specific elements of § 2025, the General Assembly inadvertently has left the statute in its current state of ambiguity.

It is a basic principle of statutory construction that absurd results are to be avoided.¹⁸ Furthermore, it is presumed that the General Assembly does not intend the application of a statute to lead to irrational consequences.¹⁹ It would be absurd and irrational to construe § 2025 to authorize a retired judge or justice from any court other than a court of the Commonwealth, whether or not it was a court of record, to perform marriages while an active judge or justice from the same foreign court was not so authorized.

Furthermore, it was not until 1985 that a Virginia court had the power pursuant to § 2025 to authorize an individual to perform a marriage in the Commonwealth outside the boundary of the county or city in which the court was located.²⁰ Accordingly, to avoid an inconsistent, irrational or absurd result, the statute should be construed to limit the applicability of the second

paragraph in § 2025 to the judges and justices of the courts of record of this Commonwealth.

Therefore, given the review of the legislative history and considering the role of the Commonwealth in the institution of marriage, it is my opinion that § 20-25 does not authorize judges or justices of foreign courts or of federal courts within or without the Commonwealth, irrespective of whether the judge or justice is in active status or retired, to celebrate the rites of marriage in the Commonwealth.

¹The second paragraph of § 2025 provides: "Any judge or justice of a court of record, any judge of a district court of this Commonwealth or any retired judge or justice may celebrate the rites of marriage either within or without the county or city wherein his court is situated without the necessity of bond or order of authorization."

²1992 Va. Op. Att'y Gen. 99, 100.

³*Boddie v. Connecticut*, 401 U.S. 371, 376 (1971) (citations omitted). "The interest of the state is not only in marriage as an institution, but in the contract between the parties who marry, and in the proper memorializing of the entry into, and execution of, such a contract." *Cramer v. Commonwealth*, 214 Va. 561, 565, 202 S.E.2d 911, 914, *cert. denied*, 419 U.S. 875 (1974).

⁴Section 2023 permits circuit courts to make an order authorizing a minister of any religious denomination to celebrate marriages in this Commonwealth.

⁵*Cramer*, 214 Va. at 564, 202 S.E.2d at 914.

⁶1992 Op. Va. Att'y Gen., *supra* note 2.

⁷*See, e.g.*, § 32.1267(C) (requiring every person who officiates at marriage ceremony to certify to facts of marriage and file record with officer who issued marriage license).

⁸*See Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983); *Vollin v. Arlington Co. Electoral Bd.*, 216 Va. 674, 222 S.E.2d 793 (1976); *Bott v. Hampton Roads San. Comm.*, 190 Va. 775, 58 S.E.2d 306 (1950); 1993 Op. Va. Att'y Gen. 234, 236.

⁹*See* Op. Va. Att'y Gen.: 1990 at 233, 234; 1989 at 155, 155.

¹⁰*Vollin v. Arlington Co. Electoral Bd.*, *supra* note 8; 1995 Va. Op. Att'y Gen. 118, 120.

¹¹Ch. 89, 1938 Va. Acts 152, 152 (amending § 5080, predecessor statute to § 2025).

¹²Ch. 15, 1981 Va. Acts Spec. Sess. 43. The first paragraph of § 2025 was amended to provide for a bonding requirement in the amount of \$500 for any person appointed by the courts to perform marriages.

¹³Ch. 64, 1983 Va. Acts 75, 76.

¹⁴*Id.*

¹⁵See Ch. 544, 1973 Va. Acts 1220 (repealing §§ 17135 to 17144.1).

¹⁶See 1984-1985 Op. Va. Att'y Gen. 153.

¹⁷Ch. 149, 1987 Va. Acts Reg. Sess. 208. This amendment reflects the language that currently appears in § 2025. See *supra* note 1.

¹⁸*MacFadden v. McNorton*, 193 Va. 455, 461, 69 S.E.2d 445, 449 (1952); 1991 Op. Va. Att'y Gen. 5, 7.

¹⁹*VEPCO v. Citizens*, 222 Va. 866, 284 S.E.2d 613 (1981).

²⁰At its 1985 Session, the General Assembly amended the first sentence of § 20-25 as follows: "The circuit courts of the Commonwealth, the clerks of which are authorized to issue marriage licenses, shall appoint one or more persons, resident in the county or city for which such court is held, to celebrate the rites of marriage ~~within the same~~ , and upon any person, so appointed, giving bond in the penalty of \$500 with surety, shall make a like order as provided in § 2023 authorizing him to celebrate the rites of marriage in ~~such county or city, as the case may be~~ *the Commonwealth*." Ch. 195, 1985 Va. Acts 235, 235.