

**01-057**

**DOMESTIC RELATIONS: MARRIAGE GENERALLY.**

**CONSTITUTION OF VIRGINIA: LOCAL GOVERNMENT  
(COUNTY AND CITY OFFICERS).**

**No requirement that circuit court clerk investigate proof of facially valid ordination or certificate to determine authenticity of given religious society or denomination. Clerk has discretionary authority to make order authorizing minister to celebrate rites of matrimony.**

The Honorable Thomas M. Moncure Jr.  
Clerk, Circuit Court of Stafford County  
November 29, 2001

You inquire regarding whether individuals issued "Credentials of Ministry" by a church in California may qualify as "ministers" pursuant to § 20-23 of the *Code of Virginia*.

You advise that two individuals have presented to you "Credentials of Ministry," issued by the Universal Life Church of Modesto, California, and have requested authority to perform marriages. You report that the Credentials appear valid and provide written authority to perform sacerdotal<sup>1</sup> rites, including marriage.

You first ask whether the clerk of the circuit court is required to investigate proof of a facially valid ordination or certificate to determine the authenticity of a given religious society or denomination, for the purposes of authorization pursuant to § 20-23.

Section 20-23 provides, in part:

When a minister of any religious denomination shall produce before the circuit court of any county or city in this Commonwealth, ... or before the clerk of such court at any time, proof of his ordination and of his being in regular communion with the religious society of which he is a reputed member, ... and is serving as a regularly appointed pastor in his denomination, such court, ... or the clerk of such court at any time, may make an order

authorizing such minister to celebrate the rites of matrimony in this Commonwealth.

In the case of *Cramer v. Commonwealth*, the Supreme Court of Virginia notes that § 20-23 applies to "ministers" who make proof of "ordination" and of being in "regular communion" with a religious society.<sup>2</sup> The Court also holds that the term "minister" applies to those for whom ministry is less than a full-time vocation,<sup>3</sup> and that the terms "ordination" and "communion" are not used in the ecclesiastical sense, because the state is "not concerned with the religious aspect of the marriage ceremony."<sup>4</sup> The Court further notes that the word "ordain" is subject to such definitions as "'appoint', 'arrange', 'order', 'manage' or 'to establish by appointment.'"<sup>5</sup> The Court also notes that the word "communion" is subject to such definitions as "'mutual participation', ... 'joint or common action' or 'a function performed jointly.'"<sup>6</sup> The Court defines the term "minister," as used in § 20-23, to mean one who "is the head of a religious congregation, society or order. He is set apart as the leader. He is the person elected or selected in accordance with the ritual, bylaws or discipline of the order."<sup>7</sup>

Article VII, § 4 of the Constitution of Virginia creates the office of clerk of the circuit court, and provides that a clerk's duties "shall be prescribed by general law or special act."<sup>8</sup> As a rule, clerks of court have no inherent powers, and the scope of their authority must be determined by reference to applicable statutes.<sup>9</sup> When a statute creates a specific grant of authority, however, such authority exists only to the extent specifically granted in the statute.<sup>10</sup>

Section 20-23 grants the only authority to circuit court clerks to "make an order authorizing [a] minister to celebrate the rites of matrimony." The primary goal of statutory construction "is to ascertain and give effect to legislative intent."<sup>11</sup> "The manifest intention of the legislature, clearly disclosed by its language, must be applied."<sup>12</sup> Section 20-23 does not require a circuit court clerk to investigate proof of a facially valid ordination or certificate to determine the authenticity of a given religious society or denomination. Had the General Assembly intended to require clerks to do so, it would have chosen appropriate language reflecting such an intent.<sup>13</sup> Consequently, I must conclude that a clerk of the circuit court is not required to investigate proof of a facially valid ordination or certificate to determine the authenticity of a given religious society or denomination.

You also ask whether the individuals who have presented "Credentials of Ministry" issued by the Universal Life Church may be authorized to perform marriages in the Commonwealth.

Section 20-23 specifically provides that the clerk of the circuit court "may make an order authorizing ... minister[s] to celebrate the rites of matrimony." The use of the term "may" indicates that the issuance of such an order by the clerk is permissive and discretionary, rather than mandatory.<sup>14</sup> Consequently, it is my opinion that it is within the discretion of the clerk of the circuit court to "make an order authorizing such minister to celebrate the rites of matrimony."<sup>15</sup>

<sup>1</sup>"Sacerdotal" essentially means "priestly." Webster's Third New International Dictionary of the English Language Unabridged 1995 (1993).

<sup>2</sup>214 Va. 561, 563, 202 S.E.2d 911, 913 (1974).

<sup>3</sup>*Id.* at 564, 202 S.E.2d at 913.

<sup>4</sup>*Id.* at 565, 202 S.E.2d at 914.

<sup>5</sup>*Id.* (citation omitted).

<sup>6</sup>*Id.* (citation omitted).

<sup>7</sup>*Id.* at 567, 202 S.E.2d at 915.

<sup>8</sup>*See also* Va. Code Ann. § 15.2-1600(A) (Michie Repl. Vol. 1997).

<sup>9</sup>*See Mendez v. Commonwealth*, 220 Va. 97, 102, 255 S.E.2d 533, 535 (1979) (stating that authority of clerk of court to administer oath or take affidavit is purely creature of statute); *Harvey v. Telephone Company*, 198 Va. 213, 218, 93 S.E.2d 309, 313 (1956) (noting that duties of clerk are ministerial); 21 C.J.S. *Courts* § 236 (1990); 1987-1988 Op. Va. Att'y Gen. 80, 81.

<sup>10</sup>*See Tate v. Ogg*, 170 Va. 95, 195 S.E. 496 (1938); 2A Norman J. Singer, Sutherland Statutory Construction § 47.23 (5<sup>th</sup> ed. 1992 & Supp 1999) ("*Expressio unius est exclusio alterius*"); 1999 Op. Va. Att'y Gen. 85, 86.

<sup>11</sup>*Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983); 1993 Op. Va. Att'y Gen. 237, 239.

<sup>12</sup>*Barr v. Town & Country Properties*, 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990) (quoting *Anderson v. Commonwealth*, 182 Va. 560, 566, 29 S.E.2d 838, 841 (1944)).

<sup>13</sup>When the General Assembly intends words in a statute to have a specific meaning, it clearly and unambiguously expresses its intention. *See Potomac Hospital Corp. v. Dillon*, 229 Va. 355, 359, 329 S.E.2d 41, 44 (1985) (noting that General Assembly specifically expressed its intention to allow application of § 8.01-35.1, regardless of date causes of action affected thereby accrued).

<sup>14</sup>*See Turner v. Commonwealth*, 221 Va. 513, 521, 273 S.E.2d 36, 41 (1980); *Harmon v. Commonwealth*, 209 Va. 574, 580, 166 S.E.2d 232, 236 (1969) (concluding that "may" is not mandatory but permissive and leaves matter to discretion of trial court); 1997 Op. Va. Att'y Gen. 10, 12, and opinions cited at 13 n.11.

<sup>15</sup>Va. Code Ann. § 20-23 (Michie Repl. Vol. 2000).

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