



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

6-4860

GERALD C. MANN
ATTORNEY GENERAL

Honorable C. Woodrow Laughlin
County Attorney
Jim Wells County
Alice, Texas

Dear Sir:

Opinion No. 0-4860

Re: Does a county clerk have the authority to issue a marriage license to a male under sixteen or a female under fourteen years of age, provided the provisions of Article 6405 have been complied with?

Your letter of September 17 has been received by this department, submitting the following:

"Article 4603 of the Revised Civil Statutes of Texas reads as follows: 'Males under sixteen and females under fourteen years of age shall not marry.'

"Article 4604 of the Revised Civil Statutes of Texas provides that 'Persons who desire to marry shall procure from the County Clerk the license directed to all persons authorized by law to celebrate the rights of matrimony, which shall be sufficient authority to celebrate such marriage.'

"In Evans vs. Johnson, 61 S.W. 143, the Court held that 'While, under the circumstances of this case, the clerk was not authorized to issue this license even with the consent of the parent, - the female being under the age of fourteen - still we are of the opinion that the plaintiff is estopped from recovering, and under the facts no other judgment would have been properly rendered.'

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"It is therefore the opinion of this office that where the male is under sixteen or the female is under fourteen that the County Clerk has no authority whatever to issue a marriage license and that in such a case the County Clerk is compelled by law to refuse to issue the same."

As pointed out in your letter Article 4603 provides that males under sixteen and females under fourteen years of age shall not marry.

It might also be noted that Article 4607 provides that it shall not be lawful for any person of Caucasian blood or their descendants to intermarry with Africans or the descendants of Africans.

Article 4605 reads as follows:

"No clerk shall issue a license without the consent of the parent or guardian of the parties applying, if there be a guardian. Such consent may be given in person, or in writing signed and acknowledged by said parent or guardian before an officer authorized to take acknowledgments, unless the parties so applying are, in the case of the male twenty-one years of age, and in case of the female eighteen years of age. If there be any doubt in the mind of the clerk, he shall not issue said license unless there shall be presented to him a sworn certificate from the parent or guardian or some person other than the contracting parties that the contracting parties have attained the ages aforesaid. Nothing herein shall be construed to affect the issuance of marriage license in seduction prosecution. If a minor has neither parent nor guardian, then the clerk shall not issue a license without the consent of the county judge of the county of the residence of such minor, such consent to be in writing and signed and acknowledged by such county judge. P.D., 4667; Acts 1911, p. 63."

There is no provision in the above Article for the Clerk to issue a license to males under 16 or females under 14, even with the written consent of the parent or guardian. There is only a provision for the Clerk to issue a license

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to males over sixteen and under twenty-one and females over fourteen and under eighteen, with the consent of the parent or guardian, if there be a guardian.

In like manner there is no provision in the above Article 4605 for the Clerk to issue a license to those prohibited from marrying as set forth in Article 4607.

In other words there is no provision in the statutes authorizing the Clerk to issue a marriage license to those who are specifically prohibited from entering into the marriage relation.

We therefore answer your question in the negative.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Fred C. Chandler*
Fred C. Chandler
Assistant

FCC:nw

APPROVED SEP 25, 1942
Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

