

## **Opinion No. 67-65**

May 2, 1967

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Mr. Bill G. Payne Assistant District Attorney P.O. Box 808 Alamogordo, New Mexico 88310

### **QUESTION**

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1. Under Senate Bill No. 40, Chapter 39, enacted by the 1967 session of the New Mexico Legislature, are original applications for marriage licenses filed in a permanent record book?
2. May blood test results be filed the day when the license is issued, or must the blood test results be filed at the time of the application for the license?
3. What time period constitutes three days?
4. When is payment to be made to the county clerk -- at the time of the application or at the time of the issuance of the license?
5. If the applicants will both be of age on the day the license is issued, may application be made without parental consent?

#### **CONCLUSIONS**

1. Yes.
2. At the time of application.
3. See analysis.
4. At the time of application.
5. Not if either of the parties does not meet legal age requirements on the date of application.

### **OPINION**

#### **{\*95} ANALYSIS**

Senate Bill No. 40, Chapter 39, Laws 1967, provides as follows:

"THREE-DAY WAITING PERIOD. -- No license to marry shall be issued by any county clerk unless an application therefor **shall have been made and filed with the county clerk for at least three days prior to its issuance.** On application to a judge of a court of record, the court for good cause shown may order the provisions of this section waived and a certified copy of the order shall be filed with the county clerk.

Section 2. PENALTY. -- Any county clerk who fails to perform his duty under Section 1, upon conviction thereof, shall be guilty of a petty misdemeanor." (Emphasis added).

In answer to your first question, original applications for marriage licenses should be filed in a permanent record book. Present law provides for this. Section 57-1-15, N.M.S.A., 1953 Compilation states as follows:

{\*96} "Blank forms required for records. -- To insure a uniform system of records of all marriages hereafter contracted, and the better preservation of said record for future reference, the **form of application**, license and certificate provided herein shall be substantially as follows, each blank to be numbered consecutively corresponding with page number of **the record book** in the clerk's office; all such blanks to be provided free of cost by the county for public use." (Emphasis added).

In addition Section 57-1-16, N.M.S.A., 1953 Compilation, setting forth the form for **Applications for Marriage Licenses** contains thereon the following which is to be filled in by the county clerk:

"STATEMENTS RECEIVED AND **FILED** IN COUNTY CLERK'S OFFICE at \_\_\_ o'clock \_\_\_ .M. \_\_\_ 19\_\_." (Emphasis added).

Neither of the above statutes is affected in any manner by Senate Bill 40, Chapter 39. Thus it is still contemplated that Applications for Marriage Licenses be filed in a permanent record book.

The second question involves the physician's certificate. While Section 57-10-10.1, N.M.S.A., 1953 Compilation now provides that no **marriage license** shall be issued until the physician's certificate is filed (this because at present the license is issued at the time the Application for a Marriage License is filed), when Senate Bill 40 becomes effective the physician's certificate must be filed on the date of **application** for a license. This is because Section 57-1-16, supra, the provision relating to the date required on an **Application** for a Marriage License, contains the following:

"DATE OF PREMARITAL PHYSICAL EXAMINATION

BRIDE \_\_\_\_

GROOM \_\_\_\_

COUNTY CLERK \_\_\_\_ County

BY \_\_\_\_ Deputy."

Your third question involves the necessary waiting period prior to issuance of a marriage license when Senate Bill 40 becomes effective. In answering this question we must examine not only the portions of Senate Bill 40 which are underlined in the initial part of the analysis herein but also Section 1-2-2, N.M.S.A., 1953 Compilation (P.S.). Paragraph seven thereof states:

"Seventh. In computing time the first day shall be excluded and the last included, unless the last falls on Sunday, in which case the time prescribed shall be extended so as to include the whole of the following Monday."

Following this rule of statutory construction, we exclude the day on which the Application for a Marriage License is filed and count the next three days. The word "day", unless the context requires other wise, means the twenty-four hours from midnight to midnight. **People v. Breckenridge**, 190 N.Y.S. 2d 122; **In re Opinion of the Justices**, 252 Ala. 541, 42 So.2d 27; **Kirkpatrick v. King**, 228 Ind. 228, 91 N.E.2d 785; **Nelson v. Sandkamp**, 227 Minn. 177, 34 N.W. 2d 640; **Mississippi Ben. Ass'n v. Brooks**, 184 Miss. 451; 185 So. 569.

Thus the waiting period for issuance of the license under Senate Bill 40 will be the 72 hours beginning at midnight on the day the Application for a Marriage License is filed.

Your fourth question asks when payment is to be made to the county clerk -- at the time of the Application for a Marriage License or when the Marriage License is issued.

{\*97} Section 71-1-10, N.M.S.A., 1953 Compilation provides a five-dollar fee for "issuing, acknowledgement and recording marriage license and marriage certificate." We feel that the five-dollar fee should be charged at the time the Application for Marriage License is filed because the fee is for the issuance of the marriage license which the clerk will issue, upon request, after the necessary waiting period. After all, the county will have administrative costs in connection with the proper filing of the Application for a Marriage License.

In answer to your final question both parties must be of the age required in Section 57-1-5, N.M.S.A., 1953 Compilation at the time of the application for a marriage license, unless the necessary parental consent is obtained. The reason for this is that Section 57-1-16, N.M.S.A., 1953 Compilation, the form for the application, is the document that is used for the consent by the parents or guardians when either party is under age. As a matter of fact this application form specifically states the following:

"CONSENT OF PARENT OR GUARDIAN (Where either party is under age)".

Therefore, the application for a marriage license would not be complete if either party did not meet the legal age requirements on the date of the application for a marriage license and the consent portion of the form was not filled in.

By: Oliver E. Payne

Deputy Attorney General