

Opinion No. 16-1882

October 12, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Abe M. Burnett, Hope, New Mexico.

Solemnization of a marriage.

OPINION

{*430} I have just received your letter of the 10th instant in which you say that a question has been raised as to whether your father, the Reverend R. H. H. Burnett, can legally perform a marriage ceremony. You say that he was licensed and ordained to preach in the Methodist Church over forty years ago, and evangelized for twenty-five years until he broke down in health and retired.

Our statute on the subject is to be found in Section 3426 of the Codification of the Statutes, a copy of which you will undoubtedly find at the office of your justice of the peace. It declares, in substance, that it shall be lawful to solemnize the contract of matrimony {*431} by means of any ordained clergyman whatsoever, without regard to the sect to which he may belong, or by means of any civil magistrate. There is nothing else on this subject in our statutes. I am unable to see how there can be any doubt that your father is qualified under this statute to perform a marriage ceremony. He appears to be an ordained clergyman, presumably in accordance with the requirements of the Methodist Church, and there is nothing in our law which requires any ordination within the state. I have no doubt that the great majority of clergymen in New Mexico were not ordained here, and this is applicable to all the churches. The fact that an ordained clergyman is not actively engaged in clerical work, or acting as a pastor to any church, cannot deprive him in any way of his status as an ordained clergyman in the language of the statute.

There is, however, nothing in our statute which requires the celebration of the marriage contract by a clergyman or magistrate, and it is the opinion of this office that what are known as common law marriages would be valid in New Mexico. There are few people, however, who would be willing to contract marriage without some solemnization by a clergyman, or a magistrate at least.