

Opinion No. [30-39]

March 5, 1930

TO: Office of the Attorney General of New Mexico

MARRIAGE -- Common law marriages of doubtful validity in New Mexico.

OPINION

Miss Franzen of your office has handed me copy of letter to you from Mr. S. P. Breckinridge of the University of Chicago, dated February 10, 1930, requesting information as to the validity of common law marriages in New Mexico.

I have gone into this matter at some length and, from an examination of our statutes (chapter 87 of the Code of 1929) it might very well be inferred that the legislature possibly had in mind the doing away with common law marriages after 1905.

In this connection, I beg to call your attention to section 87-111 of the Code of 1929, which was originally chapter 65 of the Laws of 1905, wherein it is provided "That hereafter all persons desiring to enter into the marriage relation in the State of New Mexico, **shall** obtain a license from the county clerk in the county wherein they desire the marriage to occur," and to section 87-123 of the Code of 1929, which was originally chapter 91 of the Laws of 1929, wherein it is provided that all marriages contracted during the year 1905, or which existed prior to April 13, 1905 "without the persons entering into the marriage relation, having first obtained a license" are validated and legalized.

The question, however, has apparently never been definitely decided by our Supreme Court and hence, as matters stand, it is a pure case of a lawyer's opinion, being as how there is no statute expressly declaring them either legal or illegal.

Personally, I am inclined to the belief, as indicated above, that the legislature intended to do away with common law marriages when they passed the said chapter 65 of the Laws of 1905. I should like to see the point decided by our Supreme Court, however, and consequently, I am not prepared to state definitely, one way or the other, whether common law marriages are now good in New Mexico since the law might be taken either way.