

Opinion No. 41-3746

March 24, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Joseph W. Hodges District Attorney Silver City, New Mexico

{*49} This will acknowledge receipt of your letter dated March 21, 1941, in which you request an opinion from this office as to whether or not a county clerk has the authority to perform a marriage ceremony.

Section 87-102, New Mexico Statutes, Annotated, 1929 Compilation, provides:

"It shall be lawful, valid and binding, to all intents and purposes, for those who may so desire, to solemnize the contract of matrimony by means of any ordained clergyman whatsoever, without regard to the sect to which he may belong, or by means of any civil magistrate."

A civil magistrate is not defined in our law, but I am certain that a county clerk is not a civil magistrate and cannot perform a marriage ceremony.

I am of the opinion that if marriages have been performed by county clerks, such marriages are nullity and of no more effect than if you or I performed the ceremony.

Trusting that the foregoing answers your inquiry, I remain

By George H. Hunker, Jr.

Asst. Atty. General