

Opinion No. 42-4133

August 10, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Arthur Livingston Assistant District Attorney Santa Fe, New Mexico

{*228} In your letter of the 5th you request our opinion as to whether or not a police judge or magistrate, who is not a justice of the peace, may legally perform a marriage ceremony in New Mexico.

Section 87-102, New Mexico Statutes Annotated, 1929 Compilation reads in part as follows, to wit:

"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 civil magistrate."

In view of the foregoing statute the question now arises as to whether or not a police judge or magistrate is a "civil magistrate" within the meaning of Section 87-102 supra. If so, then a marriage ceremony performed by such a person is valid; if not, it is void.

The Supreme Court of this State in the case of Golden vs. Golden, 41 N.M. 356 held probate judges, justices of the peace and judges of the district court to be "civil magistrates" within the meaning of Section 87-102 supra.

Chapter 230, Laws of 1939, which created and established a "Police Magistrate Court" in all incorporated cities and towns conferred on such court:

"* * * * jurisdiction over all offenses and complaints arising under the ordinances and laws of such cities and towns to the same extent and with like effect as now exercised in such cities and towns by justices of the peace, acting as police judges."

In Gordon v. Hobart, Fed. Cas. No. 5,609, 2 sumn. 401, Justice Story said:

"I know of no other definition of the term 'magistrate' than that he is a person clothed with power as a public civil officer."

Our Supreme Court in the Golden case, supra, after quoting with approval the above case, had the following to say:

"Paraphrasing Justice Story, we know of no other definition of the term 'magistrate' than that he is a person clothed with power as a public civil officer."

In view of the foregoing authority, I conclude that a police judge is a "civil magistrate" and that he is a person "clothed with power as public civil officer." This being true, I am

of the opinion that a police judge may legally perform a marriage ceremony in the State of New Mexico.

By HOWARD F. HOUK,

First Asst. Atty. General