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OPINION	:	No. 81-210
of	:	MAY 14, 1981
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The Honorable John Vasconcellos, Member of the Assembly, has requested an opinion on questions which have been revised and restated as follows:

1. May a priest who has resigned from active ministry within the official Roman Catholic structure, who is recognized by the church as a priest but is not allowed by the church to perform marriages without a bishop's authorization, solemnize marriages under the provisions of section 4205 of the California Civil Code?

2. May persons certified to perform marriages by the Fellowship of Christian Ministry, a religious organization incorporated in various states other than California, solemnize marriages under the provisions of section 4205 of the California Civil Code?

3. If the Fellowship of Christian Ministry were a religious organization incorporated in California, may persons certified to perform marriages by the Fellowship solemnize marriages under the provisions of section 4205 of the California Civil Code?

CONCLUSIONS

1. A priest who has resigned from active ministry within the official Roman Catholic structure, who is recognized by the church as a priest but is not allowed by the church to perform marriages without a bishop's authorization, may solemnize marriages under the provisions of section 4205 of the California Civil Code only as authorized by the bishop.

2. & 3. Person certified to perform marriages by the Fellowship of Christian Ministry, whether or not incorporated in California, may solemnize marriages under the provisions of section 4205 of the California Civil Code.

ANALYSIS

Section 4206.5 of the Civil Code[1] provides:

> "No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect."

This section, formerly article XX, section 7, of the California Constitution, repealed at the general election of November 3, 1970, and enacted as section 4206.5 by the Statutes of 1970, chapter 789, merely states a proposition which is completely self-evident: the exclusive methods for entering or terminating marriage are prescribed by statute pursuant to the inherent power of the state to enact laws respecting the domestic status of its citizens. (*Cf*. California Constitution Revision Commission, Proposed Revision (1970) pt. 3, p. 36.) We turn, then, to the provisions of the Family Law Act, section 4000 *et seq*.

Marriage is described as a personal relation arising out of a civil contract between a man and a woman, to which the consent of the parties capable of making that contract is necessary; except as otherwise expressly provided,[2] consent must be followed by the issuance of a license and solemnization as authorized by law. (§ 4100.)[3] No particular form for the ceremony of marriage is required, except that the parties must declare, in the presence of the person solemnizing the marriage, that they take each other

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[1] All statutory references herein are to the Civil Code unless otherwise indicated.

[2] Cf., sections 4213, 4215.

[3] Section 4200 provides:

> Marriage must be licensed, solemnized, authenticated, and the certificate of registry of marriage filed as provided in this article; but noncompliance with its provisions by others than a party to a marriage does not invalidate it."

as husband and wife. (§ 4206.)[4]

With respect to persons authorized to solemnize a marriage, section 4205 provides:

> "Marriage may be solemnized by any judge or retired judge, commissioner or retired commissioner or assistant commissioner of a court of record or justice court in this state or by any priest, minister, or rabbi of any religious denomination, of the age of 18 years or over or by a person authorized to do so under Section 4205.1.
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> "A marriage may also be solemnized by a judge who has resigned from office."[5]

The initial inquiry is whether a priest who has resigned from active ministry within the official Roman Catholic structure, who is recognized by the church as a priest but is not allowed by the church to perform marriages without a bishop's authorization, may solemnize marriages under the provisions of section 4205.

Based upon information provided, it is our understanding, upon which this analysis is predicated, that one attains the status of priesthood within the Roman Catholic Church by virtue of ordination; that ordination to the priesthood does not confer the authority of the church to officiate at marriage; that such authority to officiate at marriage may be generally conferred by the local Ordinary (bishop) subject to limitations of boundary (parish) upon appointment of a priest as pastor or assistant or associate pastor, or expressly conferred by any of them upon a specific priest for a specific marriage; that a marriage officiated by a priest not authorized so to do is not a valid religious marriage.[6] (Codex Iuris Canonici, cc, 1094, 1095, l096.)[7]

We are further advised that a priest may be resigned from active ministry by virtue

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[4] A ceremonial marriage is presumed to be valid. (Evid. Code, § 663.) Every intendment of the law leans to matrimony. (*Wilcox v. Wilcox* (1916) 171 Cal. 770, 774; and see *Estate of Hughson* (1916) 713 Cal. 448.)

[5] Section 4205.1 concerns the limited authority of a county clerk in a county with a population of 100.000 or more to solemnize a marriage.

[6] Hereinafter, the term "religious marriage" is employed to connote a marriage viewed by the church as valid, while the term civil marriage' will connote a marriage viewed as valid by the state.

[7] We do not purport to interpret Ecclesiastical Law Representations herein are based upon the interpretations of a Doctor of Cation Law, Officialis of the Diocesan Tribunal, Diocese of Sacramento.

of ill health or superannuation, by virtue of official laicization (approved), or unapproved departure; that a priest, including one resigned, is nevertheless a priest forever; that a priest, depending upon the status of resignation, may in accordance with the Canons of the Code of Canon Law be forbidden to engage in the practice of ministry, including the solemnization of marriage, without the authorization of a bishop. Thus, a priest may, in the first instance, not be authorized to officiate at marriage and, once authorized, such authority may thereafter be revoked.

We do not undertake to resolve any internal dispute within the Roman Catholic Church as to doctrine or teaching. It is not claimed that a marriage performed by a resigned priest without the authority of a bishop is a valid religious marriage. Rather, it is suggested simply that by virtue of the recognition by the church of a person once ordained as "priest," albeit without the authority of that or any other denomination to solemnize marriage, such person is authorized under the terms of section 4205 to perform a valid civil marriage. We disagree.

To fall within the category of "priest, minister, or rabbi" within the purview of section 4205, it is only necessary for one to be recognized and acting as such within his denomination. (57 Ops. Cal. Atty. Gen. 397, 398 (1974); 41 Ops. Cal. Atty. Gen. 77 (1963); Ops. Cal. Atty. Gen. NS-3579 (1941).) One who has been regularly licensed by the proper authorities of a recognized denomination as, e.g., a minister, even though not ordained as such, would be authorized under that section to solemnize marriage. (57 Ops. Cal. Atty. Gen., *supra*, at p. 399; I.L. 74–68, LB 384, p. 53 (1974); 41 Ops. Cal. Atty. Gen., *supra*, at p. 77; 2 Ops. Cal. Atty. Gen. 134 (1943).) Thus, neither the name nor the title of the office conferred by the religious denomination is of talismanic significance; rather, the nature and scope of the authority conferred is the significant factor.

The goal of statutory construction is, of course, the ascertainment of legislative intent so that the purpose of the law may be effectuated. (*People v. Shirokow* (1980) 26 Cal. 3d 301, 306–307.) In our view, the import of section 4205 is not to confer upon a member of a religious denomination authority in spite or in excess of that conferred by his religious denomination, but rather to recognize that authority which is derived from and defined by the denomination in question, so as to reasonably accommodate religious belief and practice. Thus, in order to fall within the category of "priest" under section 4205, one must be authorized by his denomination to solemnize marriage, and act within the scope of that authority in the solemnization of marriage; i.e., the authority of an individual other than a judge or commissioner to solemnize marriage depends upon the duly constituted authorization by the religious denomination of such person, whether or not ordained, to act *in that capacity*. An individual who is not duly authorized by his religious denomination to solemnize marriage, such as a person who, by virtue of resignation, is not authorized to engage in active ministry, does not satisfy the criteria of section 4205. It may

be noted in this regard that section 4205 makes no reference, as in the case of a judge, to a resigned or retired priest, minister, or rabbi. It is concluded accordingly that a priest who has resigned from active ministry within the official Roman Catholic structure, who is recognized by the church as a priest but is not allowed by the church to perform marriages without a bishop's authorization, may solemnize marriages under section 4205 only as authorized by the bishop.[8]

The second inquiry is whether persons certified to perform marriages by the Fellowship of Christian Ministry, a religious organization incorporated in various states other than California, may solemnize marriages under the provisions of section 4205. The final inquiry, which we consider in conjunction with the second, is whether persons certified to perform marriages by the Fellowship may solemnize marriages under the provisions of section 4205 if the Fellowship were a religious organization incorporated in California.

In 1973, section 4205.5 was added as follows:

> "In addition to those persons permitted to solemnize manages under the provisions of Section 4205, a county may license officials of a nonprofit religious institution, whose articles of incorporation are registered with the Secretary of State, to solemnize the marriages of persons who are affiliated with or are members of the religious institution. The licensee shall possess the degree of doctor of philosophy and must perform religious services or rites for the institutions on a regular basis. Such marriages shall be performed without fee to the parties."

It would appear to follow, assuming that the Fellowship is a nonprofit religious institution whose articles of incorporation are registered with the Secretary of State within the meaning of section 4205.5, that an officer of the Fellowship may solemnize marriages, without a fee to the parties, of persons who are affiliated with or are members of the Fellowship, provided that such officer is licensed so to do by the county, possesses the degree of doctor of philosophy, and performs religious services or rites for the Fellowship on a regular basis.

We need nor examine for purposes of this analysis, however, the meaning of the term "religious institution," not otherwise defined, or the nature of the requirement peculiar to section 4205.5 that the articles of incorporation of such organization be "registered with the Secretary of State." The present inquiries are specifically limited to

[8] Whether a marriage by an individual not authorized to officiate at marriage is valid does not fall within the scope of the inquiry or of this analysis.

the authority of persons certified by the Fellowship to solemnize marriages under the provisions of section 4205. If such persons are so authorized, then neither domestic incorporation nor registration, nor the specified requirements of section 4205.5, including licensure and education, are required.

We return to the provisions of section 4205. As previously set forth, a person need not be ordained to fall within the purview of that section. (57 Ops. Cal. Atty. Gen. 397, *supra*, at p. 399.) One must, however, be recognized as a priest, minister, or rabbi, i.e., as a person authorized to officiate at marriage, by the proper authorities of his denomination. (*Id*., at pp. 398–399.) The issue presented for resolution, then, is whether the Fellowship is a "religious denomination" within the meaning of section 4205.

We are advised that the Fellowship of Christian Ministry is a nonprofit religious association of priests who have resigned from active ministry within the Roman Catholic structure and of others, primarily but not exclusively Roman Catholic, not ordained. The Fellowship, being incorporated in one or more states other than California, has national officers, and certifies certain of its members to engage in one or more aspects of ministry, including Eucharistic ministry and solemnification of marriage, and other activities related to ministry such as teaching and counseling. While the Fellowship, though not under the authority of any bishop, recognized the authority of the Roman Catholic Church and views itself "as an alternative part of it," the Roman Catholic Church neither authorizes nor recognizes as a valid religious marriage any marriage performed by a member of the Fellowship. Finally, the Fellowship has no established place of worship, although its members do congregate from place to place for the purpose of worship.

Again, we do not engage in any religious dispute or controversy. The question presented is whether a marriage performed by a person certified by the Fellowship is a valid *civil* marriage within the meaning of section 4205. As noted in connection with the first inquiry, the criteria of section 4205 are not met simply by virtue of the fact that an individual once ordained, though not authorized to officiate at marriage, is recognized as a "priest." If, however, an individual is duly authorized by the Fellowship to officiate at marriage, then the conditions of section 4205 are satisfied *provided* that the Fellowship is a religious denomination" within the purview of that section, *without regard* to whether it is, purports to be, or is recognized by the church as, Roman Catholic.

The term "denomination" connotes simply a class or society of individuals called by the same name; in context with the term "religious,"[9] it signifies a group or community of believers called by the same name. (Webster's Third New Internat. Dict.

[9] We have previously considered the nature of the term 'religious" in the context of denomination (57 Ops. Cal. Atty. Gen. 397, *supra*, 41 Ops. Cal. Atty. Gen. 77, *supra*.)

(1961) p. 602.) The content of the belief is of no moment. (*Fellowship of Humanity v. County of Alameda* (1957) 153 Cal. App. 2d 673.) In the latter case, the term "religion" in conjunction with the term "religious worship" was described as including (1) a belief, not necessarily referring to supernatural powers, (2) a cult, involving a gregarious association openly expressing the belief, (3) a system of moral practice directly resulting from an adherence to the belief, and (4) an organization within the cult designed to observe the tenets of belief. (*Id*., at p. 699.)

In our view, the Fellowship of Christian Ministry is clearly a religious denomination, involving a belief, association, moral code, and organization, comprised of a class of persons identified by the same name. It is concluded that a person certified to perform marriages by the Fellowship, whether or not incorporated in California, may solemnize marriages under the provisions of section 4205.

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