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OPINION	:	No. 81-618
	:	
of	:	<u>MAY 20, 1982</u>
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THE HONORABLE BEVERLEE A. MYERS, DIRECTOR,
DEPARTMENT OF HEALTH SERVICES, has requested an opinion on the following
question:

May a county recorder refuse to record a declaration of marriage tendered
pursuant to the provisions of Civil Code section 4215, where a marriage license has not
been procured?

CONCLUSION

A county recorder must refuse to record a declaration of marriage tendered
pursuant to the provisions of Civil Code section 4215, where a marriage license has not
been procured.

ANALYSIS

Section 4100 of the Civil Code¹ provides:

"Marriage is 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. Consent alone will not constitute marriage; *it must be followed by the issuance of a license* and solemnization as authorized by this code, except as provided by Section 4213." (Emphasis added.)²

All persons about to be joined in marriage must first obtain a license therefor from a county clerk. (§ 4201.) Thus, marriage must be licensed (see § 4200) and solemnized (§§ 4100, 4200; 64 Ops.Cal.Atty.Gen. 409, 410 (1981)). In addition to the license, all persons about to be joined in marriage must obtain from the county clerk a certificate of registry of marriage. (§ 4202.) Within four days after the marriage ceremony, the person performing the ceremony must complete and return the certificate of registry (§ 4202) and endorse and return the license (§ 4208) to the county recorder of the county in which the license was issued. (See Health & Saf. Code, § 10325.)

The certificate of registry is divided into three sections: the first contains the personal data of the parties married; the second contains their signatures and the license to marry;³ the third includes the certification of the person performing the ceremony. (Health & Saf. Code, § 10350.) *Each marriage* which occurs in this state must be registered on the prescribed certificate form (Health & Saf. Code, §§ 10000, 10030), and a certificate is not complete that does not supply all of the items of information called for, *or satisfactorily account for their omission*. (Health & Saf. Code, § 10004.)

The county recorder, acting as the local registrar of marriages (Health & Saf. Code, § 10052), must transmit to the State Registrar of Vital Statistics (the State Director of Health Services; Health & Saf. Code, § 10025) on or before the fifth day of each month all original certificates of registry of marriage accepted by him for registration during the preceding month. (Health & Saf. Code, § 10062.)

We turn next to the provisions of section 4215:

¹ Hereinafter, all section references are to the Civil Code unless otherwise indicated.

² Section 4213, pertaining to the solemnization of marriage, without a license, of persons who had been living together as man and wife, is not relevant to this analysis.

³ It can be seen, then, that the license to marry and the certificate of registry are actually parts of a single, integrated document.

"The provisions of this article, *so far as they relate to the solemnizing of marriages*, are not applicable to members of any particular religious denomination having, as such, any peculiar mode of entering the marriage relation; but such marriages must be declared, as provided in Section 4210, and be acknowledged and recorded, as provided in Section 4211. Where a marriage is declared as provided in Section 4210 the husband must file said declaration with the county recorder within 30 days after such marriage, and upon receiving the same the county recorder must record the same; and if the husband fails to make such declaration and file the same for record, as herein provided, he is liable to the same penalties as any person authorized to solemnize marriages, who fails to make the return of such solemnization as provided by law." (Emphasis added.)

Section 4215 contemplates a situation in which, by virtue of a "peculiar mode" of entering the marriage relation, the marriage license has not been endorsed in the manner prescribed in section 4208.⁴ (Cf. 57 Ops.Cal.Atty.Gen. 397, 398 (1974).) In such a case, as where a marriage has been regularly solemnized but no solemnization endorsement is known to exist, the provisions of section 4210 must be followed:

"If no record of the solemnization of a marriage heretofore contracted, be known to exist, the parties may join in a written declaration of such marriage, substantially showing all of the following:

"(1) The names, ages, and residences of the parties.

"(2) The fact of marriage.

"(3) That no record of such marriage is known to exist.

⁴ Section 4208 provides:

"The person solemnizing a marriage must make, sign and endorse upon or attach to the license a statement, in the form prescribed by the State Department of Public Health showing all of the following:

"(1) The fact, time and place of solemnization.

"(2) The names and places of residence of one or more witnesses to the ceremony.

"(3) A statement of the official position of the person solemnizing the marriage, or of the denomination of which such person is a priest, minister or clergyman. The person solemnizing the marriage shall also type or print his name and address.

"The marriage license, thus endorsed, shall be returned to the county recorder of the county in which the license was issued within four days after the ceremony."

"Such declaration shall be subscribed by the parties and attested by at least three witnesses."

Declarations of marriage must be acknowledged and recorded in like manner as grants of real property. (§ 4211; cf. § 1169; Gov. Code, § 27322.)⁵ Thus, the county recorder, acting in such official capacity as distinguished from the local registrar of marriages, "must record" a declaration of marriage "upon receiving the same" according to the literal prescription of section 4215.

The inquiry presented for resolution is whether a county recorder may refuse to record a declaration of marriage under section 4215 where no license, and hence no certificate of registry, has been issued by the county clerk. The inquiry is posed in view of a certain statutory ambiguity. The sole reference in section 4215 is the return of the declaration within 30 days; no special provision has been made for the return of the license and certificate of registry within four days or otherwise, a function which is ordinarily the responsibility of the person performing the ceremony. It has been suggested that in the absence of any such reference, no return need be made, and that, in the absence of such a requirement, no license need be issued in the first instance. Consequently, it is argued, recordation of a declaration of marriage upon receipt thereof is an unconditional, ministerial duty. Does the lack of specification with respect to the return of the license and certificate portend the displacement of such requirements by the recording of the declaration? We think not; rather, we shall conclude that a marriage contract in the absence of a license is void, and that the county recorder in such a case is without authority to record a declaration thereof.

Returning to the basic provisions, section 4201 provides universally that *all* persons about to be joined in marriage must first obtain a license therefor, and further prohibits the issuance of a license to certain classes of individuals. Section 4202 provides universally that *all* persons about to be joined in marriage must obtain a certificate of registry of marriage. Health and Safety Code section 10000 requires *each marriage* which occurs in this state to be registered. We have previously concluded, accordingly, that

⁵ The requisites for an acknowledgment of an instrument are the personal appearance of the maker, his acknowledgment that he signed it, and the officer's personal knowledge that the maker is the person he purports to be. (Civ. Code, § 1185; *Transamerica Title Ins. Co. v. Green* (1970) 11 Cal.App.3d 693, 700.) Its function is to establish the identity of the person making the acknowledgment and the genuineness of the signature attached to the instrument. (*Ryan v. Bank of Italy* (1930) 106 Cal.App. 690, 693; *Clements v. Snider* (1969) 409 F.2d 549, 550.) The purpose of an acknowledgment is to permit the instrument to be used as competent evidence without further proof as to authenticity. (*Gordon v. San Diego* (1895) 108 Cal. 264, 267; *Lillard v. Walsh* (1959) 172 Cal.App.2d 674, 678.)

section 4215, while dispensing with the provisions relating to solemnization, does not dispense with the license requirement. (58 Ops.Cal.Atty.Gen. 914, 917-918 (1975).) It appears, then, from the statutory scheme as a whole as well as specific statutory language⁶ that marriage is not valid in the absence of a license.

While section 4215 contains no reference to the marriage license, it is an exception to the general provisions of the Family Law Act (§ 4000 et seq.) only "as they relate to the solemnizing of marriages." Hence, while such a marriage must, *in lieu of solemnization and endorsement* as provided in section 4208, be declared, acknowledged, and recorded as provided in sections 4210 and 4211, no exception is made with respect to the return of the license. Thus, the fact that a license need not, under section 4215, be returned *along with an endorsement* as otherwise provided (§§ 4204, 4208) will not support a conclusion that it need not be returned at all. Rather, the effect of section 4215, in our view, is simply to substitute, under the specific circumstances therein prescribed, a declaration in lieu of endorsement. So interpreted in conjunction with related provisions, the purposes of section 4215 are fully effectuated.

Nevertheless, the statutory duty of the recorder is stated in unequivocal mandatory terms. (Cf. *Thomas v. Department of Motor Vehicles* (1970) 3 Cal.3d 335, 338 (Department of Motor Vehicles); *Schmitz v. Younger* (1978) 21 Cal.3d 90, 92-93 (Attorney General); 62 Ops.Cal.Atty.Gen. 365, 367-368 (1979) (Secretary of State).) Similarly, we determined in 2 Ops.Cal.Atty.Gen. 532, 533 (1943) that the validity of a marriage is a judicial question and that the Bureau of Vital Statistics, lacking judicial powers, could not refuse to register a marriage certificate. Thus, it has been suggested that where a declaration of marriage is valid on its face, i.e., proper in form and complies with statutory prerequisites (cf. *Schmitz v. Younger, supra*, at p. 93), it is the ministerial duty of the county recorder to follow the express statutory directives.

While it is the ministerial duty of the county recorder to record a document which is proper in form and *complies with statutory prerequisites*, it does not follow that a document which must be tendered in conjunction with other documents is, standing alone, statutorily sufficient. As previously discussed, a marriage under section 4215 must be licensed and registered. With respect to such registration, the local registrar of marriages "shall carefully examine each certificate before acceptance for registration and, if any are incomplete or unsatisfactory, he shall require such further information to be furnished as may be necessary to make the record satisfactory before acceptance for registration." (Health & Saf. Code, § 10056; and cf. Health & Saf. Code, § 10005; see also Health & Saf.

⁶ See, e.g., section 4100, *supra*: "Consent alone will not constitute marriage; it must be followed by the issuance of a license . . .," with the *single, specific exception* of marriages contracted under section 4213.

Code, § 10034 (the state registrar).) Clearly, a certificate of registration which does not contain the required information pertaining to the issuance of a license is incomplete.⁷

The fundamental rule of statutory construction is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. (*Moyer v. Workmen's Comp. App. Bd.* (1973) 10 Cal.3d 222, 230.) Moreover, the various parts of a statute must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole. (*Id.*)

We do not perceive from this statutory scheme and design any authority of the county recorder to record a declaration of a marriage which, as a matter of official cognizance,⁸ has been neither licensed nor solemnized.⁹ A public officer has only such powers as have been conferred by law, expressly or by implication. (63 Ops.Cal.Atty.Gen. 840, 841 (1980).) Thus, we have determined in related contexts that a return on a license pursuant to section 4208 by a family member who is not authorized to solemnize marriage may not be accepted for filing, and that a declaration of a marriage without "religious significance" under section 4215 may not be recorded. (57 Ops.Cal.Atty.Gen. 397, *supra.*) Similarly, we now conclude that a declaration of marriage may not be recorded under section 4215 where a license has not been procured.

⁷ With regard to a certificate of registration of a marriage under section 4215, the absence of an endorsement of solemnization is "satisfactorily accounted for" within the meaning of Health and Safety Code section 10004. However, information as to the declaration, in lieu of the endorsement, must be provided.

⁸ The requirement of section 4204, that "[t]he county clerk shall number each license issued, and shall transmit at periodic intervals to the county recorder a list of the licenses issued . . ." is significant. Even assuming that a license need not be returned, the county recorder is thereby provided with primary official notice as to the status of each license.

⁹ Clearly, the reference in section 4210 to "the fact of marriage" is to a valid marriage. It would appear, then, that a declaration of a marriage which is invalid would constitute a false record. Penal Code section 360 provides that ". . . every person who willfully makes a false record of any marriage return . . ." is guilty of a misdemeanor. (And cf. Pen. Code, § 115.) It would be wholly incongruous to suggest that the obligation of a county recorder to record "all instruments, papers and notices the recording of which is required or permitted by law" (Gov. Code, § 27322; see also Gov. Code, § 27203) would include the filing of such a false record.