Honorable Wallace Wyatt
Judge of Probate
St. Clair County
Ashville, Alabama 35953

Probate Judges – Marriages –
Marriage Licenses

Persons of the same sex cannot marry in Alabama. A marriage license issued to parties of the same sex is null and void.

Dear Judge Wyatt:

Reference is made to your request for an opinion from the Attorney General as to the following questions:

"Is it legal in the State of Alabama for a woman to marry a woman? Is it legal for the Probate Office to issue a marriage license to two females?"

Your questions are to be answered in the negative.

In the laws of this State governing marriage found at Code of Alabama 1975, Section 30-1-1 through Section 30-1-18, there is no statutory definition of marriage. Furthermore, there is no provision therein which specifically prohibits marriage between persons of the same sex nor is the issuance of a marriage license to such persons authorized. My research further reveals that there is no criminal law which prohibits marriage between persons of the same sex in Alabama.
Honorable Wallace Wyatt  
Judge of Probate  
Page Two

While marriage between persons of the same sex is not directly prohibited by Alabama law and while the Alabama appellate courts have not spoken to this question, the courts of other states have ruled such a marriage invalid. A decision concerning this issue by the Kentucky Court of Appeals in Jones v. Hallahan 501 SW2d 588 can be helpful in trying to determine the law in Alabama. Like Alabama, Kentucky has no statutory definition of marriage and no laws directly barring marriage between persons of the same sex. The Kentucky Court said that in the absence of a statutory definition of marriage, marriage must be defined according to the common usage as a legal union of persons of the opposite sex. The Court went on to determine that a license for certain parties to enter into a status or a relationship is a nullity when the parties are incapable of achieving that status or relationship.

Therefore, in answer to your question, it is the opinion of the Attorney General that because Alabama has no statutory definition of marriage, marriage must be defined according to its common usage as a legal union between a man and a woman and therefore, persons of the same sex cannot enter into marriage in Alabama. Furthermore, a license issued for the marriage of persons of the same sex would be null and void.

I trust that your questions have been adequately answered.

If our office can be of any further assistance, please do not hesitate to let us know.

Sincerely,

CHARLES A. GRADDICK  
Attorney General  
BY:

LYNDA F. KNIGHT  
Assistant Attorney General

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