

2337.

PROBATE COURT—WHO ENTITLED TO RECEIVE LICENSES TO SOLEMNIZE MARRIAGES—WHEN NON-RESIDENT OF OHIO ENTITLED TO RECEIVE SUCH LICENSE.

1. *A person who is regularly ordained or licensed minister of any religious society within this state and who, though having no specific congregation, performs work which under the rules and regulations of that society gives him the status of a regular officiating minister, is entitled to receive from the probate court of the county wherein he officiates, a license to solemnize marriages, pursuant to section 11183 G. C.*

2. *The statutes of Ohio do not require that the applicant for a license to solemnize marriages within this state be a resident of Ohio, and a non-resident minister of the gospel is entitled to receive such license, provided he produce to the probate judge of any county within this state in which he officiates, credentials of his being a regularly ordained or licensed minister of any religious society or congregation within this state.*

COLUMBUS, OHIO, August 12, 1921.

HON. WILLIAM H. LUEDERS, *Probate Judge, Cincinnati, Ohio.*

DEAR SIR:—In recent letters you submit for the opinion of this department certain questions relative to the issuance by the probate judge of licenses to solemnize marriage.

(1) The first question is based on a letter to this office from Mr. Julius Holzberg, Cincinnati, Ohio. Said letter, after quoting sections 11182 and 11183 of the General Code of Ohio, says:

“The point at issue is whether ministers, rabbis and priests lawfully ordained by their respective churches, but who at the time being have been called by their respective societies to preach the gospel in the form of pedagogical services at seminaries, parochial schools or other theological institutions, can come under the purview of the foregoing statutes to solemnize marriages.”

Continuing, Mr. Holzberg says:

“I am in this matter specifically referring to the rabbis who are at present teaching at the Hebrew Union College, Cincinnati, Ohio, a college devoted to the teaching of young men to become rabbis. These rabbis, although ordained ministers of the Jewish faith, have, of course, no specific congregation at present since their time is taken up exclusively at the above mentioned college. However, they are considered as rabbis of the Jewish faith, have the same powers as rabbis with congregations, and are all members of the Central Conference of American Rabbis.”

Sections 11182 and 11183 G. C. read as follows:

“Sec. 11182. An ordained or licensed minister of any religious society or congregation within this state, who has obtained a license for that purpose, as hereinafter provided, or a justice of the peace in his county, or the mayor of a city or village in any county in which such city or village wholly or partly lies, or the superintendent of the

institution for the deaf and dumb, or the several religious societies, agreeably to the rules and regulations of their respective churches, may join together as husband and wife all persons not prohibited by law."

"Sec. 11183. A minister of the gospel, upon producing to the probate judge of any county within this state in which he officiates, credentials of his being a regularly ordained or licensed minister of any religious society or congregation, shall be entitled to receive from the court a license, authorizing him to solemnize marriages within this state so long as he continues a regular minister in such society or congregation."

In the case of *In re Reinhart*, 6 O. N. P. 438, the court (Cuyahoga county probate court), speaking of section 11183 G. C.—then known as section 6386 R. S.—said (p. 440):

"This law is to receive a liberal and not a strict construction. * * * In designating the class who may receive the license to solemnize marriages, the section begins with the words 'Any minister of the gospel.' Is this a description of exclusion or inclusion? If the section should be strictly and technically construed, on the generally received meaning of the expression 'Minister of the gospel' it would confine licenses exclusively to Christian ministers. Yet, reading the whole section, and considering for a single moment the real purpose of the law, it is clear it should not receive such a narrow construction. Such an interpretation would deny the license to the learned and reverend Jewish rabbi, and many other ministers of religion, who, while not Christian in name, look upon marriage as a sacred and religious institution. The law here means to use the word 'gospel' in its broad general sense, and keeping in view the entire act, and its manifest purpose, should be made to mean 'any minister of religion.'"

At page 441, the court construes the meaning of the term "ordained minister," as the same is used in the marriage laws of Ohio, and says:

"The laws of Ohio make no discrimination in any respect, between Catholic or Protestant, Greek, Gentile, Jewish or any other religious societies or denominations; much less do they attempt to prescribe any mode or form of ministerial ordination. It has been the practice in this court, therefore, to grant the license to authorize the solemnization of marriages, to duly commissioned officers in the Salvation Army, who are engaged under such authority in ministering in religious affairs; to all Protestant ministers, Catholic priests, Jewish rabbis, teachers and ministers of spiritualistic philosophy, and in fact all persons, who can prove to the satisfaction of the court that they have been duly appointed, or recognized in the manner required by the regulations of their respective denominations, and are devoting themselves generally, at the work of officiating and ministering in the religious interest and affairs of such societies or bodies. I cannot conceive of any other reasonable and just construction of this statute."

The holding in that case was that a minister, regularly ordained and having received a license under section 11183 G. C., who is cut off from membership in the congregation and society to which he ministers, and whose rela-

tion and contract as minister is terminated by any action of the society or congregation, not absolutely void, does not "continue a regular minister in such society or congregation" in the sense and meaning of said section. This holding was, it appears, based on the rules and regulations of the religious society known as "the Disciples of Christ," which rules and regulations, the court found, provided that as soon as a minister loses his congregation or charge "he no longer continues to officiate as a regular minister in such society or congregation" (p. 443).

That such a rule does not obtain in the case of a Jewish rabbi, appears from that part of Mr. Holzberg's letter which says :

"In the Jewish religion * * * the * * * rabbi once ordained is part of his respective religious society whether he has a congregation at the time or not, so long as he is preaching the gospel in some form or other. I might mention the added fact that these rabbis are called many times during the year to officiate at various temples, especially during the Jewish New Year and Day of Atonement."

It should be observed that the sections in question use both the term "society" and the term "congregation," the phrase being

"an ordained or licensed minister of any religious *society or congregation.*"

In other words, the legislature has not gone so far as to require that a minister of the gospel must at all events and under all circumstances have a specific congregation, before he is entitled to receive a license to solemnize marriages. On the contrary, if a person be a regularly ordained or licensed minister of any religious society, and, though having no specific congregation, nevertheless performs work which, under the rules and regulations of that society, gives him the status of a regular officiating minister, such person is entitled to receive from the probate court of the county wherein he officiates a license to solemnize marriages, pursuant to section 11183 G. C.

As said at page 443 of the Reinhart case above referred to, "it is a question finally of official status," to be determined in each instance by a consideration of the rules and regulations of the particular society or congregation.

Assuming that Mr. Holzberg's letter correctly sets forth the status of the rabbis in question from the standpoint of the rules and regulations of the Jewish religion, I am of the opinion that said rabbis are entitled to receive from your court, pursuant to section 11183 G. C., licenses to solemnize marriages within this state.

(2) The facts surrounding your next question you state thus :

"Reverend W. E. M., a regularly ordained minister of the gospel, a member of a religious society known as 'The Christian Church' or 'Disciples of Christ' has for the last ten or twelve years had charge of a church in this city (the city of Cincinnati), but the reverend gentlemen during the entire time and now resided and voted in Covington, Kentucky.

Recently Reverend M., for some reason unknown to me, came to the probate court, and inquired if he, a resident of Kentucky, having charge of a religious denomination and congregation in the city of Cincinnati, could perform marriage ceremonies in the city of Cincinnati, county of Hamilton.

* * * Kindly advise me if under sections 11183 and 11184 of the General Code of Ohio, a non-resident of the state having a congregation in the city of Cincinnati and state, can solemnize marriages in this state?"

Section 11183 G. C. has already been quoted, in answer to your first question. Section 11184 G. C.—the other section to which you refer—says:

"Sec. 11184. Each minister, who is licensed to solemnize marriages, must produce to the judge of the probate court in each county, in which he solemnizes a marriage, his license so ordained. The judge thereupon shall enter the name of such minister upon record as a minister of the gospel duly authorized to solemnize marriages within this state, and note the county from which such license issued; for which service no charge shall be made by the judge."

In neither of these sections is there any requirement that the applicant for a license to solemnize marriages within Ohio be a resident of Ohio. Nor has any such provision been found in any other part of the statutes. No reason, therefore, occurs why a non-resident of Ohio may not receive a license to solemnize marriage in this state, provided he meet the requirements laid down in sections 11182 and 11183 G. C. That is to say, provided he produce to the probate judge of any county within this state in which he officiates, credentials of his being a regularly ordained or licensed minister of any religious society or congregation within this state. With these provisos in mind, your second question should be answered in the affirmative.

Respectfully,

JOHN G. PRICE,

Attorney-General.

2338.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS, JEFFERSON COUNTY, OHIO.

COLUMBUS, OHIO, August 12, 1921.

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.

2339.

APPROVAL, BONDS OF VILLAGE OF UPPER SANDUSKY, OHIO, IN AMOUNT OF \$75,000 FOR STREET IMPROVEMENTS.

COLUMBUS, OHIO, August 13, 1921.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.