# Office of the Attorney General

# State of Tennessee

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Tenn. Op. Atty. Gen. No. 97-138, 1997 WL 654162 (Tenn.A.G.)

*1 Opinion No. 97-138 October 9, 1997

## Validity of Marriage That Was Performed by a Universal Life Church, Inc., Minister

Honorable Tim Burchett State Representative 18th Legislative District 207 War Memorial Building Nashville, TN 37243-0118

## QUESTION

Are couples in Tennessee legally married when the person who conducted the ceremony was an ordained minister in the Universal Life Church, Inc.?

## OPINION

The presumption in favor of marriage is very strong. The burden to rebut this presumption rests upon the party challenging the validity of the marriage and is not easily sustained. The marriage's validity depends upon the context in which it is challenged, the specific facts involved, and the proof presented. Upon proper proof, a court could determine that the marriage was void if it determined, under the specific facts, that it was appropriate to examine the minister's qualifications to solemnize a marriage under Tenn. Code Ann. § 36-3-301(a) and the minister did not meet the statutory qualifications.

## ANALYSIS

In Op. Tenn. Atty. Gen. U97-041, we opined that a person ordained by the Universal Life Church, Inc., which apparently has ordained anyone who filled out a mail order application, without a background check, verification or obtaining of any information, did not appear to meet the criteria of Tenn. Code Ann. § 36-3-301(a) in order to be qualified to solemnize marriages. You have asked a follow-up question, regarding whether marriages conducted by such person are valid in this state. The answer depends upon the context in which the marriage's validity is challenged, the specific facts involved, and the actual proof presented.

As the instant analysis will reflect, Tennessee courts have considered the validity of marriages in many different contexts, e.g., divorce actions; annulments; will contests by surviving heirs, including those alleged to be illegitimate children; wrongful death actions where the deceased's recovery is claimed by multiple persons; third party challenges involving benefits to survivors, such as workers' compensation benefits; actions for insurance recovery; contest to a marriage by family members; and criminal prosecution such as bigamy and non-support.

The public policy of "Tennessee and ... the civilized world is to sustain marriages, not to upset them." Madewell v. United States, 84 F. Supp. 329, 332 (E.D. Tenn. 1949). [FN1] Marriage, "being of vital public interest, is subject to state and legislative power and control, with respect to its inception, duration and status, conditions and termination, except as restricted by constitutional provision." Crawford v. Crawford, 198 Tenn. 9, 14, 277 S.W.2d 389 (1955), citing 35 Am.Jur., p. 186. In the "interest of social order, the presumption in favor of [marriage] is very strong, and the pressure of that presumption is felt at every stage of the inquiry." Gamble v. Rucker, 124 Tenn. 415, 417, 137 S.W. 499 (1911). Where there is "direct proof of the performance of a ceremony and consummation of a marriage " this evidence raises a prima facie case of a legal marriage." Duggan v. Ogle, 25 Tenn. App. 467, 472, 159 S.W.2d 834, 838 (1941), cert. denied. The burden to rebut such presumption rests upon the party challenging the validity of the marriage. Duggan, 25 Tenn. App. 472-473; Whipple v. McKew, 166 Tenn. 31, 60 S.W.2d 1003 (1933). Such burden is not easily sustained as the evidence required has been described as "strong, distinct, satisfactory and conclusive" Duggan, 25 Tenn. App. at 473, 159 S.W.2d at 838, as well as "cogent and convincing." Gamble, 124 Tenn. at 417; Aghili v. Saadatenejadi, 1997 W.L. 311544, p. 4 (Tenn. App. 1997); Hall v. Hall, 13 Tenn. App. 683, 688 (1931), cert. denied (1932). Indeed, if any evidence supports the presumption, the Court will sustain it. Duggan, 25 Tenn. App. at 472, 159 S.W.2d at 838.

**FOOTNOTES**

[FN1]. See generally, "Informal Marriages In Tennessee " Marriage by Estoppel, by Prescription and by Ratification," 3 Vanderbilt Law Review 610 (1949); "Use of Presumptions In Proving the Existence of Marriage Relationships in Tennessee," 5 Memphis State Law Review 409, 410-411 (1975).

[FN2]. The principles of presumption and estoppel are not generally applied by courts to presume a marriage which is prohibited by law or against public policy. See, e.g., Bennett v. Anderson, 20 Tenn. App. 523, 101 S.W.2d 148 (1936).

[FN3]. This analysis largely omits discussion of "common law" marriage and marriage allegedly based solely upon cohabitation and reputation, where no statutory ceremony occurred. See generally, 3 Vanderbilt Law Review, 610, supra.

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