



Office of The Attorney General
State of Connecticut

October 28, 2008
Honorable J. Robert Galvin, M.D.
Department of Public Health
410 Capitol Avenue
Hartford, Connecticut 06134-0308

Dear Commissioner Galvin:

This formal opinion responds to several questions that the Department of Public Health ("Department") has asked concerning the effect the decision of the Connecticut Supreme Court in Kerrigan v. Commissioner of Public Health, S.C. 17716, which will be officially released on October 28, 2008, will have on Connecticut's civil union and marriage statutes. In Kerrigan, the Court ruled that Connecticut's laws limiting marriage to opposite sex couples violate the equal protection provisions of the state constitution and that "same sex couples cannot be denied the freedom to marry."

The Department's specific questions are as follows:

- (1) Whether the age restrictions and requirements specified in the Connecticut marriage statutes will apply to same-sex marriages?
- (2) In light of Kerrigan, will the marriage statutes specifying the individuals that may join persons in marriage apply to same sex marriages and will those individuals continue to have the discretion to refuse to perform particular marriages.
- (3) Whether the civil union laws remain valid, thereby allowing same sex couples the option of entering into a civil union rather than marriage?
- (4) Whether individuals currently in civil unions will need to seek dissolution of their civil unions before marrying their partners?
- (5) Whether parties to out of state same sex marriages who entered into civil unions in

Connecticut because this state did not recognize their out of state marriages at the time will continue to have their Connecticut civil union recognized, even though, presumably, their out of state marriages will now be recognized?

Questions 3 and 4 were answered in a recent opinion to State Comptroller Nancy Wyman, which we attach to this opinion for your reference. To reiterate, under Kerrigan, Connecticut's civil union laws remain valid unless amended by the legislature. Current Connecticut law does not require a same sex couple to dissolve their civil union prior to marriage to each other.

As set forth in this opinion, current Connecticut law relating to marriage applies fully to same sex marriages.

As to your first question, the requirements for entering into a valid marriage in this state are found in Conn Gen Stat. §§ 46b-20 through 46b-35. Conn. Gen. Stat. § 46b-30 deals with the age restrictions on marriage and states:

- (a) No license may be issued to any applicant under sixteen years of age, unless the judge of probate for the district in which the minor resides endorses his written consent on the license.
- (b) No license may be issued to any applicant under eighteen years of age, unless the written consent of a parent or guardian of the person of such minor, signed and acknowledged before a person authorized to take acknowledgments of conveyances under the provisions of section 47-5a, or authorized to take acknowledgments in any other state or country, is filed with the registrar. If no parent or guardian of the person of such minor is a resident of the United States, the written consent of the judge of probate for the district in which the minor resides, endorsed on the license, shall be sufficient.

Hence, a minor under sixteen years of age who wishes to marry must complete a license application endorsed by the judge of probate for the district in which the minor resides. A minor under eighteen years of age must have the written consent of a parent or guardian or, if the minor has no parent or guardian

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residing in the United States, the written consent of the probate judge for the district in which the minor resides. Nothing in the Connecticut marriage statutes distinguishes between same sex and opposite sex license applicants. Therefore, all of the restrictions and requirements set forth in §§ 46b-20 through 46b-35 will apply to same sex marriages.

Your second question asks whether the statutes authorizing specified individuals to perform marriages in this state apply to same sex marriages. Conn. Gen Stat § 46b-22 provides: "(a) [p]ersons authorized to solemnize marriages in this state include (1) all judges and retired judges, ... (2) family support magistrates, state referees and justices of the peace who are appointed in Connecticut, and (3) all ordained or licensed members of the clergy ... as long as they continue in the work of the ministry." Conn. Gen Stat. § 46b-23 imposes a criminal penalty on "[a]ny person who undertakes to join persons in marriage, knowing that he is not authorized to do so." In light of the Kerrigan decision, these statutes apply to same-sex marriages.

Section 46b-22 does not impose a duty on persons authorized to perform marriages to perform a marriage for any particular couple or establish a right for couples seeking to marry to have the ceremony performed by a particular authorized person. However, as is currently the case, public officials who have been authorized to perform marriages may not refuse to perform a marriage for discriminatory reasons, in violation of the Connecticut Constitution.

As to your final question, we concluded in our opinion to State Comptroller Wyman that the Kerrigan decision does not alter the status of existing civil unions in Connecticut. Connecticut must recognize under the Full Faith and Credit Clause of the United States Constitution out of state civil unions and out of state same sex marriages. Under current Connecticut law the status of the Connecticut civil unions of persons previously married in other states is not affected by the fact that their out of state marriage will be recognized in this state when the Kerrigan decision takes effect.

Very truly yours,


RICHARD BLUMENTHAL
ATTORNEY GENERAL