

OPINION
45-191

November 19, 1945 (OPINION)

MARRIAGE

RE: License - Age of Applicant

Your letter of November 17 addressed to the Attorney General has been received and contents noted.

You inquire whether this office has been called upon to render an opinion as to whether a county judge may legally issue a marriage license to a boy under 18 years of age. I do not believe that this office has rendered such an opinion.

Section 14-0302 of the North Dakota Revised Code of 1943 reads as follows:

Any unmarried male of the age of eighteen years or upwards, and any unmarried female of the age of fifteen years or upwards, and not otherwise disqualified, are capable of consenting to and consummating a marriage. If the male is under the age of twenty-one years, or the female under the age of eighteen years, a marriage license shall not be issued without the consent of the parents or guardian, if there are any."

You will note that the age of consent to marriage of a male is 18 years or upwards, and of a female 15 years or upwards, but if the male is under 21 and the female under 18, a license may not be issued without consent of the parents or guardian.

The age of consent was considered by our Supreme Court in the case of *Berry vs. Vinistorfer*, (55 N.D. 310). In that case a man the age of 33 induced a girl 16 years of age to marry him. The marriage was consummated without the knowledge and consent of the girl's parents. It was sought to annul the marriage upon the ground set forth in Subdivision 1 of Section 14-0401, which is the same as found in Section 4368 of the Compiled Laws of 1913.

It appears that in this case the court held that since the girl was over 15 she was of age of consent and therefore the marriage could not be annulled upon that ground, notwithstanding the fact that parents or guardian had not given their consent.

The inference to be drawn from the language in the decision in that case is that if a male is under the age of consent - that is under 18 - or a girl is under the age of consent - that is under the age of 15 - then the marriage may be annulled.

The further inference that may be drawn from the language of the law and the decision is that the county judge may not issue a license to a male person under the age of 18 or to a female person under the age of 15.

I have been unable to find any other decisions bearing upon this

question.

NELS G. JOHNSON

Attorney General