March 27, 1946   (OPINION)

DEATH

RE: Official Notice of

This will acknowledge your letter of March 21, in which you
state that recently a prominent attorney of your city raised a
question as to whether it was proper for you to issue a marriage
license to a war widow, whose husband had been missing and had been
reported officially dead by the government after the one year
apparently used by the government as a basis for such report. I note
from your letter that he wondered how this would compare with the
presumptions entitled "Disputable Presumptions," in section
31-1103(26) and also section 31-1104 of the North Dakota Revised Code
of 1943.

Chapter 195 of the 1945 Session Laws, I believe, covers the situation
mentioned in your letter. Under section 1 of that law, written
findings of presumed death, made by the Secretary of War, the
Secretary of the Navy, or other officer or employee of the United
States authorized to make such findings, pursuant to the federal
Missing Persons Act, or a duly certified copy of such finding, shall
be received in any court, office, or other place in this state as
prima facie evidence of the death of the person therein found to be
dead, and the date, circumstances and place of his disappearance.
There are other sections in this same chapter, but they are not
pertinent to the question raised in your letter.

It seems entirely clear to me that, if you are presented with a
certificate from the Secretary of War, or the Secretary of the Navy,
or other officer or employee of the United States, authorized to make
a finding under the federal Missing Persons Act, that such person is
dead, you have to discretion in the matter of issuing a marriage
license,. The finding of the proper official is prima facie evidence
that the death of such person has taken place and, if you file the
record in the office, it would be entirely proper for you, and I
believe it would be your duty, to issue a marriage license to the
widow of such missing person.

NELS G. JOHNSON

Attorney General