

**OPINION**  
**47-93**

March 10, 1947 (OPINION)

INDIANS

RE: Negroes - Marriage License - Section 14-0305

This will acknowledge your letter of March 6, 1947, in which you request the opinion of this office upon your authority to issue a marriage license based on the following facts:

A young man named Francis Peter Houle, born February 7, 1926, and supposed to be of half white and half Indian blood has applied for a license to marry a girl also of half white and half Indian blood. This young man has all the characteristics of a Negro, looks like one, acts like one, and was classified as a Negro in the navy. His final discharge shows that he was classified under the heading "Race - Negro". Accordingly, I note that it is your opinion that although he was born to parents half white and half Indian that he is a Negro.

Section 14-0305 of the 1943 Revised Code provides: "Every person who shall have one-eighth or more of negro blood shall be deemed and held to be a colored person or negro."

On the basis of the facts as you have given them, you may assume that Francis Peter Houle is a Negro until such time as proof to the contrary is furnished you, and on that basis under section 14-0305 you may refuse to issue him a marriage license, if he is in fact marrying a white person. But from the facts as you have given them, it would appear that the girl is half white and half Indian. No white person residing or being in this state shall intermarry with any negro person and every such marriage is void, and if the marriage has been consummated the parties may be punished by imprisonment in the penitentiary. (Section 14-0304 of the 1943 Revised Code.)

Assuming that the young man is a Negro, the question arises whether or not he is marrying a white person, under section 14-0304 of the 1943 Revised Code. Is a girl of half white and half Indian blood a "white person" within the meaning of the statute?

A person of half white and half Indian blood is not a 'white person,' within the meaning of this phrase as used in the naturalization laws. In re. Camille, 6 F. 256, 257." (Taken from Words and Phrases, Permanent Edition, Vol. 45, p. 97.)

A person the offspring of a white man and a half-breed Indian woman, being nearer white than Indian, is considered as white, so as to be entitled to the right of franchise guaranteed by the Constitution to free white citizens. Jefferies v. Ankeny, 11 Ohio, 372, 373."

Within the import of a statute prohibiting the marriage of a white person with any negro, etc., a person having but one-sixteenth, or one-eighth of colored blood, is a white

person. Bailey v. Fiske, 32 Me. 77." (The last two cases quoted appear in Words and Phrases, Permanent Edition, Vol. 45, p. 97.)

If, therefore, the girl that this young man intends to marry is in fact half white and half Indian, even though he may be a Negro, you would be authorized to issue a license to them, provided, of course, that they comply with the statutes and pass the physical examination. See In re. Camille, supra.

If the young lady is more white than Indian, that is, if she is more than half white, then she would be considered a white person, and if the young man is in fact an eighth Negro, they would not be entitled to a license to marry. It would then become incumbent upon Mr. Houle to prove to your satisfaction before a marriage license is issued that he is in fact not a Negro but an Indian. Whether he can do that, I do not know. It is safe for you to assume that on the basis of his final discharge that he is a Negro, and being classified as such, comes within the terms of the definition of a Negro as set forth in section 14-0305.

I believe that it is incumbent upon these young people to prove to you as county judge that they come within the terms of the law and are permitted to marry. If the girl is more than half white she would be classified as a white person and you would be justified in refusing the marriage license, unless the young man can prove that he in fact is not a Negro. On the other hand, even though he may be a Negro, and you have the right to assume so from the records as disclosed by his discharge, and the girl is half white and half Indian, she would not be a white person, and you would be authorized to issue a marriage license.

Generally speaking, it seems to me that when the parties appear to be within the prohibitions of the statutes as to marriage, you are justified in requiring them to furnish you proof of their race and parentage so as to eliminate any doubt as to whether or not you are permitted by law to issue them a marriage license. You are in duty bound to follow the statutes and if there is any doubt in your mind as to whether these people are entitled to a marriage license, it becomes incumbent upon them to establish by competent proof that they are within the terms of the law, and when they have done that you are authorized to issue them a license.

NELS G. JOHNSON

Attorney General