



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

May 24, 2010

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

The Honorable Chaz Evans-Haywood
Clerk of the Circuit Court of the City of Harrisonburg and Rockingham County
Court Square
Harrisonburg, Virginia 22801

Dear Mr. Evans-Haywood:

The Supreme Court of Virginia recognizes that construction of the Constitution and statutes of the Commonwealth by the Attorney General under § 2.2-505 of the *Code of Virginia* “is of the most persuasive character and is entitled to due consideration.”¹ The same status and weight, however, is not afforded informal opinions and advice rendered by deputy and assistant attorneys general. The views expressed herein do not constitute an opinion of the Attorney General under the provisions of § 2.2-505. Consequently, this response to your inquiry represents only the individual views of one of the counsel to the Attorney General.²

Issue Presented

You ask whether a clerk of a circuit court (“circuit court clerk” or “clerk”) is required to authorize ministers of the Universal Life Church Monastery Storehouse to celebrate marriages in the Commonwealth.

Response

It is my view that to the extent a minister from the Universal Life Church Monastery Storehouse becomes ordained in a fashion analogous to the ordination of ministers examined in *Cramer v. Commonwealth*,³ a circuit court clerk is not required to authorize such ministers to perform marriages in the Commonwealth.

¹Barber v. Danville, 149 Va. 418, 424, 141 S.E. 126, 127 (1928); see also Va. Beach v. Va. Rest. Ass’n, 231 Va. 130, 135, 341 S.E.2d 198, 201 (1986); Bd. of Supvrs. v. Marshall, 215 Va. 756, 762, 214 S.E.2d 146, 150 (1975).

²See VA. CODE ANN. § 2.2-501 (2008) (permitting Attorney General to appoint such deputy and assistant attorneys general as may be necessary).

³214 Va. 561, 202 S.E.2d 911 (1974).

The Honorable Chaz W. Evans-Haywood
May 24, 2010
Page 2

Background

You state that you received a copy of a letter written by the Presiding Chaplain ("Chaplain") of the Universal Life Church Monastery Storehouse in Seattle, Washington ("Monastery"). You state that the Chaplain raises a variety of legal theories that he purports would compel you to recognize ministers licensed by the Monastery.

The Chaplain explains that the Monastery holds beliefs similar to the Universal Life Church of Modesto, California ("Church"), but he states that the two are distinct entities. The Chaplain further notes that:

The Universal Life Church Monastery serves as a clear voice of Heaven's new mandate to all: to integrate all human belief systems into a common ecumenical principle under which "*we are all children of the same universe.*" We here at the Monastery, through our ecclesiastical teachings and rationalist doctrine, instruct our congregants "to do the right thing", [sic] whatever they believe this to be, insofar as it does not impinge on the rights of others and is within the law.^[4]

The Chaplain further notes that the mission of the Monastery is to welcome everybody into its fold.⁵ You relate that when you asked for a letter from a congregation represented by a minister of the Monastery, the response was that its congregation is everywhere.

Applicable Law and Discussion

The Commonwealth of Virginia historically considers marriage among its most valued and sacred institutions. The Supreme Court of Virginia has emphasized that

[t]he interest of the state is not only in marriage as an institution, but in the contract between the parties who marry, and in the proper memorializing of the entry into, and execution of, such a contract. In the proper exercise of its legislative power [the legislature] can require that the person who performs a marriage ceremony be certified or licensed.^[6]

Likewise, the Supreme Court of the United States has expressed the interest of the states in regulating marriage.

Marriage, as creating the most important relation in life, as having more to do with the morals and civilization of a people than any other institution, has always been subject to the control of the legislature. That body prescribes the age at which parties may

⁴Letter from G. Martin Freeman, Presiding Chaplain, Universal Life Church Monastery Storehouse, to The Honorable Kenneth T. Cuccinelli, II, Attorney General of Virginia (Apr. 1, 2010), at *4 (emphasis in original).

⁵*Id.* at *5.

⁶*Cramer*, 214 Va. at 565, 202 S.E.2d at 914.

contract to marry, the procedure or form essential to constitute marriage, the duties and obligations it creates, its effects on the property rights of both, present and prospective, and the acts which may constitute grounds for its dissolution.^{7]}

The General Assembly systematically has surrounded the celebration of marriage (as well as its dissolution) with statutory mandates.⁸ For example, § 20-13 requires that “[e]very marriage in this Commonwealth ... be under a license and solemnized in the manner ... provided.” Therefore, marriage licenses are not considered valid unless someone who is authorized to perform the ceremony signs them. A number of avenues are available for an individual to be licensed to perform marriages. Section § 20-23 provides that:

When a minister of any religious denomination shall produce before the circuit court of any county or city in this Commonwealth ... proof of his ordination ..., or proof that he holds a local minister’s license ..., the clerk of such court ... may^{9]} make an order authorizing such minister to celebrate the rites of matrimony in this Commonwealth.

The Virginia Supreme Court interpreted this statute in *Cramer*. In *Cramer*, ministers of the Church argued that they should be permitted to perform marriages under § 20-23.¹⁰ The Court observed that “[t]he General Assembly was not concerned with preferring one sect over another in the enactment of Code § 20-23.”¹¹ The Court also noted that the General Assembly intended to qualify only those citizens within the selective and exclusive class of “ministers.”¹² The Court rejected the notion that the legislature intended to qualify a minister of a religious organization “whose title and status could be so casually and cavalierly acquired.”¹³ Instead, “[t]he minister referred to [in § 20-23] is the head of a religious congregation, society or order ... set apart as the leader ... the person elected or selected in accordance with the ritual, bylaws or discipline of the order.”¹⁴ The selection of ministers “must be a considered, deliberate and responsible act. It must be an authoritative act.”¹⁵ The Church, however, was “an organization of ministers”¹⁶ whose requirements to become a minister consist of “little more than an

⁷ *Maynard v. Hill*, 125 U.S. 190, 205 (1888).

⁸ *See, e.g.*, VA. CODE ANN. §§ 20-13 to 20-37.1 (2008 & Supp. 2009) (codified in scattered sections).

⁹ *See Masters v. Hart*, 189 Va. 969, 979, 55 S.E.2d 205, 210 (1949) (“Unless it is manifest that the purpose of the legislature was to use the word ‘may’ in the sense of ‘shall’ or ‘must,’ then ‘may’ should be given its ordinary meaning—permission, importing discretion.”); *see also* Op. Va. Att’y Gen.: 2000 at 29, 32 n.2; 1999 at 193, 195 n.6; 1997 at 10, 12 (noting that use of “may” in statute indicates statute is permissive and discretionary, rather than mandatory).

¹⁰ *Cramer*, 214 Va. at 562, 202 S.E.2d at 912.

¹¹ *Id.* at 566, 202 S.E.2d at 915.

¹² *Id.* at 566-67, 202 S.E.2d at 915.

¹³ *Id.* at 567, 202 S.E.2d at 915.

¹⁴ *Id.*

¹⁵ *Id.* at 566, 202 S.E.2d at 915

¹⁶ *Id.*

expression of a desire for ordination” as well as a “free-will offering.”¹⁷ The Court upheld the action of the lower court, which rescinded the authority of the ministers of the Church to perform marriages in Virginia.¹⁸

Although the Monastery may be a distinct and separate entity from the Church, its belief systems, as well as their selection process for ministers, appear to be nearly identical.¹⁹ To the extent the ministers in the Monastery are ordained in a way that is closely analogous to that of the ministers in *Cramer*, a clerk may decline to authorize such ministers to perform marriages.

I find nothing in the Chaplain’s letter that would alter the conclusion reached by the Virginia Supreme Court in *Cramer*. First, the United States statutes cited by the Chaplain²⁰ prohibit a willful denial or conspiracy to deny the constitutional rights of another. If a person’s constitutional rights are not being denied, those statutes have no applicability.

The Chaplain cites a case from a United States District Court in California, where the court held that the Church was entitled to a refund of taxes because it qualified as a tax-exempt organization.²¹ That case has no application to Virginia laws regarding the qualification of a “minister” to perform marriages.²² Similarly, a federal case arising in Utah²³ does not support the notion that any “minister” ordained by any religious organization must be permitted to perform marriages in Virginia. In the Utah case, the court examined a Utah statute that governed who could perform marriages and prohibited persons ordained through application over the internet or by mail.²⁴ The court held that this statute did not offend the Free Exercise²⁵ or the Due Process Clauses²⁶ of the Constitution of the United States.²⁷ Further, the court noted that the government has a legitimate state interest in protecting the integrity of marriages and that

individuals who so effortlessly and casually become ministers, priests, or rabbis (i.e., by applying to become a minister, priest, or rabbi by submitting their names and addresses

¹⁷ *Id.* at 562, 202 S.E.2d at 912.

¹⁸ *Id.* at 569, 202 S.E.2d at 917.

¹⁹ See *Rubino v. City of New York*, 480 N.Y.S.2d 971 (N.Y. Sup. Ct. 1984) (finding no merit in argument that refusal of City’s clerk to accept application filed by ordained ministers of the Universal Life Church to permit them to perform marriages violated their First Amendment rights); *Ravenal v. Ravenal*, 338 N.Y.S.2d 324, 328 (N.Y. Sup. Ct. 1972) (annulling marriage because minister of Universal Life Church was not proper “minister” under New York law).

²⁰ See 18 U.S.C. §§ 241, 242.

²¹ See *Universal Life Church, Inc. v. United States*, 372 F. Supp. 770, 775 (E.D. Calif. 1974).

²² Virginia’s tax code and its laws related to persons authorized to perform marriage ceremonies are distinct bodies of the law with separate requirements.

²³ See *Universal Life Church v. Utah*, 189 F. Supp. 2d 1302 (C.D. Utah 2002).

²⁴ *Id.* at 1306.

²⁵ U.S. CONST., amend. I.

²⁶ U.S. CONST., amend. XIV.

²⁷ *Universal Life Church*, 189 F. Supp. 2d at 1313-15.

over the Internet or through the mail), cannot solemnize a marriage in Utah.... [O]ne who so cavalierly becomes a minister might not appreciate the gravity of solemnizing a marriage and might not bring to the ceremony the desired level of dignity and integrity.^[28]

This case does not undermine *Cramer*; instead, it supports the holding in *Cramer*.²⁹ If anything, legal developments after the *Cramer* case strengthen the Court's conclusion.

A 1998 circuit court case similarly rejected the contention that a self-proclaimed "minister" must be licensed to perform marriages in Virginia.³⁰ As that court aptly noted, "[i]t should be clear from the outset that this is not a case concerning religious freedoms. Instead, the only question is whether Ms. Kooiman is a 'minister' of a religious denomination and in 'communion' with the members of the religious society."³¹ Under the facts presented, the court answered that question in the negative.³² Similarly, in the prison context, the United States Court of Appeals for the Ninth Circuit rejected challenges brought by ministers of the Church to the application of prison rules that precluded such a minister from conducting marriages and study sessions.³³

Finally, § 20-23 does not permit arbitrary actions by a clerk in such a way that would raise procedural or "substantive" due process issues.³⁴ Section 20-23, particularly as construed by the *Cramer* court, establishes clear and judicially reviewable guidelines concerning the requirements for a minister to be authorized to perform a marriage in the Commonwealth.

Conclusion

Accordingly, it is my view that to the extent a minister from the Universal Life Church Monastery Storehouse becomes ordained in a fashion analogous to the ordination of ministers examined in *Cramer v. Commonwealth*,³⁵ a circuit court clerk is not required to authorize such ministers to perform marriages in the Commonwealth.

²⁸ *Id.* at 1315.

²⁹ Because the Utah statute differentiated between ministers ordained by mail or via the internet and ministers ordained by fax, telephone or in person, it suffered from an Equal Protection Clause defect that is not present in Virginia law. *Id.* at 1316-17. The Court held that this irrational distinction failed Equal Protection scrutiny. *Id.* The Virginia statutes do not draw such a distinction.

³⁰ *In re Kooiman*, 45 Va. Cir. 503, 507 (1998).

³¹ *Id.* at 505.

³² *Id.* at 505-07.

³³ See *Jones v. Bradley*, 590 F.2d 294, 295-96 (9th Cir. 1979).

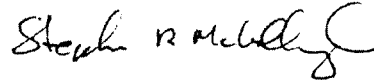
³⁴ *Etheridge v. Med. Ctr. Hosps.*, 237 Va. 87, 97, 376 S.E.2d 525, 530 (1989) (explaining procedural and substantive due process).

³⁵ 214 Va. 561, 202 S.E.2d 911.

The Honorable Chaz W. Evans-Haywood
May 24, 2010
Page 6

With kindest regards, I am

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen R. McCullough". The signature is fluid and cursive, with a large, stylized initial "S" and "M".

Stephen R. McCullough
Opinions Counsel

1:485. 1:941/10-052i