

MARCH 22, 1949.

HONORABLE SANFORD BATES, *Commissioner,*
Department of Institutions and Agencies,
State Office Building,
Trenton, New Jersey.

FORMAL OPINION—1949. No.16.

MY DEAR COMMISSIONER:

It appears that on several occasions patients of the feebleminded or mental hospitals, while on visit or on escape, have contracted marriages with other persons.

You desire to be advised whether these marriages are valid. There are three aspects to this question.

First, I assume that the contracting parties had first secured a license to marry as required by law, and that the marriage was solemnized by an official authorized so to do by statute. If the contrary were the fact, the marriage would be absolutely void by the provisions of R. S. 37:1-10, as amended by Chapter 227, P. L. 1939, which requires both prerequisites for a valid marriage.

Second, it must also be assumed that your patient had sufficient mental capacity to consent to the marriage, otherwise it is void ab initio, as distinguished from voidable.

Third, I must advise you that a marriage will not be rendered invalid by the mere fact that a license was secured as the result of misrepresentation.

In R. S. 37:1-2, it is provided that before a marriage can be legally performed in this State the persons intending to be married shall obtain a marriage license from the licensing official and deliver it to the person who is to officiate in the marriage ceremony.

In R. S. 37:1-9, it is provided that no such marriage license shall be issued to a person who is or has been an inmate of an insane asylum or institution for indigent persons unless it appears that such person has been satisfactorily discharged therefrom. In the situation which you describe, it appears that these persons have not been satisfactorily discharged from your institutions and, therefore, come within the prohibition clause of the cited section of the law. In R. S. 37:1-8, it is provided that any person furnishing false information to secure a license shall be guilty of perjury and punished accordingly.

R. S. 37:1-15, provides that any person who solemnizes a marriage without the presentation of the license provided for under the law shall be guilty of a misdemeanor and punished accordingly.

It is significant to observe in the reading of all of these sections of the law that it is nowhere provided that the securing of a marriage license under false representations shall invalidate the marriage contract. On the contrary, in the case of *Buechler vs. Simon*, 104 N. J. Eq. 572, it was specifically decided that the provision of the law prohibiting the issuance of a marriage license to an inmate of an insane institution would not affect the legality of the marriage.

The contracting parties who secure the license by fraud are subject to the penalties provided by the act, but, assuming capacity to consent and compliance with R. S. 37:1-10, as amended, the marriage is valid.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: EUGENE T. URBANIAK,
Deputy Attorney General.

MARCH 28, 1949.

MR. JOSEPH L. BUSTARD, *Assistant Commissioner,*
Department of Education,
Division Against Discrimination,
1060 Broad Street,
Newark 2, New Jersey.

FORMAL OPINION—1949. No. 17.

DEAR MR. BUSTARD:

Receipt is acknowledged of your letter of March 18th, in which you inform us that a question has arisen as to the meaning of the word "creed" in the 1945 Law Against Discrimination and in "the proposed civil rights law" (by which we assume that you refer to Assembly Bill No. 65, which would amend said 1945 law), and request our opinion as to whether "use of the word 'creed' in the law applies only to religious beliefs or religious principles, and not political beliefs or political principles."

It is our opinion, and we advise you, that, as used in the Law Against Discrimination (P. L. 1945, c. 169), the word "creed" comprehends religious principles only; and that if Assembly Bill No. 65 becomes law in its present form (second official copy reprint), no provision thereof will alter such meaning.

The broad object of the Law Against Discrimination is to prevent and eliminate practices of discrimination against persons "because of race, creed, color, national origin or ancestry".

In your letter you pass on to us the suggestion that in some dictionaries the word "creed" is defined to comprehend political, as well as religious, principles. Let this be conceded. Our task, however, is not to find and apply various authoritative definitions of the word, but to ascertain the meaning thereof as used in the Law Against Discrimination. It would be futile, therefore, to resort to dictionaries. Nor would reported judicial constructions of the word be helpful. Rather, we approach the issue, first, from the viewpoint of the meaning intended for the word "creed" by the Legislature which enacted the law, and, secondly, from the viewpoint of pertinent provisions of the 1947 Constitution.

It is a matter of common knowledge that our Law Against Discrimination was patterned generally after a similar law which had been then recently enacted in New