

Man in Same-Sex Marriage May Wed Woman Too, Says North Dakota

A man already married to another man in a state that permits same-sex marriage could wed a woman in North Dakota without breaking state laws, the state's top attorney has found.

The finding raises potentially complex issues about Social Security and death benefits, tax exemptions and even possible prosecutions for bigamy or polygamy, said a constitutional law expert.

Those issues are likely to arise more often with 16 states plus the District of Columbia now recognizing **same-sex marriage** while a majority of states still ban it, said Jeffrey Shaman, a professor at DePaul University's College of Law.

The issue came up when a man giving only his first name called Burleigh County Recorder Debbie Kroshus in September to ask if he could marry a woman in North Dakota if he were already married to a man in another state, she said.

"I didn't ask where this caller was calling from or where he planned on getting a marriage license," Kroshus said in a telephone interview, adding that it was not possible to determine if the man had applied for a marriage license.

The man could not get a divorce in North Dakota because of the state ban on same-sex marriage and he said the man he is married to also lives in a state that does not recognize **gay marriage**, Kroshus said.

Kroshus asked the state's attorney from Burleigh County to seek the opinion from the attorney general.

North Dakota is among the states that ban same-sex marriage by

state law and state constitutional amendment. Since it would not recognize the man's same-sex marriage, he could also marry a woman in North Dakota without breaking state laws, Attorney General Wayne Stenehjem said in an opinion dated Dec. 12.

Stenehjem also found the man would not be committing a crime in North Dakota if he filled out the application as "single/never married" and declined to discuss whether he could be prosecuted for bigamy in another state if he later moved to a state that recognized same-sex marriage.

Shaman said more and more people will enter into same-sex marriages and move to other states as the recognition of same-sex marriage increases. And same-sex couples, like opposite-sex couples, will part ways.

"I think there are going to be more and more of these questions," Shaman said in a telephone interview.

The Supreme Court has found that federal law must recognize same-sex marriage in states where it is legal, but the ruling in June that struck down part of the **Defense of Marriage Act** stopped short of requiring states to recognize same-sex marriages from other states, Shaman said.

"Although this is pretty extreme in its complexity, situations like these do arise because of the nature of our country," Shaman said. "We are a federation and states have authority to enact laws as they see fit."

Stenehjem referenced a part of the Defense of Marriage Act that says states need not recognize a same-sex marriage formed in another state in finding that a marriage license could be issued even if the same-sex marriage was not dissolved.

The state attorney general's opinion came a day before a U.S. federal judge struck down a portion of Utah's bigamy law governing cohabitation as unconstitutional, saying it bars consenting adults from living together and criminalizes their

intimate sexual relationships.

Reporting by Eric M. Johnson in Seattle and David Bailey in Minneapolis; editing by Gunna Dickson

© 2013 Thomson Reuters. All rights reserved.