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February 13, 1974

FILE NO. S-695

ELECTIONS:
Registration of married woman

Honorable Jack Hoogasian
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Dear Mr. Hoogasian:

I have your recent letter wherein you state:

"The following problem arises: Whether a woman who marries but retains her name without adopting the marriage name must re-register for election as provided in Ch. 46, Sec. 6-54.

Your opinion in this matter would be appreciated."

Your attention is first called to Section 6-54 of

"The Election Code", (Ill. Rev. Stat., 1971, ch. 46, par. 6-54)

which provides:

"Any registered voter who changes his or her name by marriage or otherwise, shall be required to register anew and authorize the cancellation of the previous registration; * * *"

It should first be noted that in Illinois there is no statute which requires a woman to adopt, assume or change her own name to her husband's surname upon marriage.

Section 16 of "An Act to revise the law in relation to divorce", (Ill. Rev. Stat., 1971, ch. 40, par. 17) permits a woman to resume her maiden name or the name of any former husband, upon being granted a divorce. However, the Illinois Supreme Court has held that even without the statutory permission, a woman has the right to resume her maiden name, Reinken v. Reinken, 351 Ill. 409. At page 413 of this opinion the court said:

"At common law, and in the absence of statutory restriction, an individual may lawfully change his name without resort to any legal proceedings, and for all purposes the name thus assumed will constitute his legal name just as much as if he had borne it from birth. (45 Corpus Juris, 381.) Our 'act to revise the law in relation to names' (Cahill's Stat. 1931, chap. 96) permits an individual to apply to the circuit court for the entry of an order changing his name. These statutory provisions are, however, not exclusive but are merely permissive, and they do not abrogate the common law right of the individual to change his name without application to the courts. (45 Corpus Juris, 381, 382, and authorities there cited.) In 19 Corpus Juris, under the title 'Divorce,' it is said at page 182: 'Since at common law a person may assume any name which does not interfere with the rights of others, a woman who has obtained a divorce may, even without statutory authority, resume her maiden name.' (Citing authorities.)"

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The decision of "In re Will of Minnie Westerman", 401 Ill. 489 is in accord with the Reinken case.

I am aware of the decision in People ex rel. Rago v. Lipsky, 327 Ill. App. 63, which holds that it is well settled by common-law principles and immemorial custom that a woman upon marriage abandons her maiden name and takes the surname of her husband. I do not believe that this appellate decision should control. The other Illinois decisions and cases elsewhere establish that a woman may in fact retain her own name upon marriage with or without court proceedings.

A recent decision is Stuart v. Board of Supervisors of Elections, (Md.), 295 A. 2d 223 wherein the court rejected the Rago case and held that where a married woman had exclusively, consistently and nonfraudulently used her maiden name after marriage, the statute requiring the board of supervisors of elections, upon being advised of change of name by marriage to require the voter to show cause why her registration should not be cancelled, did not preclude a married woman from registering to vote using her maiden name. The court said at page 226:

"* * *We have heretofore unequivocally recognized the common law right of any person, absent a statute to the contrary, to 'adopt any name by which he may become known, and by which he may transact business and execute contracts and sue or be sued.' Romans v. State, 178 Md. 588, 597, 16 A.2d 642, 646. In the context of the name used in an automobile liability insurance contract, we approved the consistent nonfraudulent use by a married woman of a surname other than that of her lawful husband in Erie Insurance Exchange v. Lane, 246 Md. 55, 227 A.2d 231.* * *

* * *

If a married woman may lawfully adopt an assumed name (which, in Erie, was neither her birth given name nor the name of her lawful husband) without legal proceedings, then we think Maryland law manifestly permits a married woman to retain her birth given name by the same procedure of consistent, nonfraudulent use following her marriage. In so concluding, we note that there is no statutory requirement in the Code, in either Article 62 (Marriages) or Article 45 (Husband and Wife), that a married woman adopt her husband's surname. Consistent with the common law principle referred to in the Maryland cases, we hold that a married woman's surname does not become that of her husband where, as here, she evidences a clear intent to consistently and nonfraudulently use her birth given name subsequent to her marriage. Thus, while under Romans, a married woman may choose to adopt the surname of her husband--this being the long-standing custom and tradition which has resulted in the vast majority of married women adopting their husbands' surnames as their own--the mere fact of the marriage does not, as a matter of law, operate to establish the custom and tradition of the majority as a rule of law binding upon all."

Other cases which are in accord with the Stuart decision are: State ex rel. Bucher v. Brower, 21 Ohio Op. 208, 7 Ohio Supp. 51; Rice v. State (Tex.) 38 S.W. 801; Lane v. Duchac, 73 Wisc. 646, 41 N.W. 962; State ex rel. Krupa v. Green, 114 Ohio App. 497, 177 N.E. 2d 616; In re Leibowitz (N.D. Ill.), 49 F. Supp. 953; Succession of Kneipp, 172 La. 411, 134 So. 376. See also: Ruth Bader Ginsburg, "Symposium on the Status of Women", The American Journal of Comparative Law, Vol. 20, 1972, and Priscilla Ruth MacDougall, "Married Women's Common Law Right To Their Own Surnames", Women's Law Reporter, Fall/Winter, 1972/1973.

Your attention is also called to Section 18 of Article I of the 1970 Illinois Constitution which states:

"The equal protection of the laws shall not be denied or abridged on account of sex by the State or its units of local government and school districts."

In my opinion, this constitutional provision provides and protects the right of women to their own names.

In view of the foregoing, it is my opinion that if a woman exclusively, consistently and nonfraudulently

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uses her maiden name after her marriage, she is not required to register anew under Section 6-54 of "The Election Code". This section only applies where a person changes his or her name.

Very truly yours,

A T T O R N E Y G E N E R A L