

STATE OF ILLINOIS
MACON COUNTY
141 S. Main St.
Decatur, IL 62523

STEPHEN M. BEAN
COUNTY CLERK

February 27, 2014

Attorney General Lisa Madigan
500 S. Second St.
Springfield, IL 62706

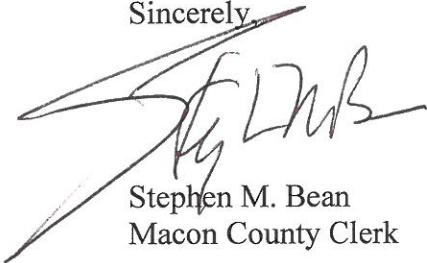
Dear Attorney General Madigan:

I am hoping you and your office can give the other 101 County Clerks in Illinois some guidance over the recent federal court ruling which found the current marriage law unconstitutional. Like the Champaign County Clerk, my personal belief is that if the current marriage law is unconstitutional; why not apply it to all 102 counties.

I have attached two State's Attorney's opinions explaining why we should not issue same sex marriage licenses.

I would hope that your office could shed some light, and direction, concerning whether marriage equality has really only come to one county, or to all of Illinois.

Sincerely,



Stephen M. Bean
Macon County Clerk

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MACON COUNTY STATE'S ATTORNEY'S OFFICE
JAY SCOTT, STATE'S ATTORNEY

MICHAEL B. BAGGETT
ASSISTANT STATE'S ATTORNEY
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February 26, 2014

The Honorable Stephen M. Bean
Macon County Clerk
141 S. Main Street
Decatur, Illinois 62523

Re: Macon County Same Sex Marriage Licenses in Light of Champaign
County Clerk's Decision to Immediately Begin Issuance

Dear Mr. Clerk:

I am writing to you as a follow up to my letter of February 21, and in light of the Champaign County Clerk's decision to immediately begin issuing marriage licenses to same sex couples. After the Champaign County Clerk announced his decision to immediately begin issuing marriage licenses to same sex couples, you asked whether the Macon County State's Attorney's Office's position had changed regarding whether you, as Macon County Clerk, may begin issuing marriage licenses to same sex couples.

First, let me start by correcting two errors in my previous letter. First, I referred to the public act which amends the Illinois Marriage and Dissolution of Marriage Act as P.A. 97-597. The public act is P.A. 98-597. Second, my previous letter stated that P.A. 97-597 is effective July 1, 2014. It should have said *June* 1, 2014.

To respond to your most recent inquiry, in short, the Champaign County Clerk's decision does not affect the position of the State's Attorney. That is because the State's Attorney's position is not a personal position, but a legal position. It remains the position of the State's Attorney's Office that the United States District Court's Order in *Lee, et al. vs. Orr*, applies only to the Cook County Clerk. That is because only the Cook County Clerk was sued in that case. No other Illinois county clerk was a party to the suit. Judge Johnson Coleman, despite finding that the ban on same sex marriage was unconstitutional, explicitly held that her finding only applied to Cook County. In light of the express limitation, the ruling does not apply to Macon County.

Until a court rules that said restriction is unconstitutional throughout the entire state or in Macon County specifically, the State's Attorney's position cannot change. His job, when advising

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county officials, is not to act as an advocate, but to simply interpret and apply the law as it stands.

It is also worth noting that no one knows what effect same sex marriages occurring in Macon County prior to June 1 without a court order will have if such marriages are later challenged in a probate or divorce setting. There is a possibility that any same sex marriages occurring before the effective date of P.A. 98-597 could be found invalid after the fact. A declaration of invalidity of a same sex marriage in a probate or divorce proceeding could have far reaching ramifications.

Finally, I will point out that it is ultimately not the State's Attorney's decision as to whether you will issue marriage licenses to same sex couples. The issuance of marriage licenses is a duty entrusted to you and only you, as County Clerk. The State's Attorney's Office may only provide legal advice to you to the best of its ability – it is ultimately your decision as to whether or not to proceed immediately with the issuance of marriage licenses to same sex couples.

FOR THE MACON COUNTY STATE'S ATTORNEY



Michael B. Baggett
Assistant State's Attorney

MACON COUNTY STATE'S ATTORNEY'S OFFICE
JAY SCOTT, STATE'S ATTORNEY

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February 21, 2014

The Honorable Stephen M. Bean
Macon County Clerk
141 S. Main Street
Decatur, Illinois 62523

Re: The Effect of the United States District Court's (Northern District of Illinois) Order of February 21, 2014, in *Lee, et al. vs. Orr*, 13-cv-8719

Dear Mr. Clerk:

You have sought an opinion regarding the effect of United States District Judge Sharon Johnson Coleman's Memorandum Opinion and Order handed down earlier today in *Lee, et al. vs. Orr*, Docket No. 13-cv-8719 (N.D. Ill.) on the issuance of marriage licenses to same sex couples in Macon County. For the reasons that follow, it is the position of the State's Attorney that the Order's effect is limited solely to Cook County and may not be used as a valid basis for the issuance of marriage licenses to same sex couples in Macon County at this time.

As you are aware, Section 201 of the Illinois Marriage and Dissolution of Marriage Act authorizes marriage only between a man and a woman. 750 ILCS 5/201. The General Assembly recently amended Section 201 to remove this restriction. *See* Public Act 97-597. However, pursuant to Article IV, § 10 of the Illinois Constitution, P.A. 97-597 does not take effect until July 1, 2014.

In her Order, Judge Johnson Coleman found that the restriction of marriage to opposite sex couples only runs afoul of the Fourteenth Amendment's Equal Protection Clause, but expressly noted that due to the posture of the lawsuit before her, her Order applied only to the Cook County Clerk.

For these reasons, it is the position of the State's Attorney, as chief legal officer of the County, that unless and until ordered to do so by a court of competent jurisdiction, you, as Macon County Clerk, may not violate the standing law of the State of Illinois by issuing marriage licenses to same sex couples at this time. When P.A. 97-597 takes effect on July 1, 2014, you will no longer be so restricted.

FOR THE MACON COUNTY STATE'S ATTORNEY

A handwritten signature in black ink, appearing to read "Michael B. Baggett".

Michael B. Baggett
Assistant State's Attorney