

DECISION



THE COMPTROLLER GENERAL OF THE UNITED STATES WASHINGTON, D. C. 20548

FILE: B-186179

DATE: JUN 30 1976

MATTER OF: Chief Warrant Officer, USA

DIGEST: Army officer who entered into a common-law marriage in Texas, where such marriages may lawfully be contracted, is legally married under Texas law and may claim his spouse as a dependent for basic allowance for quarters purposes.

This action is in response to a letter dated February 24, 1976, from Lieutenant Colonel T. J. Brantley, USA, Finance and Accounting Officer, Fort Bliss, Texas, requesting an advance decision as to the status of [redacted] as the common-law wife of Chief Warrant Officer 2, USA, for the purpose of his claiming her as a dependent for basic allowance for quarters (BAQ) at the with dependents rate. The request was assigned control number DO-A-1251 by the Department of Defense Military Pay and Allowance Committee and forwarded to this Office by Office of the Comptroller of the Army letter dated March 20, 1976 (DACA-FAF-P).

The record indicates that Mr. [redacted] was divorced on October 13, 1972, from [redacted] in El Paso, Texas. The record also includes a copy of an affidavit dated January 28, 1974, by Mr. [redacted] stating that, on April 13, 1973, he and [redacted] mutually agreed to become husband and wife and that the marriage agreement was further consummated by each of them holding themselves out to their relatives, associates, neighbors and members of the community as husband and wife. Also included with the submission was a copy of a Declaration and Registration of Informal Marriage filed in El Paso County, Texas, on January 23, 1974, in accordance with Vernon's Texas Code Annotated (1975) (V. T. C. A., Family Code) §§ 1.92 and 1.94. That declaration, which was sworn to by both [redacted] and [redacted], states:

"We, the undersigned declare that we are married to each other by virtue of the following facts: On or about April 13, 1973, we agreed to be married, and after that date we lived together in this State as husband and wife and in this State represented to others that we were married."

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Pursuant to 37 U.S.C. 401 and 403 (1970), Department of Defense Military Pay and Allowances Entitlements Manual (DODPM), paragraph 30232, provides that a member's lawful spouse, with some exceptions not applicable here, is at all times considered his dependent for the purposes of BAQ. A member's spouse acquired through a valid common-law marriage is a lawful spouse and, therefore, may be claimed as a dependent for BAQ purposes. See B-163509, April 18, 1968, and 39 Comp. Gen. 374 (1959).

As a general rule the validity of a marriage is determined by the law of the place where it was contracted, and if valid there it will be held valid everywhere, in the absence of contravention of positive law, or consideration of policy to the contrary. 21 Comp. Gen. 79, 80 (1941). In this case it appears the parties were residing in the State of Texas when they agreed to live as husband and wife and they are apparently still residing there. Thus, the determination of the validity of their marriage should be based on Texas law.

Common-law or informal marriages may be entered into in Texas and are recognized by the courts there as legal marriages producing the same legal consequences as ceremonial marriages. v. , 377 S.W. 2d 855 (Tex. Civ. App. 1964) and v. , 199 S.W. 2d 279, 284 (Tex. Civ. App. 1947). In order to constitute a valid common-law marriage in Texas it must be established that the parties entered into an expressed or implied agreement to become husband and wife; that such agreement was followed by cohabitation as man and wife; that they held each other out professedly and publicly as husband and wife; and that the parties possess the capacity to marry, and there is no legal impediment prohibiting the marriage contract. See v. , 382 S.W. 2d 162, 165-186 (Tex. Civ. App. 1964) and , 523 S.W. 2d 94 (Tex. Civ. App. 1975). The facts stated in Mr. affidavit and in both parties' declaration of their marriage appear to conform to those requirements.

Concerning proof of such marriages, V.T.C.A., Family Code § 1.91 provides as follows:

"(a) In any judicial, administrative, or other proceeding, the marriage of a man and woman may be proved by evidence that:

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"(1) a declaration of their marriage has been executed under Section 1.92 of this code; or

"(2) they agreed to be married, and after the agreement they lived together in this state as husband and wife and there represented to others that they were married.

"(b) In any proceeding in which a marriage is to be proved under Subsection (a)(2) of this section, the agreement of the parties to marry may be inferred if it is proved that they lived together as husband and wife and represented to others that they were married."

As was indicated previously, the Declaration and Registration filed by the parties in El Paso County, Texas, on January 23, 1974, appears to conform to the provisions of V.T.C.A., Family Code §§ 1.92 and 1.94. In addition, we note that subsection 1.94(d) provides that a declaration recorded as provided in that section is prima facie evidence of the marriage of the parties.

Accordingly, under Texas law,
 is Mr. ; lawful spouse, has been such since
 April 13, 1973, and, as such, may be claimed as his dependent for
 BAQ purposes. Mr. ; application for BAQ is returned
 herewith.

R. F. KELLER

Deputy
 Comptroller General
 of the United States