



JO ANNE BERNAL
EL PASO COUNTY ATTORNEY
500 EAST SAN ANTONIO
ROOM 503, COUNTY COURTHOUSE
EL PASO, TEXAS 79901

NO. 201020

PRESS RELEASE

FOR IMMEDIATE RELEASE

Monday August 9, 2010

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For More Information Contact:

Elhiu Dominguez

Public Affairs Officer

Phone: (915) 546-2016

Cell: (915) 472-1354

FAX: (915) 546-2133

Elhiu.dominguez@epcounty.com

TEXAS ATTORNEY GENERAL DECLINES TO ISSUE OPINION TO CLARIFY SAME-SEX MARRIAGE CONTROVERSY IN EL PASO

El Paso County Attorney Jo Anne Bernal today announced that the Office of the Texas Attorney General Greg Abbott has formally declined to issue a legal opinion regarding the granting of marriage licenses to individuals who have undergone sex change operations.

On April 19, 2010 El Paso County Attorney's Office requested a legal opinion as to whether the County Clerk could legally issue a marriage license under a new Texas law when one of the parties is a female and the other was born a man but subsequently underwent sexual reassignment surgery and is now living as a woman.

The request was made after two Hudspeth County women requested, and were denied, a marriage license in El Paso in February of this year. As proof of identification, one of the applicants presented a birth certificate identifying her as a male, a court order approving his name change from a male to female, and an Arizona driver's license with her new identity as a female.

Presented with conflicting documents, the El Paso County Clerk's Office requested guidance from the County Attorney's Office as to the eligibility of the applicants to obtain a marriage license.

Legal analysis revealed the existence of a legal gray area around this particular issue, raised by recent changes adopted by the Texas Legislature. Up until 2009, the identity and gender of a marriage license applicant was established through a birth certificate. However, during the 81st Session, the Texas Legislature expanded the list of documents acceptable to establish proof of identity and age for purposes of obtaining a marriage license. Section 2.005(b) of the Texas Family Code lists the nineteen documents approved and, to make things more difficult, all are given equal legal weight.

This is important for transgender individuals, as conflicting information on various personal documents may arise not from fraud, but because of sex reassignment surgery, and so transgender applicants should be able to self-identify their gender, as opposed to a court doing it for them.

In a letter dated on August 6, 2010, the Texas Attorney General's Office notified the El Paso County Attorney's Office that they will refrain from answering any questions or issuing an opinion, and in fact are closing the file on this request. The reason provided for this action is that issues included in the opinion request are the subject of pending litigation recently filed in the 245th District Court of Wharton County, *In the Estate of Thomas Trevino Araguz III, Deceased*, Cause No. 44575. The letter further states that, once that litigation is concluded, the El Paso County Attorney could submit another request if these questions remain unresolved.

El Paso County Attorney Jo Anne Bernal expressed her disappointment regarding the decision of the Texas Attorney General Gregg Abbott.

"Unfortunately, the ambiguity in the law and confusion for the County clerk remains," Bernal concluded.

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