

## THE THEATER OF THE ABSURD COMES TO NORTH DAKOTA

Eugene Ionesco, Samuel Beckett and several other authors wrote plays in the 1950's which critics labeled the Theater of the Absurd. Their plays expose a society which replaces logic with irrationality.

On December 12, 2013, the North Dakota Attorney General Wayne Stenehjem issued an opinion Letter Opinion 2013-L-06 which could have been penned by a member of that literary movement.

A North Dakota state's attorney asked Attorney General Stenehjem whether a person in a same-sex marriage, validly entered into in another state and never divorced, can obtain a marriage license in North Dakota.

Specifically, he was asked

- (1) can a county recorder issue a marriage license to this person?
- (2) is the person committing a crime by stating under oath on the marriage license application that s/he is "single/never married?" and
- (3) is it bigamy if the person then gets married in North Dakota and moves to a state where same-sex marriage is valid.

Rather than following the lead of fellow Attorneys General in Virginia, Kentucky, Pennsylvania, California, Nevada, Oregon and Illinois who have elected not to defend their state's ban on same-sex marriage, Attorney General Stenehjem decides to ignore legal precedent and to disregard the extent and breadth of the equal protection and due process clauses of the 14<sup>th</sup> amendment to the U.S. Constitution.

To the first question Attorney General Stenehjem opines that since North Dakota prohibits recognition of same-sex marriage under its state constitution, the marriage license applicant's same-sex marriage is a nullity. Therefore, he reaches the conclusion that the applicant in a same-sex marriage is unmarried in the eyes of North Dakota and free to marry a person of a different sex in his

state. Thus, the Attorney General advises that the local recorder can issue a North Dakota marriage license to a person in a same-sex marriage validly entered into in another state.

That conclusion which refuses to recognize the reality of someone's life mimics perfectly the philosophy of the Theater of the Absurd --- replace the logical with the absurd.

Having boxed himself in with that irrational position, the Attorney General is forced to follow this illogic to the ridiculous. As to the question whether a person is committing a crime by stating that she or he is not married, the North Dakota Attorney General advises that it is not as crime for an individual in his state who has married a same sex spouse in another state to swear under oath that she or he is not married.

One wonders whether the North Dakota Attorney General would find it a crime for that same individual to state under oath that she or he is in a marriage. Can one have it both ways? Ionesco could not have written this better.

As to the last question about bigamy, North Dakota Attorney General Stenehjem decides to take a pass. By the twisted interpretations in the letter opinion, the North Dakota Attorney General permits someone to put her or himself in the vulnerable position of being accused of bigamy and putting one's family at risk. Yet, the chief law enforcement official of North Dakota decides it would be inappropriate "to interpret the laws of other states."

Beckett and Ionesco turned the world upside down. In their works one can ignore reality and replace it with the illogical and the absurd. Welcome to North Dakota.