

Ky. OAG 77-334, 1977 WL 247647 (Ky.A.G.)

Office of the Attorney General

Commonwealth of Kentucky

OAG 77-334

May 23, 1977

NAMES - Change of personal name, persons eligible

REAL ESTATE BROKERS & SALESMAN -  
Qualification for license

SYLLABUS: (1) In the absence of a Kentucky court ruling to the contrary, the Real Estate Commission's requirement that a salesman license applicant must use her correct married legal name would probably be upheld as constitutional by the federal courts. (2) The name "K. P. Gail" used by applicant meets the Commission's requirement as to the correct married legal name.

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Your client, Ms. K. P. Gail, applied to the Kentucky Real Estate Commission to take the March, 1977, test for a salesman's license. In making application, she used the name "K. P. Gail," which she has been using since her marriage to K. B. Poonacha on September 21, 1971, in Madison, Wisconsin. (Emphasis added). However, Ms. Gail's application and fee were returned by the Commission stating she must apply under her "correct married name," which the Commission contends is "Gail Poonacha." (Emphasis added).

It appears that K. P. Gail's maiden name was Gail Grajkowski. After her marriage to K. B. Poonacha, she changed her name to K. P. Gail in accordance

with the culture of her husband who is from India.

You ask whether or not, in our opinion, the application must be in the name "Gail Poonacha," or whether she may legally apply under the name "Ms. K. P. Gail."

You pointed out in a letter to the Commission that the name "Gail Poonacha" is in fact a combination of the applicant's first name (Gail) and her husband's first name (Poonacha). You also wrote the Commission that her husband is from India, and thus the positioning of first names and surnames does not correspond to the custom in this country. You told the Commission that requiring Ms. Gail to apply for a license in a name that she has never used and by which she is not known by in the community would create a serious problem for her. You have said that it would cause a significant interference with her ability to pursue the occupation of a real estate sales person if not misleading the public as to her identity.

You enclosed a copy of a letter from the Attorney General of Michigan stating in effect that in the opinion of that office your client's legal name in Michigan is "K. P. Gail." The Attorney General of Michigan stated that under Michigan common law, a married woman can change her name and use any name she desires, provided it is not done with a fraudulent intent.

We concluded in OAG 74-902, copy enclosed, that: (1) There is no Kentucky statute or applicable Kentucky appellate case decision compelling the wife's taking the husband's surname; (2) The general common law that anyone may change his or her name, except where there is an intent to defraud, has not been abrogated in Kentucky; (3) There is no Kentucky statute or applicable case decision prohibiting a married woman from changing her surname [that of her husband's] to her maiden name; (4) [KRS 403.230\(2\)](#) is restrictive only as relates to a divorce case, but there is nothing in the statute which transforms a recognized social custom [a married wo-

man's taking her husband's surname] into a rule of law; and (5) a married woman can go to the county court for a name change under [KRS 401.010](#), which statute is merely permissive and constitutes an optional method of name change. Thus, that statute is not an exclusive approach.

\*2 Cf. OAG 77-72, copy enclosed, in which we pointed out, because of federal holdings, that a married woman applying for a driver's license must use her husband's surname.

In using the name "K. P. Gail" your client is merely following Indian custom. The "K" refers to her husband's family name. The "P" is an abbreviation for her husband's given name, "Poonacha." The word "Gail" is her given name.

We have examined [KRS 324.040](#) and [KRS 324.045](#) concerning qualifications for license. We find no specific statutory requirements as to a married woman's application. We have also read 201 KAR 11:005 and can find no specific treatment of a married woman's application as such.

In the driver's license litigation, the Sixth Circuit Court of Appeals, in [Whitlow v. Hodges, 539 F.2d 582 \(1976\)](#), did not determine whether the district court was correct in holding that Kentucky, like Alabama, also has a common law rule requiring a married woman to adopt her husband's surname. Instead, it expressly left that question open to the Kentucky courts. "Accordingly it acknowledges," as Judge Mcree expressed it in his dissent, "the possibility that Kentucky law does not require a married woman to adopt her husband's surname ..." However, the Sixth Circuit Court of Appeals upheld the "verbal regulation" of the Transportation Department as having a rational connection with a legitimate state interest and as being reasonable. It was argued by counsel that the regulation promoted proper identification in the licensing of vehicle operators.

Here, the Real Estate Commission would probably contend that requiring a married woman applicant to use the "legal married name" would promote proper identification.

It is our opinion, in the absence of the Kentucky appellate courts' ruling on the common law as to name change, that the Sixth Circuit position in *Whitlow v. Hodges*, above, would control. In other words, the constitutionality of the Commission's requirement of the use of "married legal name" would no doubt be upheld by the federal courts, absent a Kentucky court ruling on the Kentucky common law.

However, it is our view that if this question were clearly presented to our Kentucky appellate courts, the ruling would be that a married woman can use any name she pleases by: (1) merely using any name she desires, or (2) by resorting to court action under [KRS 401.010](#). But, at present, there is a "Kentucky vacuum" on the point about the common law rule in Kentucky.

Under the present vacuum, the final question is whether the "correct legal married name" insisted upon by the Commission, and which term is by the federal courts equated with the "husband's surname," is being complied with by applicant in her use of the name "K. P. Gail." It is our opinion that "K. P. Gail" satisfies the Commission's requirement as to the "correct legal married name." Note that "K. P. Gail" follows precisely the Indian custom as to a married woman's name. The name "Gail Poonacha" is merely a combination of the wife's first name [Gail] with her husband's given name [Poonacha]. Thus, the applicant has wholly complied with the requirement of use of the "correct legal married name." Note that the Attorney General of Michigan believes the applicant's legal name in Michigan is "K. P. Gail." Actually, "K. P. Gail" is, in legal theory, merely the Indian equivalent of a married woman's use of her husband's name in the United States.

\*3 The Kentucky courts have held that a marriage valid where it takes place is valid in Kentucky unless it violates the public policy of this state. [Mangrum v. Mangrum, 310 Ky. 226, 220 S.W.2d 406 \(1949\)](#). We see no reason why that principle would not apply here to the assumption of a marital name. If the applicant's marital name in India is "K. P.

Gail," then Kentucky should recognize it, since no controvention of public policy is evident.

In OAG 77-239, copy enclosed, we concluded that a married woman may use her maiden name in registering to vote, and will be entitled to vote provided it is done in good faith and without fraudulent intent.

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