

## PROVINCETOWN



KEVIN MINGORA/Cape Cod Times

Doug Johnstone, Provincetown's town clerk, believes Gov. Romney's interpretation of the state high court ruling on gay marriage is flawed.

# Defining moment

## CAPE OFFICIALS SPEAK OUT



"I don't know frankly which aspect of any of that (defiance of the residency requirement) would rise to the level of criminal conduct."

— Cape and Islands District Attorney  
Michael O'Keefe

"I answer to a higher authority. I answer to the state Supreme Judicial Court. I answer to the constitution of my state. I answer to the citizens of my town."

— Provincetown Selectman  
Cheryl Andrews



"It's not my job to make anyone feel less than or not equal to simply because the governor wants me to. That's his interpretation."

— Provincetown Town Clerk  
Doug Johnstone

## Town's legal view rejects Romney's on gay marriage

By **CONOR BERRY**  
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**PROVINCETOWN** — Prosecution of town clerks who fail to heed state edicts on gay-marriage license applications is unlikely, the Cape and islands' top prosecutor said yesterday.

Despite the Romney administration's warning to clerks who refuse to enforce a state residency requirement on gay marriage, District Attorney Michael O'Keefe said, "I don't know frankly which aspect of any of that would rise to the level of criminal conduct."

Gov. Mitt Romney warned yesterday that town and city clerks who fail to enforce the law could be referred to district attorneys or the state attorney

general.

The caution came after the Provincetown selectmen voted Monday to allow Town Clerk Doug Johnstone to issue marriage licenses to out-of-state gay couples despite a 1913 state law barring marriages that would be illegal in a couple's home state.

The Romney administration said the prohibition would apply to all non-resident couples unless they intend to move to Massachusetts.

Under state law, officials who issue a marriage license "knowing that parties are prohibited" from legally marrying in their home states could face a fine of \$100 to \$500 or a maximum of one year in jail.

Please see **MARRIAGE /A-6**

# Marriage: Law read differently

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"If city and town clerks choose to break the law, we will take appropriate enforcement action," Shawn Feddeman, Romney's spokeswoman, said yesterday. "That could include referral to the local district attorney or the attorney general, depending on what the circumstances are."

O'Keefe said he doubted the prospect of prosecution.

"We'd certainly review anything that was referred to us and make the appropriate judgment, whatever it was at the time," he said.

Even so, O'Keefe urged town clerks to obey the law.

"I just hope people exercise some good judgment about all of this," he said, adding that he understood "it's an emotional issue for a lot of people."

State Attorney General Thomas Reilly, who refused Romney's request to seek a stay in the Supreme Judicial Court's gay-marriage order, did not have a comment on the likelihood of legal action against defiant clerks.

"Throughout this process, people have played by the rules, and now we assume that the clerks will carry out their responsibilities under the law, Corey Welford, Reilly's spokesman, said yesterday.

## Matter of interpretation

Romney, in a statement Monday, implored clerks to follow the law.

"We are a nation of laws," he said. "Beginning (Monday), Massachusetts law will allow same-sex couples to marry if they reside here. While I don't agree with this law, I will follow it."

But Provincetown officials say it all comes down to interpretation, not defiance.

The board of selectmen, town manager, town clerk and town attorney, in a meeting Monday, made it clear that they interpret the legalities of same-sex mar-

## Few clerks follow Provincetown's lead

*Most local town clerks will not defy the governor's order. Only Brewster seems ready to follow Provincetown's lead.*

■ **BREWSTER:** Town Clerk Joanne Krauss said even if there is a clear impediment in the state where the couple lives, she will issue the license if they sign the Notice of Intention form, "because signing the oath takes the liability off me. "I can't be the one to say they're lying," she said.

■ **BARNSTABLE:** Town Clerk Linda Hutchenrider said she would support the residency requirement. "As a person who is elected in Barnstable, I think the citizens expect us to follow the law," she said. "(Provincetown officials) have actually put their clerk in a position where he can face a fine or go to jail ... We're all concerned for him."

■ **EASTHAM:** Town Clerk Lillian Lamperti said she's never seen a debate over how to enforce the law in her 25 years on the job. "What the governor says is what we're following. That's the way it has been. We follow whatever directives come from those offices. We don't make determinations (on our own). We check with them," she said.

■ **EDGARTOWN:** Town Clerk Wanda Williams said she will be following state law. "I take my direction from the laws of the commonwealth," she said.

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based on sound legal advice

riage in a drastically different way than does the Romney ad-

To that end, town officials say they will follow their reading of the law, not the administration's interpretation.

The move, in defiance of the governor's edict, calls for Johnstone to issue licenses to couples who sign a statement attesting to "an absence of any legal impediment" to the marriage in their home state.

"We don't answer to edicts. We answer to the courts," said Selectman Cheryl Andrews, chairman of the five-member board.

"I answer to a higher authority. I answer to the state Supreme Judicial Court. I answer to the constitution of my state. I answer to the citizens of my town. And I do the best I can," she said.

The selectmen last month decided to shift the burden of truth onto non-resident gay couples who apply for marriage licenses in the gay-friendly town. On Monday, however, the board went a step further and voted to direct the clerk not to automatically turn away non-residents. Applicants must still meet all other requirements, however.

### **Incomplete form**

"Clearly (Romney) is against the issue to begin with," Johnstone said. "Clearly he's trying to contort himself into different positions."

The town would refer non-residents to a section of the state Notice of Intention of Marriage form that requires license-seekers to swear no legal impediments to gay marriage exist in their home state.

"It's not my job to make anyone feel less than or not equal to simply because the governor wants me to," Johnstone said. "That's his interpretation."

Based on state training local clerks received at Barnstable Town Hall last week, Johnstone said that it was his belief that couples who failed fill out residency questions 6A and 14A of the intention form would still be allowed to marry.

Meanwhile, his counterpart in Truro, Cynthia A. Slade, said it was her understanding that leaving those questions blank would constitute an incomplete form, thereby preventing it from being processed.

"We will follow the law," Slade said. "It's all new territory."

Provincetown officials say their interpretation of the law is

and lots of homework, and is not intended as a protest against the governor, though they disagree strongly with his position on gay marriage.

"It is a matter of interpretation, and we're just trying to interpret it in a way that's consistent," Johnstone said.

Considering the likelihood of Provincetown being "sued one way or another," he said, the town decided to "act on what we think is right and fair for the couples."

### **"No other choice"**

Andrews, a veteran selectman who became the board's chairman Monday night, said she felt the town made the right decision.

"When you are an elected official and you take policy positions, and you do anything ... there's always a risk of litigation. But you study the law (and) meet with counsel."

Selectman Mary-Jo Avellar agreed with Andrews, adding, "It's the right thing to do, it's the decent thing to do, it's the human thing to do. There's no other choice."

Selectman Richard Olson said the decision was "not an act of defiance at all," but rather "an attempt to make rational sense out of a completely muddled response from the Romney administration."

The town clarified its approach to same-sex marriage at a noontime meeting Monday, stating: "It shall be the policy of the Provincetown Board of Selectmen that the Town Clerk may issue marriage licenses to any persons - whether residents of the Commonwealth of Massachusetts, non-Commonwealth residents that intend to reside in Massachusetts, or non-Commonwealth residents that do not intend to reside in Massachusetts - who complete the revised 'Notice of Intention of Marriage' form prescribed by the Massachusetts Department of Public Health."

For Selectman Michele Couture, it comes down to a matter of fairness.

"It's a question of basic equality," she said. "It's a moment in history not just for gay people, but for all people in the United States."

The board's decision was unanimous and came quickly, she said, adding, "there was instant consensus."

Selectman Sarah Peake could not be reached for comment yesterday.