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Legal decision due on defining 'family association'

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SACRAMENTO UNION CAPITOL BUREAU

The secretary of state is expected to respond today or Monday to an opinion by the Legislative Counsel's Office that registering "family associations" between homosexual couples and unmarried heterosexual couples is illegal.

Registration of family associations under state corporation codes has been used recently by unmarried heterosexual and homosexual couples as a way of obtaining official recognition.

In response to a request by state Sen. Newton R. Russell, R-Glendale, the Legislative Counsel's Office said, "A group of persons who live together in a relationship in which they share rights and duties similar to those shared by members of a traditional family are not entitled to register the name of their 'association' with the secretary of state."

However, Anthony L. Miller, chief legal counsel for the secretary of state, said Thursday the office appears to be on solid legal ground.

"Based upon our look at the material so far, we think the legislative counsel is simply wrong on that issue," said Mr. Miller.

The legislative counsel decision is based on registration creating an exclusive right to the use of a person's name and a common word "family" and that would preclude anyone else with the same name from using their name.

"The registration of an association under the name such as 'Family of John Doe and Jane Roe' would give the association an exclusive right to

use that name and would prohibit others from using that name, under threat of criminal penalty," the counsel's office wrote to Sen. Russell.

"The association of ('family') with a surname does not help since a family name cannot be the subject of exclusive right-to-use. Thus . . . the registration of such a name would be repugnant to the laws of the state that permit people to use common words and family names without restriction," the letter concludes.

However, Los Angeles attorney Thomas Coleman dis-

agrees.

"They say that the term 'family' is in the public domain and therefore it cannot be exclusive. Well, so is the term 'moose' and 'lodge' but that doesn't mean that you can't register the name the 'Glendale Moose Lodge,'" said Mr. Coleman.

There are also a number of cases where the word "family" is included in a business name, such as family restaurants or "James Jones and Family, Inc.," he said. He also noted that use of surnames in corporations is quite common.