

Attorney General

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ATTORNEY GENERAL ISSUES OPINION ON SAME SEX MARRIAGE

Attorney General Eliot Spitzer today issued a legal analysis of the issues surrounding same sex marriage in New York.

The analysis is meant to provide guidance to local officials throughout New York State as to whether they may issue marriage licenses to same sex couples and whether same sex marriages are valid in New York.

Spitzer's office carefully reviewed the language and history of New York's Domestic Relations Law and other relevant statutes and issued an opinion from his office with the following findings:

- The language of the New York State Domestic Relations Law - which includes references to "bride and groom" and "husband and wife" - does not authorize the issuance of licenses to same sex couples in New York;
- Therefore, the opinion recommends that local officials in New York should not issue marriage licenses to same sex couples, and officiants should not solemnize same sex wedding ceremonies;
- New York's marriage laws raise important constitutional questions involving the equal protection of the laws. Any uncertainty arising from those questions must and will be decided by the courts; and
- Under state court precedent, same sex marriages and civil unions lawfully entered in other jurisdictions outside the state should be recognized in New York.

"The issues underlying this opinion represent matters on which people of good faith have strongly-held and widely divergent views," Spitzer said. "Ultimately, these issues will be resolved in the courts, which have the overriding authority to interpret and apply the law. Until then, this analysis is being offered to help guide local officials in the performance of their duties."

The same sex marriage issue was thrust into the public spotlight when the Mayor of New Paltz officiated at marriages of gay and lesbian couples last Friday. Spitzer was asked by the Executive branch to seek an injunction to prevent the mayor from performing the marriages but declined to do so because he did not believe the action met the legal standard for granting an injunction. That standard involves a showing of "immediate and irreparable injury, loss or damage." In addition, the mayor's conduct was addressed clearly by a section of law providing criminal misdemeanor penalties for persons who solemnize marriages without licenses. The local district attorney has the authority to enforce that law.

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