On the other hand, the department head may not wish to retain the employee in his old position when it is transferred to the unclassified service. In that event, the situation becomes identical to one where a classified position is abolished. The department would instigate a reduction in force action.

Therefore, it is my official opinion that subsection 2 (a) (2) (xii) places the department head's deputy and department head's confidential secretary in the unclassified service. It is also my official opinion that under subsection 2 (a) (2) (xiii), a department head may, in his discretion, transfer up to five classified positions to the unclassified service, so long as his department does not have five full-time managerial positions besides the department head and his deputies in the classified service.

OPINION 75-49

To: Commissioner, Department of Public Safety June 3, 1975

Re: A driver's license must be issued to a married women in her legal name which is her maiden name when she has reassumed it by judicial decree or usage.

This is in response to your request for an official opinion on whether a driver's license may be issued to a married women in a surname other than her husband's surname and more particularly whether it may be issued to her in her maiden name. For the following reasons, it is my official opinion that a married woman's surname is that of her husband but that she may change her name for all legal purposes, including issuance of a driver's license, by judicial decree or by consistent usage of another name without resort to judicial proceedings.

In a previous opinion to the Secretary of State, Op. Att'y Gen. 74-33, I concluded that a married woman adopted her husband's surname by operation of law. Thus, any statute of this state which requires a person to supply his "legal name" requires a married woman to state her husband's last name as her own. Ordinarily, then, a driver's license should be issued to a married woman in her husband's surname.

In that opinion, however, it was suggested that the only procedure for changing a person's legal name was the statutory method established by Ga. Code Ch. 79-5 (Ga. Laws 1973, p. 504). However, in reviewing the question, it is my opinion that the statutory proceeding is not the exclusive mechanism by which a person's legal name can be changed. At common law a person could change his legal name at will through usage of a new name. The American and English Encyclopedia of Law states:

> "At common law a man may lawfully change his name or by general usage or habit acquire another name than that originally borne by him, and this without the intervention of either the sovereign, the courts, or Parliament. . . ." 21 Am. & Eng. Ency. of Law (2nd Ed.), p. 311.

A married woman may also change her legal name by usage. In *King v. Inhabitant's of St. Faith's*, Dow. & Ryl. Rep. 348 (K.B. 1823), the second marriage of a woman was challenged on the ground that the banns had been published in her maiden name rather than her first husband's surname. The statute required publication of a person's "true Christian and surname." The woman had reassumed her maiden name upon the death of her first husband and had been known in the community by that name. The Court of King's Bench rejected the contention that her maiden name was not her "true name," stating:

> "It has been asserted in argument that a married woman cannot legally bear any other name than that which she has acquired in wedlock; but the fact is not so; a married woman may legally bear a different name from her husband. . . . Besides, the pauper in this case was in the eye of the law a feme sole; she might adopt any name she thought proper, and seven years use of any adopted name would by law identify that name as her own." Id. at 352.

The Court of King's Bench relied upon an earlier inheritance case in reaching this conclusion. In *Doe d. Luscombe v. Yates*, 5 B. & Ald. 542 (K.B. 1822), a devise was made to an individual conditioned upon his taking the testator's surname "by an act of Parliament or some other effectual way for that purpose. . . ." The devisee adopted the testator's name without obtaining an act of Parliament. The court held that the informal assumption of the testator's name was legally sufficient under the will and further stated:

> "A name assumed by a voluntary act of a young man at his outset into life, adopted by all who know him and by which he is consistently called becomes, for all purposes that occur to my mind, as much and effectually his as if he had obtained an act of Parliament to confer it upon him." Id. at 556.

Georgia now provides a simple statutory procedure in Ga. Code Ch. 79-5 for name changes and the Georgia courts have not yet determined whether this procedure is exclusive or supplementary of common law.[1] However, the statute itself does not expressly declare that it is the exclusive method of changing names but that a "person desirous of changing his name . . . *may* present a petition to the superior court of the county of his residence. . . ." Ga. Code § 79-501. (Emphasis added.)

[1] Dicta in *Stripling v. State*, 77 Ga. 108 (1887), is unpersuasive.

The near unanimous conclusion of other courts in this country is that the existence of similar statutory procedures does not negate informal common law procedures. See, e.g., *Linton v. First National Bank*, 10 Fed. 894 (W.D.Pa. 1882); *In re Ross*, 8 Cal. 2d 608, 67 P.2d 94, 110 A.L.R. 217 (1937); *Reinken v. Reinken*, 351 Ill. 409, 184 N.E. 639 (1933); *In re Hauptly*, 312 N.E.2d 857 (Ind. 1974); *Smith v. United States Casualty Co.*, 197 N.Y. 420, 90 N.E. 947 (1910); *Laflin and Rand Co. v. Steytler*, 146 Pa. 434, 23 Atl. 215 (1892); *Brayton v. Beall*, 73 S.C. 308, 53 S.E. 641 (1906); *Appeal of Evetts*, 392 S.W.2d 781 (Tex. Civ. App. 1965). However, see *Petition of Merolevitz*, 320 Mass. 448, 70 N.E.2d 249 (1946). (Statute provided that "no change of the name of a person . . . shall be lawful unless made by said court for a reason consistent with public interests." Mass. Gen. Laws Ch. 210 § 12.)

In *Laflin and Rand*, supra, it was held that the inclusion of an individual's informally adopted name in articles of partnership which were required by statute to "set forth the real names" of the partners was legally sufficient even though Pennsylvania had a statutory name change procedure. The court stated in this regard:

> "The legislature in 1852 provided a mode of changing the name but that act was in affirmance and aid of the common law and to make a definite point in time at which a change shall take effect. Without the aid of that act, a man may change his name or names, first or last, and, when his neighbors and community had acquiesced and recognized him by his new designation, that becomes his name." Id. at 217.

A New York Supreme Court found that a naturalized citizen who had changed his name upon naturalization could lawfully change it by usage after naturalization because included among his rights as a new American citizen was "the common law prerogative of changing his name without resorting to a judicial proceeding." Thus, election officials were required to issue a certificate of candidacy in the informally acquired name. *In re Steel*, 186 Misc. 98, 60 N.Y.S.2d 323 (1946).

Similarly, the Oklahoma Supreme Court required that a certificate of candidacy be issued to a married woman according to her title (Mrs.) and her husband's initials rather than her Christian and his surname even though she had not obtained a judicial decree changing her name. *Huff v. State Election Board*, 168 Okla. 277, 32 P.2d 920 (1934).

As stated above, Georgia courts have not decided whether a name change may still be accomplished informally in light of Ga. Code Ch. 79-5. However, because of the wording of Ga. Code § 79-501, I believe that it is most probable that Georgia courts would follow the majority rule and thus that a married woman, as well as other persons, may

acquire a new legal name by usage without resort to the proceedings provided by Ga. Code Ch. 79-5.

For these reasons, it is my opinion that a driver's license must be issued to a married woman in her maiden name if she has acquired it again by usage or otherwise after marriage. Georgia Code Ann. § 92A-9912 (Ga. Laws 1937, pp. 322, 352) makes it a misdemeanor for a person to use a false or ficticious name in applying for a driver's license. Of course, there are valid administrative reasons for making certain that all persons use their proper names in applying for and receiving drivers' licenses. Thus, you may require documentation to satisfy yourself that a legal name change has occurred. If it has, then a driver's license should be issued in the newly acquired legal name.

OPINION 75-50

To: Director of Corrections June 4, 1975

Re: Several questions concerning time computation for youthful offenders.

By letter, you requested my opinion on several questions concerning sentence computation for inmates incarcerated under the provisions of the Youthful Offender Act (Ga. Laws 1972, p. 592 (Ga. Code Ann. §§ 77-345 to 77-360)).

> 1. May an offender who is originally committed to the custody of the Department of Human Resources be transferred to the Department of Corrections under the provisions of the Youthful Offender Act upon reaching the age of 17?

By my letter of May 27, 1975, a copy of which is attached (Op. Att'y Gen. 75-47), I expressed my opinion that Section 15 of the Youthful Offender Act, as amended by Ga. Laws 1975, p. 900 (Ga. Code Ann. § 77-359), provides for the transfer you have described. 1975 Act No. 581 (H.B. 695) (attached).

> 2. Do those offenders transferred to the custody of the Department of Corrections by order of the committal court under Section 15 (b) (ii) of the Youthful Offender Act have a determinate sentence?

By letter of May 27, 1975, I addressed the question you have posed, and expressed my opinion that a court order providing for the transfer of an offender to the custody of the department under the provisions of the Youthful Offender Act is a commitment to an indefinite period of custody, as provided by the Act.