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STATE OF NEBRASKA
OFFICIAL
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DEPT. OF JUSTICE

TO: Gregg F. Wright, M.D., M.Ed.
Director, Nebraska Department of Health

DATE: January 25, 1991

SUBJECT: Confidentiality of Birth and Death Records

WRITTEN BY: Don Stenberg, Attorney General
Steve Grasz, Deputy Attorney General

This opinion is in response to your correspondence of January 15, 1991, in which you advised the Department of Health was holding requests for access to vital records pending a review of the interpretation of the governing statutes. After careful review of the relevant statutes and previous Attorney General Opinions I have determined Opinion No. 90039 is correct and should stand as issued. Furthermore, whereas Nebraska's public records statutes are clear, the expenditure of state funds on a test lawsuit between this office and the Department of Health to interpret these statutes would be wasteful and unnecessary.

Under Nebraska law, citizens of this state and all other persons interested in the examination of the public records are empowered and authorized to examine the same, free of charge, during the ordinary business hours of the governmental agency involved. Neb.Rev.Stat. §84-712 (Reissue 1987). "Public records" are defined in Neb.Rev.Stat. §84-712.01, but the definition excludes records and information where "any other statute expressly provides that particular information or records shall not be made public." Under Neb.Rev.Stat. §84-712.05(2), certain medical records may be withheld from the public. However, this section specifically excludes records of births and deaths from those medical records which may be withheld. Consequently, under Nebraska's public records statutes, birth and death records are public records which specifically may not be withheld from the public unless there is some other statutory provision which prevents their disclosure.

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Under the present statutory framework, and in particular under §84-712.05, birth and death records must be available to the public in the same fashion as other public records. That is, members of the public, including the press, can review such records, free of charge, during the normal business hours of the Department of Health, subject to reasonable restrictions for the orderly conduct of state business and the security of the records.

Under §71-612, the Department of Health may continue to determine, by regulation, what constitutes a proper purpose for the issuance of a certified copy of a birth certificate or a death certificate.

To the extent the Department of Health is denying requests to public records in a manner inconsistent with this opinion, the Department of Health is hereby notified and advised it should begin providing access forthwith in accordance with Neb.Rev.Stat. §§71-612, 84-712, 84-712.01 and 84-712.05 as interpreted by this opinion and Opinion No. 90039.

Don Stenberg
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