Linda Willard

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STATE OF NEBRASKA
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SEP 7 1990
DEPT. OF JUSTICE

DEPARTMENT OF JUSTICE
STATE OF NEBRASKA • STATE CAPITOL
TELEPHONE 402/471-2682 • FAX 402/471-3297 • LINCOLN, NEBRASKA 68509-8920

ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

DATE: September 7, 1990

SUBJECT: Meaning of Neb.Rev.Stat. §12-1211 (Cum.Supp. 1990); Provisions of the Unmarked Human Burial Sites Act

REQUESTED BY: Senator Jerome Warner

WRITTEN BY: Robert M. Spire, Attorney General
Dale A. Comer, Assistant Attorney General

In your opinion request letter, you state that you are considering introduction of legislation during the next session of the Nebraska Legislature which would clarify portions of the Unmarked Human Burial Sites Act, Neb.Rev.Stat. §12-1201 et seq. (Cum.Supp. 1990). Specifically, you may wish to clarify the final portion of §12-1211 which provides, in pertinent part:

> When the disposition of any human skeletal remains or burial goods is disputed and subject to arbitration under this section, the party in possession of the remains or goods shall retain possession until the arbitration process and appeals provided for in this section are completed.

You are concerned that this statute might be subject to two different interpretations in instances where there is a dispute over disposition of part of the remains or goods for which a request for return is made. You ask, "Does this section mean that if there is any dispute, then the entire requested remains and goods must be retained by the possessing entity until the dispute is resolved? Or does it allow the possessing entity to provide the requesting party with such portions which are not in dispute, retaining only the portion which is in dispute, and thus discharging its obligation as to those undisputed items?" From the proposed legislation which you submitted to us, we assume that you prefer the latter result which allows return of the portion of the human remains and goods not in dispute. You wish to know whether legislative clarification is necessary.

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At the outset, we would note that our normal policy, as set out in our Opinion No. 57 to Senator Beutler on December 20, 1985, is not to respond to legislative opinion requests concerning the meaning of existing statutes. This policy is based, in part, upon the legislative role with respect to existing law, and also, in part, upon the possibility that we may be called upon to defend current statutes. However, in this case you have provided us with proposed legislation and clearly contemplate introduction of that legislation if necessary. In essence, your opinion request concerns that proposed legislation. Under those circumstances, we will respond to your request.

As a general rule, statutory language, in the absence of anything indicating to the contrary, is to be given its plain and ordinary meaning. State v. Quandt, 234 Neb. 402, 451 N.W.2d 272 (1990). Moreover, in construing a statute, all parts of an act relating to the same subject must be considered together, not each by itself. State v. Jennings, 195 Neb. 434, 238 N.W.2d 477 (1976). Effect must be given, if possible, to all the several parts of a statute; no sentence, clause or word should be rejected as meaningless or superfluous if it can be avoided. NC+ Hybrids v. Growers Seed Association, 219 Neb. 296, 363 N.W.2d 362 (1985).

In the present case, it seems to us that the language at issue from §12-1211, read in its plain and ordinary sense, indicates that the party in possession of disputed remains and burial goods retains possession of those disputed objects until the arbitration process is complete. This is the clear meaning of that language, and this view is consistent with the remainder of §12-1211 which deals with arbitration procedures for disposition of human remains or burial goods "whenever a dispute arises." Since §12-1211 thus applies only to remains and burial goods involved in a dispute, non-disputed objects would not be covered by that statute and must be returned to the requesting party under the other various procedures set out in the Act.

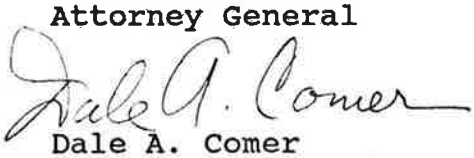
This analysis is consistent with the language of §12-1211 and also with the remainder of the Act. One of the purposes for the Unmarked Human Burial Sites Act, as discussed in §12-1203, is to "Establish procedures for the proper care and protection of unmarked human burial sites, human skeletal remains, and burial goods found in this state." Reading §12-1211 to allow the return of undisputed objects during the arbitration of disputes involving other objects comports with that legislative purpose.

Consequently, we believe that §12-1211, as presently drafted, allows a possessing entity to transfer possession of requested human remains and burial goods which are not subject to any dispute while retaining possession, pending arbitration, of other disputed remains and goods which are responsive to the same request.

Nevertheless, if you believe that §12-1211 "might be subject to two different interpretations," you may still wish to introduce your clarifying legislation.

Sincerely yours,

ROBERT M. SPIRE
Attorney General



Dale A. Comer
Assistant Attorney General

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cc: Patrick J. O'Donnell
Clerk of the Legislature

APPROVED BY:

Attorney General