STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
FAX (402) 471-3297

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

#91069

STATE OF NEBRASKA
OFFICIAL
SEP 24 1991
DEPT. OF JUSTICE

DATE: September 18, 1991

SUBJECT: Impact of Neb. Rev. Stat. § 71-602 on § 71-612

REQUESTED BY: Gregg F. Wright, M.D., M.Ed.
Director of the Department of Health

WRITTEN BY: Don Stenberg, Attorney General
Jan E. Rempe, Assistant Attorney General

You have requested our opinion regarding whether Neb. Rev. Stat. § 71-602 (Reissue 1990) requires the Department of Health to delete information deemed "confidential" in the statute from certified copies of birth and death certificates and marriage and divorce records issued by the Department pursuant to Neb. Rev. Stat. § 71-612 (Reissue 1990), as amended by Laws 1991, LB 703, § 30. Your letter of August 9, 1991, indicates that such confidential information appears on birth certificates prior to 1968, death certificates from 1904 to present, and marriage and divorce records from 1909 to 1968. You have also asked whether the Department could continue to issue "certified copies" of these records when certain information has been deleted, or, in the alternative, whether the Department could issue a "certified abstract" of the actual record under § 71-612.

Based on the following analysis, we conclude that the Department of Health may neither delete information from original records, nor issue certified "abstracts" summarizing the original documents' contents, for such actions would prevent the Department from supplying certified copies of these documents, as required by § 71-612.

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Section 71-612 requires that the Department of Health "supply to any applicant for any proper purpose, as defined by rules and regulations of the department, a certified copy of the record of any birth, death, marriage, or dissolution of marriage registered." The "certified copy" requirement has existed since the statute's inception in 1905. See, Laws 1905, ch. 98, H.R. 77, § 8.

"Certified copy" is a phrase which has acquired a peculiar meaning in the law and, therefore, must be construed according to that meaning. Neb. Rev. Stat. § 49-802(5) (Reissue 1988) (rules of statutory construction). A "certified copy" is a true and complete copy of an original document or record, signed and certified as such by an officer who has custody of the original. Putnam v. Bussing, 221 Iowa 871, 266 N.W. 559 (1936); Ehrlich v. Mulligan, 104 N.J.L. 375, 140 A. 463 (1928); Black's Law Dictionary 207 (5th ed. 1979); 32 C.J.S. Evidence § 664 (1964). The certifying officer must certify the entire and literal terms of the original, unless statutory authority exists granting the officer power to certify an abstract or summary of the original document. 5 J. Wigmore, Evidence § 1678 (3d ed. 1940); 32 C.J.S. Evidence § 640 (1964). Similarly, an officer's certification of the substance or contents of an original document is not admissible in court proceedings as a "certified copy" of the record itself. Russo v. Metropolitan Life Ins. Co., 125 Conn. 132, 3 A.2d 844 (1939); State v. Schaller, 111 Ind. App. 128, 40 N.E.2d 976 (1942); Kline v. Metcalfe Const. Co., 148 Neb. 357, 27 N.W.2d 383 (1947).

Section 71-602, enacted in 1989, describes the Department of Health's authority to promulgate rules and regulations prescribing all standard forms for registration of any birth; death; marriage, and annulment or dissolution thereof; and abortion. The statute also provides that "[a]ll information on racial or ethnic background, number of marriages, education, and reasons for termination of marriages shall be confidential, not subject to subpoena, and inadmissible in evidence in any legal proceeding."

Despite the designation of certain information as "confidential" in § 71-602, we conclude that this statute does not require the Department of Health to delete such information from certificates and records created prior to March 2, 1989, the date § 71-602 became effective. There are four main reasons for this conclusion.

First, legislation operates prospectively unless the Legislature clearly indicates retrospective, or retroactive, operation. State v. Von Dorn, 234 Neb. 93, 449 N.W.2d 530 (1989). Because neither the language of § 71-602 nor the legislative history leading to the statute's passage indicate retroactive application, the confidentiality provisions of § 71-602 apply only after the statute became effective. Second, the Nebraska statutes do not authorize deletion of material from original certificates and records required to be filed with the Department of Health. Under Neb. Rev. Stat. § 71-649 (Reissue 1990), alteration of any such certificate or record without lawful authority is a Class IV

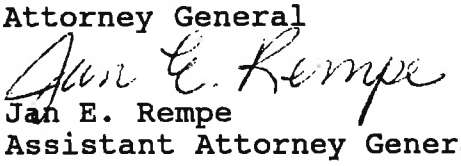
felony. Third, deletion of material from original documents would prevent the Department from providing "certified copies" under § 71-612 since certified copies must be true, correct, and complete copies of the original. Finally, as you point out in your letter, deleting all confidential information from records dating back to the early 1900's would take an extraordinary amount of time, money, and effort. In construing statutes, it is presumed the Legislature intended a sensible, rather than absurd, result. Houska v. City of Wahoo, 235 Neb. 635, 456 N.W.2d 750 (1990).

Because § 71-602 expressly describes the Department's authority to create standard forms for vital statistics registration, we presume certificates and records dated March 2, 1989, and thereafter either have been or could be structured to avoid recording confidential information on the actual documents from which certified copies must be made. However, your letter indicates there may be death certificates dated after March 2, 1989, which still contain information deemed confidential by § 71-602. Because of the Department's obligation under § 71-612 to supply certified copies of various records, and because criminal penalties may result from tampering with such records, we also cannot approve of any deletions in these death certificates. Issuing a certified "abstract" of these records is also not advised, because such a summary does not conform with the definition of "certified copy," as used in § 71-612.

Therefore, under § 71-612, the Department of Health is required to supply for any proper purpose certified copies--meaning true copies of the entire, complete, original documents--of any birth, death, marriage, or dissolution of marriage records registered with the Department. Deletion of information from the original documents and issuance of certified "abstracts" summarizing these documents would not comply with the existing statutory framework regarding vital statistics.

Sincerely,

DON STENBERG
Attorney General



Jan E. Rempe
Assistant Attorney General

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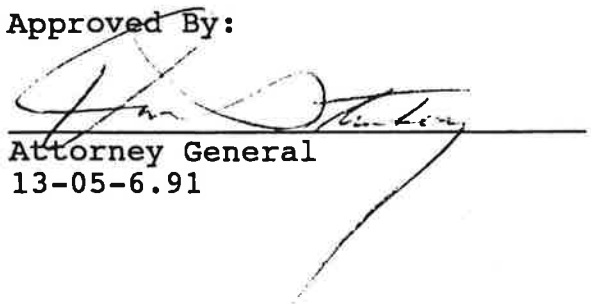

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