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STATE OF NEBRASKA
OFFICIAL
DEC 18 1991
DEPT. OF JUSTICE

DATE: December 11, 1991

SUBJECT: Impact of § 71-602 on § 71-612

REQUESTED BY: Mark B. Horton, M.D., M.S.P.H.
Director, Nebraska Department of Health

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

You have requested clarification of Attorney General Opinion No. 91069, which focused on the impact of Neb. Rev. Stat. § 71-602 (Reissue 1990) on Neb. Rev. Stat. § 71-612 (Reissue 1990), as amended by Laws 1991, LB 703, § 30. We will address each of the questions posed in your November 18, 1991, letter individually.

1. <u>If the Department of Health's process of blocking out information deemed confidential by § 71-602 would not involve altering original vital statistics documents, but would instead occur during the copying process, would the Attorney General come to the same conclusion reached in Opinion No. 91069 regarding how the confidentiality provisions of § 71-602 affect the Department's ability to provide certified copies under § 71-612</u>?

Yes. As we stated in our prior opinion:

> A "certified copy" is a true and <u>complete</u> copy of an original document or record, signed and certified as such by an officer who has custody of the original. . . . The certifying officer must certify the <u>entire</u> and literal terms of the original . . . .

Opinion No. 91069 (citations omitted and emphasis added).

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Therefore, the Department's statutory obligation to supply certified copies--that is, true copies of the entire, complete, original documents--of birth, death, marriage, and dissolution of marriage records under § 71-612 would be compromised by making deletions in either the original records or in copies thereof.

2. May the Department delete from birth and death records data which is confidential under § 71-602 before members of public view the documents?

Your letter indicates that pursuant to prior opinions by this office, the Department is allowing the public to view birth and death records. Attorney General Opinion No. 91004 stated that under the statutory framework provided by Neb. Rev. Stat. §§ 84-712, 84-712.01, and 84-712.05(2) (Reissue 1987), "birth and death records must be available to the public in the same fashion as other public records." Similarly, the opinion concluded that under the above 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." See, also, Attorney General Opinion No. 90039.

Section 71-602 is a statute which expressly provides that particular information shall not be made public, thereby preventing disclosure of this information as a public record. § 84-712.01. However, as stated in Opinion No. 91069:

> [L]egislation 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.

(Emphasis added).

Therefore, the Department should not delete confidential information from birth and death records created prior to March 2, 1989 (the effective date of the statute), before members of the public view the documents. Conversely, confidential information appearing in birth and death records created after March 2, 1989, could be deleted before public viewing. See, Neb. Rev. Stat. § 84-712.06 (Reissue 1987) (segregable portions of records shall be provided to the public after deletion of information which may be withheld).

3. Does Opinion No. 91069 prohibit the Department of Health from issuing abstracts which contain only a portion of the information recorded on birth certificates?

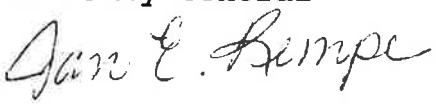
Opinion No. 91069 focused on the confidentiality provision of § 71-602 as it affects the Department's obligation to provide certified copies of various vital statistics records under § 71-612. The narrow scope of that opinion compelled the conclusion that certified abstracts of records would not conform with the definition of "certified copy," as used in § 71-612. In other words, the Department may not use abstracts to meet its obligation under § 71-612 to provide certified copies of certain records.

However, Opinion No. 91069 did not address whether the Department could issue abstracts of information contained in birth certificates for purposes outside § 71-612--for example, for the public's use at passport and social security offices as proof of citizenship and date of birth.

Section 71-602 provides that "[t]he Department of Health shall adopt and promulgate rules and regulations prescribing all standard forms for registering or reporting any birth, abortion, marriage, annulment, dissolution of marriage, or death registered in Nebraska." (Emphasis added). This language indicates that the Department could enact rules and regulations prescribing a standard "abstract form" for reporting any birth registered in Nebraska. However, because your letter states that such abstracts are currently not authorized in any Department regulation, we would advise the Department to cease issuing birth abstracts until such regulations can be promulgated.

Sincerely,

DON STENBERG
Attorney General



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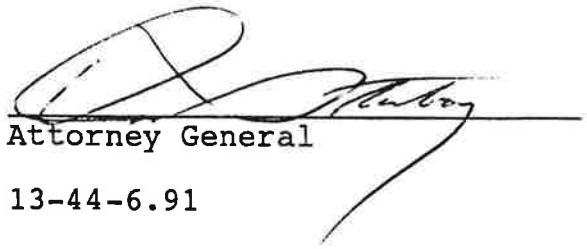

Attorney General

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