

ANATOMICAL BOARD: Under the provisions of Section 194.190, RSMo  
DISPOSITION OF DEAD Cum. Supp. 1965, only a person 18 years or  
HUMAN BODIES: older of sound mind may consent by writing as  
GIFTS OF HUMAN BODIES: provided therein to donate his body or parts  
DEAD BODIES: thereof to a named institution. A college,  
university, licensed hospital or the State  
Anatomical Board is not exempted from tort liability by Section  
194.190 (6) if such institution removes or uses all or any part of  
a body for scientific, educational or therapeutic purposes without  
the written consent of the decedent except for cases where the con-  
sent of the decedent had been revoked but the institution acted in  
good faith without actual knowledge of the revocation.

OPINION NO. 251

September 1, 1967

FILED  
251

Dr. M. D. Overholser  
Missouri State Anatomical Board  
Department of Anatomy  
University of Missouri Medical Center  
Columbia, Missouri

Dear Dr. Overholser:

This is in response to your request for an opinion from this office which request states:

"The Missouri State Anatomical Board requests your opinion regarding questions we have concerning Section 6 of House Bill No. 365 passed by the 73rd General Assembly, entitled, An Act Relating to gifts and acceptance of tissues and dead bodies for scientific, educational or therapeutic use.

Section 6 of the above Bill reads as follows:

"No cause of action in tort shall accrue to any person out of the removal or use of all or any part of the body for any such purpose, if the consent of decedent was given, or consent was given by a person upon whom devolves by law the right to control the disposition of the remains of a deceased person as defined herein, notwithstanding the invalidity of any such consent for any reason, provided, the person relying thereon:

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"(1) Acted in good faith;  
(2) Had no actual knowledge of the revocation of such consent.

"Our questions are these: (1) Can a relative of a deceased person make a gift of the body to an institution as named in Section 3 when there is no previous written statement signed by the deceased stating that this is his wish?

(2) Can a relative of a deceased person make a gift of the body to an institution as named in Section 3 when there is no previous written statement signed by the deceased stating that this is his wish but the relative states that the deceased made a previous oral request to him that this be done?

(3) If the answer should be yes to either or both of the above questions which relatives would have the power to make such a gift of the body of the deceased?"

House Bill No. 365 passed by the General Assembly in 1965, mentioned in your opinion request, appears now as Section 194.190, RSMo. Cum. Supp. 1965. This section pertains to gifts and bequests of deceased's remains to certain institutions and states generally that persons 18 years or older of sound mind may by writing witnessed by two persons of legal age make a gift of his body or any part thereof to any college, university, licensed hospital or the State Anatomical Board. A bequest by will shall be effective immediately upon death of the donor. Without the consent of the coroner, when there is reason to believe an inquest will be held on the body, no person shall give authority or act on such authority relating to the gift or bequest of a deceased's remains to the above named institutions. Subsection 6 of Section 194.190, supra, mentioned in the opinion request, is quoted in full as follows:

"6. No cause of action in tort shall accrue to any person out of the removal or use of all or any part of the body for any such purpose, if the consent of decedent was given, or consent was given by a person upon whom devolves by law the right to control the disposition of the remains of a deceased person as defined herein, notwithstanding the invalidity of any such consent for any reason; provided, the person relying thereon: (1) Acted in good faith; (2) Had no actual knowledge of the revocation of such consent."

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Question 1, asking can a relative make a gift of a deceased person's remains when there is no previous written authority, is answered in the negative.

It was necessary in determining your question to consider the history of House Bill 365. At the time such Bill was introduced on February 9, 1965, and after being perfected on April 1, 1965, there appears in section 2 the provision that any person upon whom devolves by law the right to control disposition of a deceased person may donate in writing to the institutions listed in the Bill all or any part of the deceased person's body unless he had knowledge that the decedent had left instruction for disposition of the body inconsistent therewith and section 3 contained a list of those persons upon whom devolved by law the right to control the disposition of the remains of a deceased person and to donate tissue therefrom. You will note that in House Bill 365, as truly agreed to and finally passed, these sections were deleted. It must be reasoned that the legislature intended by deleting subsections 2 and 3 thereof to eliminate any other person or persons than the deceased with any authority to make a gift of his remains to the named institutions.

Section 6 of the truly agreed to and finally passed House Bill is similar to section 8 of the perfected House Bill. In those sections there appears the following:

" \* \* \* if the consent of decedent was given, or consent was given by a person upon whom devolves by law the right to control the disposition of the remains of a deceased person as defined herein, notwithstanding the invalidity of any such consent for any reason, provided, the person relying thereon:

- (1) Acted in good faith;
- (2) Had no actual knowledge of the revocation of such consent."

The underlined portion, supra, was necessary in the Bill as introduced and perfected as it made direct reference to the list of persons in section 3 thereof. However, by oversight or otherwise this phrase was retained in the House Bill which was finally passed and its intended meaning is no longer applicable. Only the deceased has authority to donate his remains to a named institution which authority must be in writing as provided by this section.

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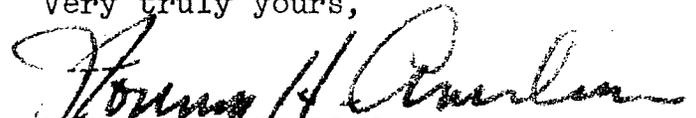
The answer to your second and third questions must also be in the negative as a relative cannot make a gift of a deceased person's remains without written consent of the deceased.

CONCLUSION

Under the provisions of Section 194.190, RSMo Cum. Supp. 1965, only a person 18 years or older of sound mind may consent by writing as provided therein to donate his body or parts thereof to a named institution. A college, university, licensed hospital or the State Anatomical Board is not exempted from tort liability by Section 194.190 (6) if such institution removes or uses all or any part of a body for scientific, educational or therapeutic purposes without the written consent of the decedent except for cases where the consent of the decedent had been revoked but the institution acted in good faith without actual knowledge of the revocation.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Gerald L. Birnbaum.

Very truly yours,

  
NORMAN H. ANDERSON  
Attorney General