

Answer by letter-Gardner

November 18, 1970

OPINION LETTER NO. 170

Mr. Jackson A. Wright
General Counsel
University of Missouri
One Tate Hall
Columbia, Missouri 65201



Dear Mr. Wright:

As you requested, we have reviewed the forms which you submitted entitled, "Anatomical Gift By Next Of Kin Or Other Authorized Person" and "Uniform Donor Card."

Our review leads us to conclude that the forms proposed by the National Conference of Commissioners on Uniform State Laws appear to be better constructed than the forms which you have submitted. Your gift by next of kin form recognizes that a gift can be made prior to the death of the person whose body is to be donated. However, this could be misleading to the uninformed since the gift, as you know, must be "immediately before death" (Section 194.220 (3)). Also your next of kin gift form does not clearly recognize that there are qualifications with respect to gifts to individual donees. For example, a gift to an individual donee who is not a physician or surgeon must be for "therapy or transplantation needed by him" (Section 194.230(4)).

With respect to the uniform donor card which you submitted, we note that the card does not contain a space for the donor to specify a donee. However, the card contains a section for "limitations or special wishes" which possibly might cause the insertion of wishes that could be confused with conditions. The word "limitations" would seem to obligate the recipient of the anatomical gift to follow terms thereafter expressed, while the words "special wishes" would appear to be precatory and therefore not binding on the recipient. When these words are used together, the views expressed thereafter would appear to be quite ambiguous as to whether the recipient would be bound by them or not.

Mr. Jackson A. Wright

Moreover, the uniform donor card which you submitted states that the instrument is "Signed by the donor and the following two witnesses in the presence of each other:". Section 194.240(2) reads, ". . . The document, . . . must be signed by the donor in the presence of two witnesses who must sign the document in his presence or before a notary or other official authorized to administer oaths generally. . . ."

In commenting upon the fine points of the act which are not reflected by either in the next of kin form or the uniform donor card, we recognize that it was deliberately intended that the documents be as brief as possible and, in this respect, obviously every caution must be exercised by anyone relying upon the documents in order that such documents can be interpreted in light of the specific provisions and limitations of the act. Accordingly, while we believe the documents you submitted may be found by the courts to be effective, it is our view that the intention of the legislature with respect to the uniform application of the act could be carried out more effectively if the forms used in Missouri were those proposed by the National Conference of Commissioners on Uniform State Laws.

Yours very truly,

JOHN C. DANFORTH
Attorney General