

NINETY-SIXTH LEGISLATURE

SECOND SESSION

LEGISLATIVE RESOLUTION 499

Introduced by Chambers, 11

WHEREAS, the Legislature in 1988 enacted LB 876 which mandated the convening of a grand jury when a person dies while being apprehended by or while in the custody of a law enforcement officer or detention personnel;

WHEREAS, the Legislature in 1999 enacted LB 72 which mandated the appointment of a special prosecutor when a person dies while being apprehended by or while in the custody of a law enforcement officer or detention personnel;

WHEREAS, the provisions of both enactments are found in section 29-1401;

WHEREAS, courts and judges throughout the state have complied with the provisions of both enactments since their respective effective dates;

WHEREAS, on January 10, 2000, Deuel County District Judge Brian C. Silverman entered an order (In The Matter of A Grand Jury for The District Court in And for Deuel County, Doc. 14, Page 266) finding the above-referenced provisions unconstitutional, as "constitut(ing) an unlawful delegation and exercise of executive powers in violation of Art. 11, section 1, of the Nebraska Constitution";

WHEREAS, the deadline to appeal Judge Silverman's

decision was February 9, 2000;

WHEREAS, the Deuel County Attorney did not timely appeal Judge Silverman's decision;

WHEREAS, the Attorney General did not timely appeal Judge Silverman's decision despite having (a) concurrent authority with the county attorney to do so pursuant to section 84-204, and (b) the duty to appeal pursuant to the first sentence of subdivision (10) of section 84-205;

WHEREAS, Judge Silverman's decision does not have statewide effect nor is it binding on any other judge of equal or higher jurisdiction;

WHEREAS, as long as Judge Silverman's decision remains intact, the law relative to grand juries will not be complied with in a segment of the state;

WHEREAS, in order to maintain public confidence in the integrity of the law, enforcement must not be spotty nor based on the opinion of a single, lower-court judge;

WHEREAS, the Uniform Declaratory Judgments Act, sections 25-21,149 to 25-21,164, is the appropriate method to obtain judicial determination of a statute's validity (State ex rel. Spire v. Northwestern Bell Tel. Co., 233 Neb. 262 , 1989)

WHEREAS, section 25-2156 states "The writ of mandamus may be issued to any inferior tribunal . . . to compel the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station";

WHEREAS, the Attorney General is empowered to seek either a declaratory judgment or a writ of mandamus;

WHEREAS, section 84-205 is mandatory and provides: "The

duties of the Attorney General shall be: . . . (10) When requested by the . . . Legislature, the Attorney General shall appear for the state and prosecute or defend any action . . . in which the state is interested or a party before any court . . . ";

WHEREAS, the state has an interest in the complete and uniform enforcement of statutes.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-SIXTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. The Legislature hereby requests the Attorney General to commence immediately the process of preparing and filing the appropriate action in the appropriate court to (a) obtain compliance by Judge Silverman with section 29-1401 or (b) obtain a declaratory judgment to obtain judicial determination of the validity of section 29-1401.

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PRESIDENT OF THE LEGISLATURE

I, Patrick J. O'Donnell, hereby certify that the foregoing is a true and correct copy of Legislative Resolution 499, which was passed by the Legislature of Nebraska in the Ninety-sixth Legislature, Second Session, on the XXXX(words)XXXX day of April 2000.

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CLERK OF THE LEGISLATURE