

March 7, 1974

SENATOR LUEDTKE: You certainly can, this is the intestacy section, you can put in your will anything you want to except that there is a right to election which is in another section, whereby the surviving spouse can, this deals with what they have called augmentative stage whereby the individual can come back in through election and take up to a third, they can get up to a third and that is all that they can get but now we have that now. We have the right for a surviving spouse to take outside the will now but otherwise by will or by waiver and by post-nuptial agreements and other agreements, you can waive that, you can get rid of that you don't have to worry about it at all.

SENATOR FRED CARSTENS: Well either I am not putting the question or you are evading the question. I am asking simply this, if a testator makes a will and gives less to his surviving spouse, then this section provides that she does not, he or she does not have to accept it but can elect to take under the other section.

SENATOR LUEDTKE: This section has nothing to do with what they do with the will. That is the answer to your question.

SENATOR FRED CARSTENS: No I am not talking about that Senator Luedtke, I know can you give by will less than this section allows you to do?

SENATOR LUEDTKE: Certainly, you can give whatever you want to in your will.

SENATOR FRED CARSTENS: But the spouse doesn't have to accept it?

SENATOR LUEDTKE: But the spouse doesn't have to accept it.

SENATOR FRED CARSTENS: Now how can this be avoided? If I wanted to leave, well this provides for \$35,000 plus one half of the balance. Now how much, if I have an estate of \$100,000, that paid \$100,000 net, how much of that can I do I have control over in the disposition in my will? How much?

SENATOR LUEDTKE: Well in your will you can do anything that you want to. You can, are you asking how much your spouse could come back in and get to right of election?

SENATOR FRED CARSTENS: Right.

SENATOR LUEDTKE: She can get up to one third. That is as much as she can ever get under election.

SENATOR FRED CARSTENS: Now if I give, if I have an estate valued at \$100,000 and I make a will, how much or I want to make a will, I haven't made it yet I am thinking about it, how much of that under this section do I have control of?

SENATOR LUEDTKE: Under this section, there is, that is what I am trying to say to you Senator Carstens. This section has nothing to do with the will. If you want to talk about the augmentative stage.

SENATOR FRED CARSTENS: I think Senator Luedtke, this is not true, this has everything to do with it. This has to do, this section controls specifically how much I can dispose of freely.

SENATOR LUEDTKE: No this is when you don't have a will.

SENATOR FRED CARSTENS: Alright, let's start at the beginning.

SENATOR LUEDTKE: Alright.

SENATOR FRED CARSTENS: I have \$100,000 a property, I can not do anything about \$35,000 worth of it because the statute already says that the, my surviving spouse is the mother of the children and I will get the first \$35,000, correct?