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OPINION	:	No. 80-710
	:	
of	:	<u>December 11, 1980</u>
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SUBJECT: CRYONIC SUSPENSION—The holding of human bodies in cryonic suspension does not constitute the operation of a cemetery, nor does arranging to have one's body so placed meet the requirements of the Uniform Anatomical Gift Act.

The Honorable John W. Gill, CPA, Executive Secretary, California Cemetery Board, has requested an opinion on the following questions:

1. Does the holding of human bodies in cryonic suspension constitute the operation of a cemetery within the meaning of either sections 7003 or 8100 of the Health and Safety Code?
2. Does arranging to have one's body placed in cryonic suspension meet the requirements of the Uniform Anatomical Gift Act, Health and Safety Code section 7150 *et seq.*?

CONCLUSIONS

1. The holding of human bodies in cryonic suspension does not constitute the operation of a cemetery within the meaning of either sections 7003 or 8100 of the Health and Safety Code.

2. Arranging to have one's body placed in cryonic suspension does not meet the requirements of the Uniform Anatomical Gift Act, Health and Safety Code section 7150 *et seq.*

ANALYSIS

Cryonic suspension is a procedure whereby a human body is frozen at the time of "clinical death." The basic theory is that such freezing will prevent "biological death" and preserve the human remains so that at some unpredictable future time the individual who has been frozen may be reanimated. Cryonicists believe, or at least hope, that at some future date medical science and technology will have so advanced as to permit bodies now frozen to be successfully thawed so as to restore life and permit the individual to be cured of the disease or malady which originally caused death. The cryonics movement first arose in 1964 upon the publication of Robert Ettinger's book, "The Prospect of Immortality." In 1967 and 1968 the first two individuals were placed in cryonic suspension.¹

For purposes of this opinion, we will analyze the questions presented in the context of cryonic suspension as practiced by Trans Time, Inc. and its contractors, who we understand to be the primary practitioners of the procedure in California today. Individuals who choose to arrange for cryonic suspension do so through the Bay Area Cryonic Society (BACS), a nonprofit corporation, or through a similar nonprofit society in Southern California called the Alcor Life Extension Foundation. Thus, for example, in Northern California, the individual would join BACS as a "suspension member." At such time he would arrange to finance his initial freezing and indefinite suspension through the "donor fund." Presently, BACS recommends that a \$60,000 life insurance policy upon the member's life be taken out with BACS as the beneficiary.² Part of the money is used to place the individual in suspension. Thereafter, only the interest is used to maintain the individual in suspension. Also, the suspension member will execute a document entitled "Authorization of Anatomical Donation" whereby he provides that it is his "wish that upon my death, my person (remains) be preserved by . . . Solid State Hypothermia, or Cryonic Suspension"; and that "[f]or this purpose, and in accordance with the laws governing anatomical donations . . . that upon my clinical death my body be delivered to" BACS; that he has "not received any remuneration whatsoever in connection with this donation of my

¹ See generally: Kent, "The Life Extension Revolution" (1980) p. 278 *et seq.*; Kurtzman and Gordon, "No More Dying" (1976) p. 99 *et seq.*; Ippoliti, *The Immortalist* (Nov. Dec., 1977) *Progressive World*, p. 6 *et seq.*

² Arrangements are also made for the proper disposition of the proceeds in accordance with the donor's wishes, should suspension become impossible. This includes either distribution of the funds to the donor's designees or, in the alternative, an outright gift of the funds to BACS or to the BACS Reanimation Fund (a research fund to further reanimation procedures.)

personal remains, and that I have made this donation solely for the purpose of furthering research in the process of inducing solid state hypothermia by means of the cryogenic preservation of my body.” This document is made a codicil to the member’s will and is executed with testamentary formality.³

BACS and Alcor in turn contract with Trans Time, Inc., a “profit” corporation for the actual suspension of members. Trans Time, Inc. currently has nine bodies in cryonic suspension in a warehouse in the City of Emeryville. It is our understanding that these bodies have been placed in capsules which are filled with liquid nitrogen and are maintained and monitored on a 24-hour basis. The capsules are not buried nor entombed.

Trans Time, Inc. has made efforts to comply with whatever laws it could discover to qualify in California as a “bank or storage facility” within the meaning of the Uniform Anatomical Gift Act, only to be advised by both the then Board of Medical Examiners and the Department of Health Services that there were no licensing or accreditation procedures applicable to their procedures but only to facilities used to collect or store human tissue for eventual transfusion or transplantation from a donor to a living recipient.⁴

With this factual background, we now proceed to the legal questions presented.

1. Does Trans Time, Inc. Operate a Cemetery?

The first question presented in the context of cryonic suspension as it exists in California today is whether Trans Time, Inc. is operating a cemetery within the meaning of either sections 7003 or 8100 of the Health and Safety Code.⁵

Section 8100 can be disposed of summarily. That section is a general provision which has been part of our laws for over a century.⁶ It provides:

“Six or more human bodies being *buried* at one place constitute the place a cemetery.” (Emphasis added.)

Trans Time, Inc. does not bury the bodies it has in cryonic suspension. It stores

³ We presume that the Alcor Life Foundation has similar procedures.

⁴ Letter from Board of Medical Examiners to Trans Time, Inc., dated October 6, 1975: Letter from Department of Health Services to Trans Time, Inc., dated May 28, 1980.

⁵ All section references will be to the Health and Safety Code unless otherwise provided.

⁶ Stats. 1854, ch. VIII, § 4, p. 20, the definition section for “An Act to protect the bodies of Deceased Persons and Public Grave Yards”—see now, sections 8101–8103 regarding vandalism in cemeteries.

them in a warehouse above ground where the capsules in which they have been placed may be properly maintained and monitored on a 24-hour basis. Accordingly, Trans Time, Inc. is not operating a cemetery within the meaning of section 8100 under the “plain meaning rule” of statutory construction. (See *In re Waters of Long Valley Creek Stream System* (1979) 25 Cal. 3d 339, 348–349; see also, §§ 7013, 7014.)

Somewhat less obvious is section 7003. Sections 7000–7023 set forth numerous definitions for purposes of Divisions 7, 8 and 9 of the Health and Safety Code, which relate to such matters as the custody of and duty to inter dead bodies, the operation and maintenance of both private and public cemeteries, and vital statistics. These definition sections also apply to the Cemetery Act, section 9600 *et seq.* of the Business and Professions Code, which establishes the California Cemetery Board as the regulatory board for cemeteries and cemetery brokers and salesmen. (Bus. & Prof. Code, § 9606.)

Section 7003 provides:

“‘Cemetery’ means any one, or a combination of more than one, of the following, *in a place used, or intended to be used, and dedicated, for cemetery purposes*:

- (a) A burial park, for earth interments.
- (b) A mausoleum, for crypt or vault interments.
- (c) A crematory, or a crematory and columbarium, for cinerary interments.” (Emphasis added.)

Of potential applicability is subdivision (b). Subdivisions (a) and (c) are clearly inapplicable to cryonic suspension as practiced by Trans Time, Inc. The question, then, is whether a warehouse or other building used to house bodies encapsulated in a liquid nitrogen solution is a “mausoleum, for crypt or vault interments.”

Section 7005 defines the term “mausoleum.” It states:

‘Except in Part 5 of Division VIII of this code, ‘mausoleum’ means a structure or building for the entombment of human remains in *crypts or vaults in a place used, or intended to be used, and dedicated, for cemetery purposes.*’⁷ (Emphasis added.)

⁷ Part 5 of Division VIII of the Health and Safety Code is the “Private and Community Mausoleum and Columbarium Law, relating to the manner of construction of mausoleums and

Looking at section 7012, we see that “entombment” is defined as “[t]he placement of human remains in a crypt or vault.” Such definition thus adds nothing to section 7003, subdivision (b). Section 7015, then in circular fashion, defines “crypt” or “vault” as “a space in a mausoleum of sufficient size, use or intended to be used, to entomb uncremated human remains.” Essentially, then, “mausoleum,” “entombment,” and “crypt” or “vault” are all defined in terms of one another. Each definition essentially returns us to another definition which contains the word previously defined.

More important, however, is the fact that both sections 7003 and 7005 define “cemetery” and “mausoleum” in terms of “a place used, or intended to be used, and dedicated, for cemetery purposes.” (Emphasis added.)

Section 7020 defines “cemetery purposes.” It provides:

“‘Cemetery business,’ ‘cemetery businesses,’ and ‘*cemetery purposes*’ are used interchangeably and mean any and all business and purposes requisite to, necessary for, or incident to, establishing, maintaining, operating, improving, or *conducting a cemetery, interring human remains, and the care, preservation, and embellishment of cemetery property*, including, but not limited to, any activity or business designed for the benefit, service, convenience, education, or spiritual uplift of property owners or persons visiting the cemetery.” (Emphasis added.)

In the case *Cemetery Board v. Telophase Society of America* (1978) 87 Cal, App. 3d 847, the court was faced with the question whether a corporation was operating a cemetery where such corporation was in the business of only incinerating human remains, made no interments itself, but merely arranged for another entity to provide for burial at sea of the cremated remains. The court in holding that such corporation was not operating a cemetery or interring human remains noted the proclivity of the definition sections to define terms in terms of themselves. Thus the court stated:

“As is all too apparent, the statutory language is virtually nonsensical. The question under Business and Professions Code section 9715 is whether defendant is operating a cemetery. Health and Safety Code section 7003 purports to define cemetery in terms of ‘a place used, or intended to be used . . . for cemetery purposes.’ But ‘cemetery purposes’ is defined in Health and Safety Code section 7020 by reference to purposes . . . incident to . . . operating . . . a cemetery,’ and we are returned to the point of beginning.

columbarium, and is, accordingly, not germane to the question we are considering, that is, whether Trans Time, Inc. is operating a cemetery.

Nevertheless, no elaborate argument is required to demonstrate that Health and Safety Code section 7020 contemplates a cemetery in the traditional sense. Whatever ‘incident to . . . interring human remains’ might mean in isolation, the section read in its entirety and taken in context with the numerous other statutory prohibitions having obvious reference to conventional cemeteries imparts an irresistible impression that section 7020 contemplates a conventional cemetery. Perhaps the single most significant indication in the language of the section itself is the use of the ‘and’ after reference to ‘conducting a cemetery, interring human remains.’ If ‘and’ is given its usual meaning, ‘cemetery purposes’ must relate at least in part to ‘the care, preservation, and embellishment of cemetery property.’ This plus the reference to ‘property owners’ and visiting the cemetery’ unmistakably indicate the section does not include the incineration of dead bodies without more.” (Id., at p. 855, emphasis added.)

Likewise, in the context of cryonic suspension, whatever the terms “mausoleum,” “interment” or “entombment” of human remains may mean in isolation, section 7020 demonstrates that section 7003 and 7005 “contemplate a cemetery in the traditional sense.” Clearly, the storage of bodies in a warehouse in capsules in clear view above ground is not a cemetery in the traditional sense.

Accordingly, we conclude that cryonic suspension as practiced by Trans Time, Inc. does not constitute the operation of a cemetery as cemetery is defined in section 7003. Insofar as one might argue that the provisions of the code should be broadly construed to include cryonic suspension to insure governmental regulation, the following language of the court in *Cemetery Board v. Telophase Society of America*, *supra*, 87 Cal. App. 3d at pages 858–859 is dispositive:

“Application of the rule of *casus omissus* is particularly appropriate in this case, for it obviates the necessity of embracing the absurdity that notwithstanding that defendant performs no cremations within the statutory definition and makes no interments within the statutory definition, and that its crematory is not a cemetery within either of the statutory definitions, it nevertheless is operating a cemetery subject to the provisions of the Cemetery Act. It further virtually insures prompt legislative attention to the question whether an operation such as that of Telophase should be regulated and to the problems presented by the incoherent and almost meaningless definitions contained in the statutes. Presumably, the Cemetery Board, to which the Legislature has entrusted the enforcement of the statutory provisions (see Bus. & Prof. Code §§ 9631, 9657, 9658) will have the legislative ear.”

2. Does Cryonic Suspension Fall Within the Purview of the Uniform Anatomical Gift Act?

The Uniform Anatomical Gift Act was approved by the National Conference of Commissioners on Uniform State Laws on July 30, 1968, after its executive committee in 1965 approved a study with respect to the possible establishment of a Uniform Gift of Human Tissue Act.⁸ This uniform law, as adopted in California in 1970, is found in section 7150 *et seq.*

Section 7153.5 provides who may be “donees” under the act. It states:

“The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

(a) Any hospital, surgeon, physician, or coroner, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation.

(b) Any accredited medical or dental school, college or university for education, research, advancement of medical or dental science, therapy, or transplantation.

(c) Any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation.

(d) Any specified individual for therapy or transplantation needed by him.”

It is thus seen that if cryonic suspension is to qualify under the act, the donee would have to qualify as a “bank or storage facility” with its purpose being “for medical . . . research [or] advancement of medical . . . science.”

Section 7150.5 provides definitions for purposes of the act. Subdivision (a) therefore states:

“‘Bank or storage facility’ means a facility licensed, accredited, or approved under the laws of any state for storage of human bodies or parts

⁸ See Louisell. *The Procurement of Organs for Transplantation* (1970) 64 Ns. U. L. Rev. 607, 619.

thereof.”

Insofar as California is concerned, the only accreditation or approval of banks for the storage of human tissue of which we are aware arises from the provisions of the Probate Code section 20. That section provides:

“Every person of sound mind, over the age of 18 years, may dispose of his or her separate property, real and personal, by will. In addition, every such person may by will dispose of the whole or any part of his or her body to a teaching institution, university, college, State Director of Public Health or legally licensed hospital, *or to or for the use of any nonprofit blood bank, artery bank, eye bank, or other therapeutic service operated by any agency approved by the Director of Public Health under rules and regulations established by the director*, either for use as such institution, university, college, hospital or agency may see fit, or for use as expressly designated therein.” (Emphasis added.)

Regulations with respect to “tissue banks” are found in section 1200 *et seq.* of Title 17, California Administrative Code. Section 1201 thereof provides:

“No person shall collect, process, store, or distribute human tissues obtained in accordance with Section 7100 or 7115 of the Health and Safety Code, or Section 20 of the Probate Code, unless such persons shall have received approval from the department.”⁹

Section 1200 thereof contains the definition of “person” for purposes of the regulations. It states:

“1200. Definitions. (a) As used in this group, ‘person’ includes teaching institution, university, college, legally licensed hospital, nonprofit blood bank, artery bank, eye bank, *or other therapeutic service* operated by any agency approved by the State Director of Public Health.” (Emphasis added.)

It is thus seen that as to organizations other than hospitals or teaching institutions, the regulations with respect to approval or accreditation of tissue banks or storage facilities for human tissue only apply to organizations or “agencies” which will provide “therapeutic” service. As noted at the outset herein, this was the advice given by the

⁹ Although the regulations have not been amended to reflect certain legislative changes, we note that the pertinent provisions of sections 7100 and 7115, as they read prior to 1968 relating to tissue donation, are now found in the Anatomical Gift Act.

Department of Health Service in its correspondence with Trans Time, Inc. of May 28, 1980.

Accordingly, it appears that California law provides no method whereby Trans Time, Inc. may qualify as a “bank or storage facility” in order to be a qualified donee under the Anatomical Gift Act. Despite this fact, it has been suggested that section 7150.5, *supra*, insofar as it states that a bank or storage facility is one “licensed, accredited, or approved under the laws of any state for storage of human bodies or parts thereof” should be interpreted to read to mean that the storage facility be “*in compliance with* the laws of any state for the storage of human bodies or parts thereof.” This argument is advanced apparently on the theory that such a reading is required to provide the constitutional right of a donor to have his body placed in cryonic suspension upon death, and the constitutional right of a donee such as BACS, or its contractee, Trans Time, Inc. to engage in the “business” of storing such bodies. The argument then proceeds to the conclusion that since there are no laws regulating cryonic suspension facilities in California, a storage facility such as Trans Time, Inc. is, accordingly, “in compliance” with California law. However, as explained below, we reject the basic premise that such constitutional rights exist.

As to a potential donor, it has been suggested that he has a “property right” in his body; therefore, to prohibit him from directing that his body be placed in cryonic suspension upon death deprives him (1) of his constitutional right to “enjoy life” and (2) of his property without due process of law.

Assuming, *arguendo*, there is a property right in one’s body¹⁰ the argument is in our opinion specious. The law has always been that there is no right to make a testamentary disposition of one’s property. This is essentially what is done under the Anatomical Gift Act and would be done by cryonicists even absent such a law. As pointed out by the court in *Estate of Nicely* (1965) 235 Cal. App. 2d 174, 184:

“The right to make a will is not a natural right, not a right of property. Originating in the Statute of Wills (32 Hen. VIII, Ch. 1, July 20; 1540), it is

¹⁰ The wording of Probate Code section 20, *supra*, would appear to contradict such a right.” That section provides in the first sentence that a person may dispose of his property by will. The section then provides that “in addition,” an individual may make certain testamentary dispositions of his body or body parts.

Likewise, insofar as it is argued that sections 654 and 655 of the Civil Code support the concept that a person owns his body to the point that it may be “willed” upon death, we note that section 654 speaks of ownership as the right to possess a thing, and section 655 states there may be “ownership of all inanimate things which are capable of . . . manual delivery.” However, once a person has died, his right to possess things has lapsed. And while he is alive, his body is not an inanimate object within the meaning of section 655.

an ancient right but not inalienable. *The testamentary act is not protected by any constitutional provisions; it is purely statutory; subject to complete control by the Legislature.* (53 Cal. Jur. 2d, Wills, § 2, p. 221; 1 Page on Wills, (Bowe-Parker Rev.) § 3.1, p. 62; *Estate of Burnison*, 33 Cal. 2d 638 [204 P.2d 3301.]) The latter case says (on p. 640): “[T]he Legislature has the exclusive power to designate those whom the testator may make the objects of his bounty.

From this it follows that where the intent of a testator, however clear, contravenes the clear purpose of a statute the latter must prevail.” (Emphasis added.)

With respect to the suggestion that there is a constitutional right to cryonic suspension as an inalienable right “to life,” such argument translates the constitutional “right” to one of a “future life.” However, such “right” is at most *a hope*, which certainly cannot be held to have reached constitutional proportions. The hope is that at some future date medical science will have reached such advanced technology that people clearly dead under all current medical criteria can be “reanimated.” This is even confirmed in BACS’s “Application for Suspension Membership” itself at page 4, where it is stated:

“The treatment of cryonic suspension is new, unproven, experimental, and involves unforeseeable medical and technical problems. This treatment is not consistent with contemporary medical or mortuary practice. Any expectation regarding the possibility of restoring a suspended person to life and health at a future date is based upon pure and hopeful speculation as to the capabilities of future medical science.”

With respect to the assertion that cryonic suspension must be permitted since the Legislature cannot legislate “non-dangerous” businesses out of existence (citing cases such as *Nebbia v. New York* (1934) 291 U.S. 502), we merely observe that again we do not agree with the basic premises advanced that engaging in cryonic suspension is a non-dangerous” activity. The plethora of health regulations contained in the Health and Safety Code with respect to dead bodies and cemeteries belies such categorization.

Finally, on the subject whether cryonic suspension falls within the purview of the Anatomical Gift Act, we believe that taken in its historical setting, the act was not intended to encompass such a “donation.” As noted, it was not until 1967 and 1968 respectively that the first two bodies were placed in cryonic suspension. Yet the study which led to the adoption of the uniform act by the Commissioners on Uniform Laws commenced in 1965, finally culminating in the adoption of the uniform act by the Commissioners in 1968. In short, during the period 1965–1968 there was no need for legislation on the subject of cryonic suspension. The need was for uniformity of law with respect to such matters as tissue transplantation. This would explain the provision in the act for licensed, accredited

or approved “bank or storage facilities.” (See, generally, Uniform Anatomical Gift Act (U.L.A.), Commissioners’ Prefatory Note, pp. 16–17; Louisell, *Procurement of Organic Transplantation*, (1970) 64 Nw.U.L. Rev. 607, 621–622.) Also, in its historical context the need for a “bank or storage facility” would have been for a place for temporary or relatively short term storage of human tissue, not for indefinite or semi-permanent storage as practiced by cryonicists. In short, we conclude that cryonic suspension does not fall within the legislative intent or purpose of the Uniform Anatomical Gift Act. “[I]n construing the meaning of . . . language, we are mindful that the goal of statutory construction is ascertainment of legislative intent so that the purpose of the law may be effectuated . . .” *People v. Shirokow* (1980) 26 Cal. 3d 301, 306–307. As stated by one pair of commentators:

“It is desirable to restrict donees to those persons or institutions licensed or authorized to practice medicine or to engage in tissue banking or related matters. The Uniform Act does just that, specifically including licensed hospitals, tissue banks and accredited medical and dental schools as valid potential donees.” (Sadler and Sadler, *Transplantation and the Law: The Need for Organized Sensitivity* (1965) 57 Georgetown Law Journal 5.)

Accordingly, We conclude that arranging to have one’s body placed in cryonic suspension does not meet the requirements of the Uniform Anatomical Gift Act.”¹¹

In concluding that cryonic suspension neither constitutes the operation of a cemetery nor falls within the purview of the Uniform Anatomical Gift Act we wish to point out that we are not attempting to determine whether cryonic suspension falls within the scope of any other California laws, either prohibitory or regulatory. We answer herein only the questions posed by the Cemetery Board.

¹¹ Thus we need not analyze nor resolve other problems or suggestions which inhere in the procedures used by BACS and Trans Time, Inc. such as (1) whether BACS may be the “donee” under the Anatomical Gift Act when Trans Time, Inc. is the actual storage facility; (2) whether the anatomical gift form used by BACS vests in it a testamentary power of appointment; (3) whether the “suspension member” is in fact making a “donation” of his body, or is really making a “death-care” contract; (4) whether the Uniform Anatomical Gift Act requires a pure gift—that is, whether there must be a complete absence of consideration for the donation; and (5) whether cryonic suspension qualifies as “medical research” within the meaning of the Uniform Anatomical Gift Act.