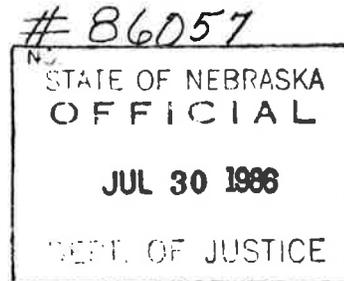


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

DATE: July 29, 1986

SUBJECT: Duties of Clerk Magistrate Under LB 529

REQUESTED BY: Mr. Patrick A. Duncan, Franklin County Attorney
Mr. Douglas A. Kristensen, Kearney County Attorney

WRITTEN BY: Robert M. Spire, Attorney General
William L. Howland, Assistant Attorney General

This is in response to your question concerning LB 529, recently passed into law. You asked if, under that law, the clerk magistrate could issue an arrest warrant if a judge is available by telephone. We believe the answer to your question is "no".

Neb.Rev.Stat. §24-519 (Supp. 1985) is amended by LB 529, §8. That section reads in part:

Clerk magistrates shall have authority to perform the following duties:

* * *

(2) To conduct any proceeding for the issuance of warrants for arrest or for searches and seizures when no county or district judge is available in the county, the county or district judge serving the county is not available by telephone at the time of the issuance of the warrant, and the issuance of such warrant is an emergency.

No problem is presented in the case of a search warrant. In an emergency where a judge is available by telephone, the judge could issue a search warrant over the telephone according to Neb.Rev.Stat. §29-814.03 (Reissue 1985). "A search warrant may be issued . . . pursuant to a telephonic statement made to a magistrate or judge." Id. No such authority exists, however, for the issuance of an arrest warrant by phone.

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Mr. Patrick A. Duncan
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It appears, then, that in the case of an emergency where no judge is available by telephone or in person, the clerk magistrate may issue an arrest warrant. If in an emergency a judge were available by telephone, however, the clerk magistrate would not have the authority to issue an arrest warrant, and it seems the judge would also lack the requisite statutory authority to issue the arrest warrant telephonically. If a judge is available by telephone, an arrest warrant may not issue until a judge can issue the warrant in person. The clerk magistrate may not issue an arrest warrant if a judge is available by telephone.

Sincerely,

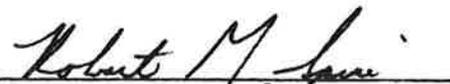
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APPROVED:



Attorney General