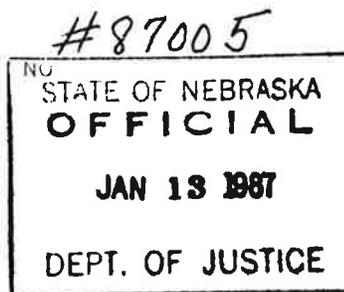


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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

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



DATE: January 8, 1987
SUBJECT: Whether the Clerk Magistrate has the Authority to Sign Garnishment Orders
REQUESTED BY: Joseph C. Steele, Nebraska State Court Administrator
WRITTEN BY: Robert M. Spire, Attorney General; Linda L. Willard, Assistant Attorney General

You have asked whether Clerk Magistrates have the authority to sign garnishment orders. In our opinion, they cannot.

Neb.Rev.Stat. §§25-1001 et seq. (Reissue 1985) established the procedure to be followed by the court in attachment or garnishment proceedings. Section 25-1002 states in relevant part: "An order of attachment shall be approved by a judge of the Supreme Court or any district or county court . . ." Additionally, §25-1003 refers to "the judge to whom the affidavit . . . is presented." Section 25-1010 provides that, "[A] judge of the Supreme Court or any district or county court may direct the clerk to issue a summons and order requiring such person, partnership, or corporation as garnishee to answer written interrogatories, . . ."

County Judge is defined in Neb.Rev.Stat. §24-503 (1986 Supp.). Clerk Magistrate is defined in §24-507 (1986 Supp.) and at subsection 2 states, "The clerk magistrate shall be the clerk of the county court and if appointed as clerk magistrate for more than one county shall be the clerk of the county court for each county." Neb.Rev.Stat. §24-519 (1986 Supp.) outlines the duties which a clerk magistrate specifically has the authority to perform.

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Mr. Joseph C. Steele
January 8, 1987
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It is clear the the clerk magistrate is not a judge within the statutory definition nor are garnishment proceedings specifically set out as one of the duties which the clerk magistrate has the authority to perform. Therefore, it is our conclusion that the clerk magistrate does not have the authority to sign garnishment orders.

Sincerely,

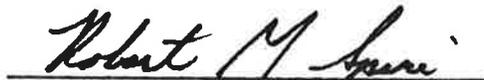
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APPROVED BY:


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