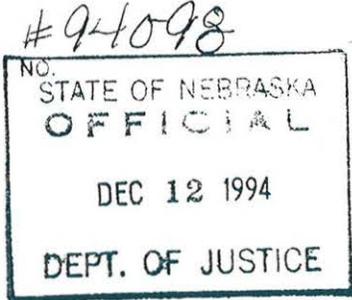




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DATE: November 4, 1994

SUBJECT: Confiscation of Property from pawnbrokers by officers who reasonably believes such property was stolen

REQUESTED BY: Matt Samuelson, Thurston County Attorney

WRITTEN BY: Don Stenberg, Attorney General
 David Arterburn, Assistant Attorney General

You requested our opinion on whether Neb. Rev. Stat. § 69-204(6) permits a police officer to confiscate or seize property from a pawnbroker when he reasonably believes that the property is stolen. We believe the answer to be in the affirmative.

Neb. Rev. Stat. § 69-204(6) specifically states that "Every pawnbroker, or employee of a pawn broker . . . shall allow such officer to place restrictions on the disposition of any property for which a reasonable belief exists that it has been stolen."

To adequately address your question it must first be determined what exactly the phrase "restriction on the disposition of any property" means. The Black Law Dictionary, Sixth Edition, defines disposition as "an act of disposing; transferring to the care or possession of another. The parting with, alienation of, or giving up property." It may easily be inferred that Neb. Rev. Stat. § 69-204(6), based on this definition of disposition, authorizes an officer to restrict or prevent the transfer of such property to another. This effectively creates a police hold on the property. However, it remains vague as to whether such "restriction on the disposition of any property" also includes the power to demand that such property be given up to police.

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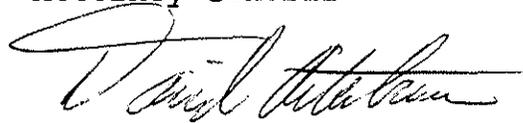
Matt Samuelson
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The legislative history of Neb. Rev. Stat. § 69-204(6) does provide some insight as to whether the Unicameral intended for officers to have the authority, not only to require pawnbrokers to hold stolen property, but also, to confiscate or seize the same. Arguably, if the legislature intended for such action under the statute they would have explicitly stated so. However there is no language in § 69-204(6) that expressly says an officer may seize property he reasonably believes to be stolen.

A review of the legislative history shows that the intent of § 69-204 was to follow the structure of the Omaha City Code dealing with pawnbrokers. Floor Debate, LB 44, March 27, 1981, pp. 2453. Section 30-130 of the Omaha City Code states that police can take into possession by virtue of police hold any article known to or believed to be stolen. Committee on the Judiciary, LB 44, January 27, 1981, pp. 15. The debate on this provision clearly demonstrates that the legislature believed that by revising § 69-204, it was in fact authorizing police to take such property into their possession. The basis for the provision was not only to protect the rightful owner from the loss of property, but protect pawnbrokers who under former law might have to turn over such property to a person posing as a rightful owner, but who in fact has no valid claim to the property. By taking the property into police custody, the task of placing the property with the rightful owner falls to the Court. Therefore, an officer's practice of seizing property which is reasonably believed to be stolen from pawnshops is not contrary to the procedure outlined in § 69-204(6).

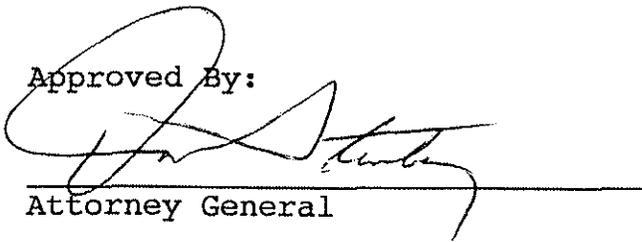
Respectfully submitted,

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Approved By:



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22-761-11