

May 7, 1979

LB 444

I was an Administrative Law Judge. The reason I was called a Judge was because that was my function. I heard and decided cases. I took testimony. I put people under oath, and that's the function I performed. The National Relations Labor Board does the same thing. These people are called Judges of the federal level. All throughout the federal beauracracy people who hear and decided cases are called Judges. That's their function. Now Senator Wesely says this is just a simple change in harmony with our provisions before. Let me submit to you some of the things that these people, whatever we're going to call them, do. They follow the rules of evidence. They are themselves trained attorneys. They have contempt authority to decide what actions that occur before them are a matter of contempt. They have their own rule making power, not under the Administrative Procedures Act but independent of their own authority. They also have rules of this body that say that people who bring cases to them must be attorneys. Now if that is not a judicial function, if that is not hearing and deciding factual and legal issues, I do not know what is. If, throughout the rest of our beauracracy we use the word Judges to describe that function, there is no reason why the animosity of this body should be specifically vented against the Commission of Industrial Relations. We use that term often. It's often a term used in the federal beauracracy to describe the functions involved, and we should do it here. Those are the substantive reasons why the Wesely amendments, I think in this case, lead us down an unfortunate path. Lastly, however, let me point to you that this is the beginning, perhaps, of a very pernicious doctrine. This is the first step in the door. I can foresee next year, for example, coming back with language that says, well, now that we've got this administrative agency, we've got to put them under the Administrative Procedures Act. Are any of the members here familiar with the rules of evidence and how extensive they are? How significant and how annotated they are, and their relationship to the starry decisive set of cases and case law in Nebraska and the federal judiciary? If you are, then perhaps you're willing to put the rules of evidence under the Administrative Procedures Act. As an attorney I can assure you that's not the place that they belong. You shouldn't turn the rules of evidence and their application into an administrative rule and regulation, but that's going to be the next step of exactly the doctrine that Senator Wesely promotes with the amendments on LB 444. Now I understand that we need to create a public clarification. The body, the Legislature, did

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