

**Opinion No. 60-145**

August 9, 1960

**BY:** OPINION of HILTON A. DICKSON, JR., Attorney General

**TO:** Mr. John A. Anderson City Attorney Lordsburg, New Mexico

**QUESTION**

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May a warrant for arrest issue where the complainant cannot identify the defendant with reasonable certainty by name, nickname, alias or physical description?

CONCLUSION

No.

**OPINION**

{\*526} **ANALYSIS**

Section 10, Article II of the New Mexico Constitution provides as follows:

"The people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures, and no warrant to search any place, or seize any person or thing, shall issue without describing the place to be searched, or the persons or things to be seized, nor without a written showing of probable cause, supported by oath or affirmation."

Section 8 of Am. Jur., pages 9 and 10, reads as follows:

"It is essential to the validity of the warrant that the person to be arrested should be identified by the terms of the warrant. This is usually done by the insertion of his name on the warrant, although it is not indispensable that the name of the person to be arrested should appear in the warrant. If, however, the warrant does not set forth the name by reason of its being unknown, or for other adequate cause, the rule is well established that the warrant must contain the best description possible, sufficient to indicate clearly the person to be arrested, and should state his occupation, personal appearance, place of residence, or other means of identifying him. If it does not contain the name of the defendant or any description or designation by which he could be known and identified as the person sought, it is void. Thus, a warrant granted with the name in blank and without sufficient designation of the person to be arrested is void, not only at common law, but as being in violation of the constitutional provisions declaring that every citizen has a right to be secure from unreasonable search and seizure and

that no warrant shall issue for the arrest of a person without {<sup>527</sup>} a special designation of the persons or objects of search, arrest, or seizure. A warrant to arrest 'John Doe', without any further description or means of identification of the person to be arrested, is a nullity. However, where an arrest is made under a John Doe warrant, and later, a regular warrant is issued under which the prisoner is held, the courts have refused to release the person arrested in spite of the invalidity of the original arrest. Even where a John Doe warrant has been issued, the prisoner will not be released if for any reason the arrest may be upheld as valid, as, for instance, where it was for an offense committed in the presence of the officer making the arrest. It appears, however, that a statute may properly be passed authorizing the practice of issuing John Doe warrants. It has been held that an officer cannot justify an arrest made under a warrant which gives the surname, but not the first name, of the person to be arrested, or which gives a first name erroneously."

It is clear from the above quoted constitutional provision and the general law that a blank or alias warrant is void. If name in warrant is not given, the warrant must contain the best description possible, sufficient to indicate clearly the person to be arrested. It should state his occupation, personal appearance, place of residence, or other means of identifying him.

By: Hilario Rubio

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