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**STATUTES  
ANNOT.**

**26 to 28**

**Elections - Fees**

**OKLAHOMA STATUTES  
ANNOTATED**

**Titles 26 to 28**

**Elections  
to  
Fees**

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# OKLAHOMA STATUTES ANNOTATED

**Title 26. Elections**

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**Title 27. Eminent Domain**

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**Title 28. Fees**

Under Arrangement of the  
Official Oklahoma Statutes

ST. PAUL, MINN.  
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# PREFACE

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This revised volume consolidates and brings to date the laws and court constructions relative to Title 26, Elections; Title 27, Eminent Domain; and Title 28, Fees.

The accumulated laws, judicial constructions and annotated materials have been integrated with existing provisions to preserve and expand the practical utility of Oklahoma Statutes Annotated.

The general and permanent laws of the State of Oklahoma contained in this volume, including all amendatory legislation, are complete through the Second Regular Session of the 42nd Legislature (1990).

## Oklahoma Statutes

The text, classification and arrangement of the laws in OKLAHOMA STATUTES ANNOTATED correspond with the official OKLAHOMA STATUTES prepared and published under legislative authority and under the direction and supervision of the Justices of the Supreme Court. A citation of any section in this volume is automatically a citation to the official Oklahoma Statutes.

## Annotations or Notes of Decisions

The annotations or constructions of the law by the courts cover decisions of the Supreme Court and Court of Criminal Appeals of Oklahoma, as well as the Supreme Court of the United States and other Federal Courts.

The annotations in this volume close with cases reported in:

Pacific Reporter, Second Series, and Oklahoma Decisions.....	801 P.2d 291
Supreme Court Reporter.....	111 S.Ct. 574
United States Reports.....	489 U.S. (part)
Lawyers' Edition, Second Series.....	112 L.Ed.2d (part)
Federal Reporter, Second Series.....	919 F.2d 147
Federal Supplement.....	750 F.Supp. 535
Federal Rules Decisions.....	132 F.R.D. 571
Bankruptcy Reporter.....	121 B.R. 266
Claims Court Reporter.....	22 Cl.Ct. 74

## PREFACE

Oklahoma Opinions of the  
Attorney General ..... Op. Atty. Gen. No. 90-25  
(Oct. 10, 1990)

### Other Standard Reports

Preceding the Notes of Decisions under each section, the user will find a detailed alphabetical index to the annotations that serves as a convenient and time-saving aid to research.

### Standard Features

In addition, this volume contains all of the familiar and time tested features of OKLAHOMA STATUTES ANNOTATED, with additions that enhance its value as a medium of research. These features include—

- Historical Notes explaining changes in the text;
- Cross References to related or qualifying provisions;
- Law Review Commentaries to pertinent articles;
- Library References to the Key Number Digests and Corpus Juris Secundum;
- United States Code Annotated (U.S.C.A.) references to related federal laws; and
- United States Supreme Court references to leading decisions.

### WESTLAW Electronic Research

A WESTLAW guide covering additional resources for use in your legal research is set out following the Preface of this volume. See WESTLAW Insta-Cite® to update the case history information for opinions under Notes of Decisions.

### Acknowledgment

The Publisher is indebted to the various State Officials and to the members of the Bench and Bar whose continued interest and cooperation have contributed materially to the practical success of OKLAHOMA STATUTES ANNOTATED.

THE PUBLISHER

April, 1991

# WESTLAW® ELECTRONIC RESEARCH GUIDE

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find OK ST T. 36 s 102

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# ABBREVIATIONS

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App.	Appendix
Art.	Article
B.R.	Bankruptcy Reporter
c.	Chapter of Act
Ch.	Chapter
Comp.Laws	Compiled Laws
Comp.St.	Compiled Statutes
Const.	Constitution
C.J.S.	Corpus Juris Secundum
Eff.	Effective
Emerg.	Emergency
F.2d.	Federal Reporter, Second Series
F.R.D.	Federal Rules Decision
F.Supp.	Federal Supplement
H.R.	House Resolution
H.C.R.	House Concurrent Resolution
H.J.R.	House Joint Resolution
⇒ (Key Number)	State Digest and other units of the American Digest System
L.Ed.	Supreme Court Reports, Lawyers' Edition
L.Ed.2d.	Supreme Court Reports, Lawyers' Ed., Second Series
Okl.	Oklahoma Supreme Court Reports
Okl.App.	Court of Appeals
Okl.Cr.	Court of Criminal Appeals
Okl.St. Ann.	Oklahoma Statutes Annotated
Okla. B.J.	Oklahoma Bar Journal
Okla. B.J. Supp. Q.	Oklahoma Bar Journal Supplement Quarterly
Okla. City U.L. Rev.	Oklahoma City University Law Review
Okla. L. Rev.	Oklahoma Law Review
O.S. Supp.	Oklahoma Statutes Supplement
Op. Atty. Gen.	Opinion of the Attorney General
P.	Pacific Reporter
P.2d.	Pacific Reporter, Second Series
p.	Page
par.	Paragraph
PEB.	Permanent Editorial Board for the Uniform Commercial Code
R.L.	Revised Laws
Sec.	Section of Act
S.R.	Senate Resolution
S.C.R.	Senate Concurrent Resolution
S.J.R.	Senate Joint Resolution
St.	Statutes
Subs.	Subsection
Subd.	Subdivision
S.Ct.	Supreme Court Reporter
Tulsa L.J.	Tulsa Law Journal

## ABBREVIATIONS

U.L.A. ....	Uniform Laws Annotated
U.S.C.A. ....	United States Code Annotated
U.S. ....	United States Reports



## EFFECTIVE DATES OF LAWS

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Constitution Article 5, § 58, provides that: "No act shall take effect until ninety days after the adjournment of the session at which it was passed, except enactments for carrying into effect provisions relating to the initiative and referendum, or a general appropriation bill, unless, in case of emergency, to be expressed in the act, the Legislature, by a vote of two-thirds of all members elected to each House, so directs. An emergency measure shall include only such measures as are immediately necessary for the preservation of the public peace, health, or safety, and shall not include the granting of franchises or license to a corporation or individual, to extend longer than one year, nor provision for the purchase or sale of real estate, nor the renting or encumbrance of real property for a longer term than one year. Emergency measures may be vetoed by the Governor, but such measures so vetoed may be passed by a three-fourths vote of each House, to be duly entered on the journal."

The following Table shows the date of adjournment and the effective date of non-emergency acts enacted at legislative sessions subsequent to 1951.

Year	Legislature	Adjournment Date	Effective Date
1953	24th	June 6, 1953	September 5, 1953
1955	25th	May 27, 1955	August 26, 1955
1957	26th	May 29, 1957	August 28, 1957
1959	27th	July 3, 1959	October 2, 1959
1961	28th	July 28, 1961	October 27, 1961
1963	29th	June 14, 1963	September 13, 1963
1965	30th	July 22, 1965	October 21, 1965
1967	31st (1st Reg.)	May 11, 1967	August 10, 1967
1968	31st (2d Reg.)	May 3, 1968	August 2, 1968
1969	32nd (1st Reg.)	April 29, 1969	July 29, 1969
1970	32nd (2d Reg.)	April 15, 1970	July 15, 1970
1971	33rd (1st Reg.)	June 11, 1971	September 10, 1971
1972	33rd (2d Reg.)	March 31, 1972	June 30, 1972
1973	34th (1st Reg.)	May 17, 1973	August 16, 1973
1974	34th (2d Reg.)	May 17, 1974	August 16, 1974
1975	35th (1st Reg.)	June 6, 1975	September 5, 1975
1976	35th (2d Reg.)	June 9, 1976	September 8, 1976
1976	35th (1st Ex.Sess.)	June 23, 1976	*
1977	36th (1st Reg.)	June 8, 1977	September 7, 1977

## EFFECTIVE DATES OF LAWS

Year	Legislature	Adjournment Date	Effective Date
1977	36th (1st Ex.Sess.)	June 17, 1977	September 16, 1977
1978	36th (2d Reg.)	April 28, 1978	July 28, 1978
1979	37th (1st Reg.)	July 2, 1979	October 1, 1979
1980	37th (2d Reg.)	June 16, 1980	September 15, 1980
1980	37th (1st Ex.Sess.)	July 11, 1980	*
1981	38th (1st Reg.)	July 20, 1981	October 19, 1981
1981	38th (1st Ex.Sess.)	Sept. 4, 1981	*
1982	38th (2d Reg.)	July 12, 1982	October 11, 1982
1983	39th (1st Reg.)	June 23, 1983	September 22, 1983
1983	39th (1st Ex.Sess.)	Sept. 23, 1983	Emergency acts only
1983	39th (2d Ex.Sess.)	Nov. 30, 1983	No legislation
1984	39th (2d Reg.)	May 31, 1984	August 30, 1984
1985	40th (1st Reg.)	July 19, 1985	October 17, 1985
1986	40th (2d Reg.)	June 12, 1986	September 11, 1986
1987	41st (1st Reg.)	July 17, 1987	October 16, 1987
1987	41st (1st Ex.Sess.)	July 7, 1987	No legislation
1987	41st (2d Ex.Sess.)	July 14, 1987	No legislation
1988	41st (2d Reg.)	July 12, 1988	October 11, 1988
1988	41st (3d Ex.Sess.)	Sept. 2, 1988	*
1989	42nd (1st Reg.)	May 26, 1989	August 25, 1989
1989	42nd (1st Ex.Sess.)	May 2, 1990	*
1990	42nd (2d Reg.)	May 25, 1990	August 24, 1990

\* Emergency measures only

**CITE THIS BOOK**

Thus: — Okl.St. Ann. § —

# OKLAHOMA STATUTES

## ANNOTATED

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#### WESTLAW Electronic Research

WESTLAW supplements Oklahoma Statutes Annotated and is useful for additional research. Enter a citation in Insta-Cite for display of any parallel citations and case history. Enter a constitution, statute or rule citation in a case law database for cases of interest.

Example query for Insta-Cite: IC 563 P.2d 125

Example query for Oklahoma Constitution:

Okl.Const. Const. Constitution /s 5 V +3 59

Example query for statute: 21 +2 O.S.! +5 701.10

Also, see the WESTLAW Electronic Research Guide following the Preface.

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## WESTLAW Electronic Research

WESTLAW supplements Oklahoma Statutes Annotated and is useful for additional research. Enter a citation in Insta-Cite for display of any parallel citations and case history. Enter a constitution, statute or rule citation in a case law database for cases of interest.

Example query for Insta-Cite: IC 563 P.2d 125

Example query for Oklahoma Constitution:

Okl.Const. Const. Constitution /s 5 V +3 59

Example query for statute: 21 +2 O.S.! +5 701.10

Also, see the WESTLAW Electronic Research Guide following the Preface.

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## Cross References

Abolished courts, declaration of candidacy, see Const. Art. 7, § 7.

Age, qualification of electors, see Const. Art. 3, § 1.

Agricultural fairs and expositions, see title 2, § 31 et seq.

Area school district, bonds, see title 70, §§ 4415, 4416.

Arrest, electors, privilege from, see Const. Art. 3, § 5.

Associate district judges, election, see Const. Art. 7, § 9.

Banks, political contributions, see title 6, § 808.

Betting upon election prohibited, see title 21, § 181.

- Campaign contributions, state officers and employees, removal from office, see title 74, § 3114.
- Carrying weapons at election, see title 21, § 1277.
- Community becoming a city, election, see title 11, § 4-101 et seq.
- Constitutional amendments proposed by legislature, see Const. Art. 24, § 1.
- Constitutional provisions as to elections, see Const. Art. 3.
- County seat elections, see Const. Art. 17, §§ 6, 7; title 19, § 71 et seq.
- District judges, election, see Const. Art. 7, § 9.
- Elective state officers, returns of elections, see Const. Art. 6, § 5.
- Initiative and Referendum, see Const. Art. 5, §§ 1 to 8; title 34, § 1 et seq.
- Judges of Court of Criminal Appeals, see Const. Art. 7, § 3.
- Judges of district courts, election, see title 20, § 92.1 et seq.
- Judicial nominating commission, see Const. Art. 7-B, § 3.
- Justices of Supreme Court, election, see Const. Art. 7, § 3.
- Libelous article concerning candidate, retraction, see title 12, § 1446a.
- Local and special laws, prohibition against, see Const. Art. 5, § 46.
- Road and bridge bond issue election, see title 69, § 604.
- State officers, suspension, see Const. Art. 8, § 1.
- Suffrage,  
Civil or military powers, non-interference with right of, see Const. Art. 2, § 4.  
Right of not to be abridged on account of race, color, or previous condition of servitude, see Const. Art. 1, § 6.
- Water facilities, acquisition, see Const. Art. 10, § 27A.

### **United States Code Annotated**

- Denial of right to vote, see 42 U.S.C.A. § 1971.
- Election offense, see 18 U.S.C.A. § 592 et seq.
- Federal election records, see 42 U.S.C.A. § 1974 et seq.
- Freedom of election, interference, see 42 U.S.C.A. § 1972.
- Intimidation of voters, see 18 U.S.C.A. § 594.
- Presidential election campaign fund, see 26 U.S.C.A. § 9001 et seq.
- Uniformed and overseas citizens absentee voting act, see 42 U.S.C.A. § 1973ff et seq.

## **ARTICLE I. STATE AND COUNTY ELECTIONS—POLITICAL PARTIES**

### **§ 1-101. General elections**

On the first Tuesday succeeding the first Monday of November, 1976, and every four (4) years thereafter, a General Election shall be held, at which time electors for President and Vice President shall be elected. On said date, and every two (2) years thereafter, United States Senators and United States Representatives, whose terms expire before the next succeeding General Election, and state, district and county officers, whose terms expire before the next succeeding General Election, shall be elected. No county, municipality or school district shall schedule an election on any date during the twenty (20) days immediately preceding the date of any such General Election.

Laws 1974, c. 153, § 1-101, operative Jan. 1, 1975. Laws 1977, c. 134, § 1.



### Historical and Statutory Notes

The 1977 amendment added the last sentence.

#### Source:

Laws 1907-08, p. 316.  
Comp.Laws 1909, § 3095.  
R.L.1910, § 3056.  
Comp.St.1921, § 6126.  
St.1931, § 5792.  
26 O.S.1971, § 1.

#### Title of Act:

An Act relating to elections; amending 11 O.S.1971, §§ 41, 48, 49, 50, 61 and 62; amending 19 O.S.1971, §§ 215.8 and 449; amending 20 O.S.1971, § 30.12; amending 34 O.S.1971, § 22; providing for primary, runoff primary and general elections; establishing procedure for substitute candidates and various party recognition, termination and affiliation; authorizing election boards; designating the organization, duties, structure and compensation of boards and employees; providing various means for voter recognition; establishing framework for conducting elections and supplying equipment and materials; creating necessary funds and accounts; authorizing precincts and subprecincts and allowing for change; providing for electronic data processing; providing for requirements, declaration, filing, withdrawal, challenge and contest of candidacy; providing for format, content, printing and distribution of ballots; establishing procedures for voting, counting, certification and possession of ballots, supplies and equipment; allowing time to vote; providing for appointment and duties of watchers; allowing for the disabled voter; providing for certification and other procedures in the nomination and election of candidates; designating requirements in the event of a contest, recount or petition; allowing for purchase or rental, storage and repair of voting machines; prescribing specifications and guidelines in utilization of voting machines; allowing for challenges and experimental use; providing for the nomination, election, certification and related matters of presidential electors; providing for appointment, terms, candidacy and certification for judicial officers; eliminating party designation; providing for judicial districts and nominating districts; providing for special elections and municipal

elections and procedures for conducting each; providing for ballot in special elections; designating certain acts as crimes and providing penalties; designating requirements for filing and candidate's name on ballot; making district attorney ineligible as candidate in certain instances; declaring a vacancy in office of county commissioner upon certain disability and manner of filling vacancy; providing for candidacy and election of judge for the court of appeals; designating procedures for voting by initiative and referendum; providing for selection of qualified jurors; directing codification; designating effect of headings; providing for severability; providing for general repealer and specifically repealing all of Title 26, Oklahoma Statutes, as amended by § 1 of Chapter 167, §§ 1 through 7 of Chapter 211, §§ 1 through 3 of Chapter 213, §§ 1 through 5 of Chapter 224 and §§ 1 through 12 of Chapter 226, O.S.L.1972 (26 O.S.Supp. 1973, §§ 25a, 93.3, 93.4, 101b, 101f, 102.3, 102.7, 103.5, 326a, 326d, 326e, 345.1, 345.7, 4, 103.5, 103.6, 103.7, 103.8, 103.9, 345.10, 345.16, 345.2, 101, 103.1, 103.3, 103.16, 103.20 and 103.21), and as amended by § 1 of Chapter 3, § 3 of Chapter 40, § 1 of Chapter 49 and § 1 of Chapter 110, and as last amended by § 1 of Chapter 10, O.S.L.1973 (26 O.S.Supp. 1973, §§ 373, 8, 556a, 438 and 102.1); repealing 11 O.S.1971, §§ 25, 26, 27, 28, 29, 31, 34, 35, 37, 38, 63, 65, 66 and 1291; repealing 12 O.S.1971, § 36; repealing 19 O.S.1971, §§ 361, 362, 363, 364 and 403; repealing 21 O.S.1971, §§ 184, 185, 186, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 211, 212, 213, 214, 215, 216, 217, 218, 219, 231, 243, 251, 252, 253, 254 and 1780; repealing 34 O.S. 1971, §§ 14, 20, 61, 62, 63, 64, 65 and 66; except 26 O.S.1971, §§ 71 through 103.22 inclusive, as amended (Chapter 4, Registration); 26 O.S.1971, §§ 321 through 345.17 inclusive, as amended (Chapter 10, Absentee Voting) and 26 O.S.1971, §§ 401 through 423.10 inclusive, as amended (Chapter 13, Campaign Expenditures); providing that nothing in this act shall be construed to repeal the provisions of Senate Bill No. 478, Senate Bill No. 481 and Senate Bill No. 534 of the Second Session, 34th Oklahoma Legislature, should said Bills be enacted into Law except that §§ 93.13, 93.20, 93.21, 93.22, 93.23, 103.1, 103.4, 103.20 and

345.11 of 26 O.S.1971, as amended are hereby specifically repealed on the effective date of this act; otherwise except as expressly stated and/or reserved herein,

all laws or parts of laws in conflict herewith are repealed; providing for operative date; and declaring an emergency. Laws 1974, c. 153.

### Cross References

Presidential electors, see § 10-101 et seq. of this title.

### Library References

Elections ⇨38.

United States ⇨11, 25.

WESTLAW Topic Nos. 144, 393.

C.J.S. Elections §§ 76, 77.

C.J.S. United States §§ 11 to 15, 28.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### United States Code Annotated

Time of election,

Representatives, see 2 U.S.C.A. § 7.

Senators, see 2 U.S.C.A. § 1.

### Notes of Decisions

#### Construction and application 1

#### General elections 2

#### Repeals 3

#### 1. Construction and application

"Election" includes registration, nomination, voting and manner in which votes are to be counted and result made known. *Gragg v. Dudley*, 143 Okl. 281, 289 P. 254 (1930).

#### 2. General elections

Vote of people on state questions popularly referred to as repeal question and state bond issue was a special election and not a "general election". In re Initiative Petition No. 249, 203 Okl. 438, 222 P.2d 1032 (1950).

Under St.1931, § 5792 (repealed; now this section), election held November 8, 1932, at which justices of Supreme Court were elected, was "general election" for state officers within Const. Art. 7, § 3, providing election to fill vacancy in Supreme Court membership. *Bayless v. Kornegay*, 163 Okl. 184, 21 P.2d 481 (1933).

Where St. c. 79, art. 13, § 1 (repealed) provided for a system of common schools, and was complete within itself, an election held in compliance with its provisions to determine the question as to whether separate schools shall be established for colored pupils was not invalid because not conducted as required by St. c. 33 (repealed) governing general elections, known as the "Australian System." *Marion v. Territory*, 1 Okl. 210, 32 P. 116 (1893).

#### 3. Repeals

The Act approved May 29, 1908 (Laws 1907-08, c. 31, p. 316, now incorporated in this title), providing a general election law, repealed Laws 1903, c. 13, p. 157, art. 2, entitled "An Act to require the registration of voters in cities of the first class." *State ex rel. Manhattan Const. Co. v. Barnes*, 22 Okl. 191, 97 P. 997 (1908).

The Act approved May 29, 1908 (Laws 1907-08, c. 31, p. 316, now incorporated in this title), providing a general election law, did not repeal St.1903, § 354, relating to city elections (repealed by Laws 1909, ch. 16, p. 268, art. 3, § 4). *Id.*

## § 1-102. Primary elections

A Primary Election shall be held on the fourth Tuesday in August of each even-numbered year, at which time each political party

recognized by the laws of Oklahoma shall nominate its candidates for the offices to be filled at the next succeeding General Election, unless otherwise provided by law. No candidate's name shall be printed upon the General Election ballot unless said candidate shall have been nominated as herein provided, unless otherwise provided by law; provided further that this provision shall not exclude the right of a nonpartisan candidate to have his name printed upon said General Election ballots. No county, municipality or school district shall schedule an election on any date during the twenty (20) days immediately preceding the date of any such primary election.

Laws 1974, c. 153, § 1-102, operative Jan. 1, 1975. Laws 1977, c. 134, § 2.

### Historical and Statutory Notes

The 1977 amendment added the last sentence.

#### Source:

Laws 1907-08, pp. 358, 359.  
Laws 1909, p. 270.  
Comp.Laws 1909, §§ 3266, 3267.  
R.L.1910, § 3024.  
Comp.St.1921, §§ 6093, 6094.  
Laws 1929, c. 241, p. 303, §§ 1, 2.

Laws 1931, p. 94, § 3.  
St.1931, §§ 5754, 5758.  
Laws 1937, p. 136, § 2.  
Laws 1943, p. 88, § 1, State Question No. 312, Referendum Petition No. 89.  
Laws 1959, p. 119, § 1.  
Laws 1961, p. 247, § 1.  
Laws 1967, c. 32, § 1.  
26 O.S.1971, §§ 112a, 113.

### Constitutional Provisions

Article 3, § 3 provides:

"The Legislature may enact laws providing for a mandatory primary system which shall provide for the nomination of all candidates in all elections for federal, state, county and municipal offices, for all political parties, except for the office of Presidential Elector, the candi-

dates for which shall be nominated by the recognized political parties at their conventions. The Legislature also shall enact laws providing that citizens may, by petition, place on the ballot the names of independent, nonpartisan candidates for office, including the office of Presidential Elector."

### Cross References

Ballots, see § 6-101 et seq. of this title.

Municipal primary elections, see title 11, §§ 16-107, 16-108.

Primary elections, see Const. Art. 3, § 3; § 1-102 et seq. of this title.

Tie vote, § 8-105 of this title.

Voting machines, nonpartisan elections, see § 9-104 of this title.

### Library References

Elections ◊126(1), 159.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 90, 111 et seq., 130.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### Notes of Decisions

City and town offices 5

Date of election 3

Party nominees 4  
 Primary elections, in general 2  
 Validity of prior laws 1

### 1. Validity of prior laws

Laws 1929, Sp. Sess., c. 241 (repealed; now this section) providing for general primary elections, did not deprive citizen of free right of suffrage guaranteed by Constitution. *Kerr v. Luttrell*, 143 Okl. 275, 288 P. 938 (1930).

Laws 1929, Sp.Sess., c. 241 (repealed; now this section) did not deprive elector of constitutional right of suffrage. *Id.*

### 2. Primary elections, in general

Provision of Const. Art. 3, § 5 (repealed; see, now, Const. Art. 3, § 3) and implementing statutes requiring mandatory primary system for nomination of candidates for state offices involved a political right and state election board had no jurisdiction or authority to refrain from holding primary election authorized by law. *Brown v. State Election Bd.*, Okl., 369 P.2d 140 (1962).

The mandatory primary system established by state laws affords the exclusive method by which a political party may nominate its candidates, and names of nominees or candidates chosen or designated by a political party in any other manner, may not go on a general election ballot. *Lillard v. Cordell*, 200 Okl. 577, 198 P.2d 417 (1948).

Primary elections are component elements of right of suffrage, and necessary prerequisite to general election. *Craig v. Bond*, 160 Okl. 34, 15 P.2d 1014 (1932).

Candidate, before entitled to submit himself to qualified electors at general election, must comply with statutory provisions regulating primary elections. *Id.*

Statutes regulating primary elections are part of public policy of state and their provisions are mandatory and controlling upon all political parties and nonpartisan candidates. *Id.*

Law regulating method of nominating party candidates includes every class of elective offices within state requiring party primary nominations. *Dancy v. Peebly*, 132 Okl. 84, 270 P. 311 (1928).

A "primary election" is one for the nomination of candidates of political parties by the members thereof. *Bell v. State*, 11 Okl.Cr. 37, 141 P. 804 (1914).

Party nominations by primary elections is a fundamental principle of popular government and a permanent rule of public policy in Oklahoma, as declared by Const. Art. 3, § 5. *Ex parte Wilson*, 7 Okl.Cr. 610, 125 P. 739 (1912).

Const. Art. 3, §§ 1, 4a, 7 (repealed; see, now, Const. Art. 3, §§ 1, 5) prescribing the qualifications of electors and guaranteeing their right to vote, applies to the election of public officers, and not to primary elections; a "primary election" being one for the nomination of candidates of the respective political parties by their members. *Id.*

### 3. Date of election

Former § 113 of this title (repealed; now this section), fixing the date of general primary elections, was mandatory and hence election was required to be held on the date designated by legislature. *State ex rel. Sizemore v. State Election Bd.*, 203 Okl. 1, 217 P.2d 805 (1950).

Former § 113 of this title (repealed; now this section) was not changed, modified or affected by § 82.1 of title 25, and holding of state primary election on July 4, 1950 was in compliance with this section and hence election was valid as to the date notwithstanding Independence Day, a legal holiday, would fall on the same date. *Id.*

### 4. Party nominees

Presidential electors designated by State's Rights Democratic Party only in a convention assembled were not "nominees" of the party within contemplation and requirements of primary election laws, and their names could not go on general election ballot. *Lillard v. Cordell*, 200 Okl. 577, 198 P.2d 417 (1948).

By reason of Comp. Laws 1909, § 3266 (repealed; now this section) mandamus would not lie to compel state election board to place upon official ballot for a general election candidate's name as a nominee and candidate of a political party for congress, where his name was not printed upon the ballots of such party at the primary election, and his candi-

## Note 4

dacy for nomination by such party was not voted upon by the members of the party at the primary election, although such person filed his petition within time prescribed by statute to have same printed upon the tickets of such political party as a candidate for nomination by that party for said office. *Persons v. Penn*, 33 Okl. 581, 127 P. 384 (1912).

## 5. City and town offices

Former § 113 of this title (repealed; now this section) was not applicable in case of a tie vote for nomination for councilman of city, since the statute did not apply in primaries to select candidates for city and town office. *Thomas v. Wagoner*, 197 Okl. 662, 174 P.2d 231 (1946).

## § 1-103. Runoff primary elections

If at any Primary Election no candidate for the nomination for office of any political party receives a majority of all votes cast for all candidates of such party for said office, no candidate shall be nominated by said party for said office, but the two candidates receiving the highest number of votes at said election shall be placed on the official ballot as candidates for such nomination at a Runoff Primary Election to be held on the third Tuesday of September of the same year. No county, municipality or school district shall schedule an election on any date during the twenty (20) days immediately preceding the date of any such Runoff Primary Election.

Laws 1974, c. 153, § 1-103, operative Jan. 1, 1975. Laws 1977, c. 134, § 3.

## Historical and Statutory Notes

The 1977 amendment added the last sentence.

## Source:

Laws 1929, c. 241, p. 307, § 5.  
St.1931, § 5761.

Laws 1937, p. 138, § 7.  
Laws 1947, p. 245, § 11.  
Laws 1961, p. 248, § 3.  
Laws 1967, c. 32, § 4.  
26 O.S.1971, §§ 172, 345.11.

## Cross References

Municipal primary elections, see title 11, §§ 16-107, 16-108.

Primary elections, see Const. Art. 3, § 3; § 1-102 et seq. of this title.

## Library References

Elections ⇐126(1).  
WESTLAW Topic No. 144.  
C.J.S. Elections § 111 et seq.

## WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## United States Supreme Court

Access to ballots by minor party candidates, minimum number of primary votes required, see *Munro v. Socialist*

*Workers Party*, 1986, 107 S.Ct. 533, 479 U.S. 189, 93 L.Ed.2d 499.

## Notes of Decisions

## Municipal elections 1

## Prior laws 2

## 1. Municipal elections

In the absence of controlling charter provisions, municipal primary elections were to be held on the third Tuesday in March in each election year in accordance with the provisions of title 11, § 41a (repealed; see, now, § 16-108 of title 11). General elections were to be held in all incorporated towns of this state on the first Tuesday in April in each election year in accordance with provisions of title 11, § 23c (repealed; see, now, §§ 16-205, 16-206 of title 11). The provisions of title 11, § 23c and the provisions of § 345.11 of this title (repealed; now this section) were in conflict inasmuch as § 345.11 of this title provided for a runoff primary election to be held on the third Tuesday in the month of September of each election year, whereas the terms of title 11, § 23c provided that officials elected in each election year shall begin their terms of office on the first Monday in May fol-

lowing their elections. It is the opinion of the Attorney General that the provisions of title 11, § 23c were controlling, and, therefore there were no runoff primary elections for cities and towns operating without charters provided for by state law. Op.Atty.Gen. No. 71-226 (May 27, 1971).

## 2. Prior laws

The provisions of former § 345.11 of this title (repealed; now this section) that candidate receiving most votes for nomination for office, no candidate for which had filed petition under 26 Okl.St. Ann. § 391 (repealed), for recount of ballots cast, would be given certificate of nomination, and that election board should have hearing on such a petition, filed within time provided by the statute, as provided in the prior statute, were sufficient to make provisions thereof applicable to run-off primary. *Brickelrun-off primary. Brickell v. State Election Bd.*, 203 Okl. 361, 221 P.2d 783 (1950); *Coe v. State Election Bd.*, 203 Okl. 356, 221 P.2d 774 (1950).

## § 1-104. Closed primaries—Independent voters

A. No registered voter shall be permitted to vote in any Primary Election or Runoff Primary Election of any political party except the political party of which his registration form shows him to be a member, except as otherwise provided by this section.

B. 1. A recognized political party may permit registered voters designated as Independents pursuant to the provisions of Section 4-112 of this title to vote in a Primary Election or Runoff Primary Election of the party.

2. The state chairman of the party shall, between November 1 and 30 of every odd-numbered year, notify the Secretary of the State Election Board as to whether or not the party intends to permit registered voters designated as Independents to vote in a Primary Election or Runoff Primary Election of the party. If the state chairman notifies the Secretary of the State Election Board of the party's intention to so permit, registered voters designated as Independents shall be permitted to vote in any Primary Election or Runoff Primary Election of the party held in the following two (2) calendar years. If the state chairman of one party notifies the Secretary of the State Election Board of the party's intent to so permit, the notification period specified in this paragraph shall be

extended to December 15 for the state chairman of any other party to so notify or to change prior notification. A registered voter designated as Independent shall not be permitted to vote in a Primary Election or Runoff Primary Election of more than one party.

3. Failure to so notify the Secretary of the State Election Board shall serve to prohibit registered voters designated as Independents from voting in a Primary Election or Runoff Primary Election of the party.

4. A group of persons seeking to form a recognized political party pursuant to the provisions of Section 1-108 of this title shall, upon filing of the petitions seeking recognition of the political party with the Secretary of the State Election Board, notify the Secretary of the State Election Board as to whether or not the party intends to permit registered voters designated as Independents to vote in a Primary Election or Runoff Primary Election of the party. If the party is recognized and the group of persons seeking recognition of the party notifies the Secretary of the State Election Board of such intention, registered voters designated as Independents shall be permitted to vote in any Primary Election or Runoff Primary Election of the party held prior to January 1 of the following even-numbered year.

Laws 1974, c. 153, § 1-104, operative Jan. 1, 1975. Laws 1987, c. 72, § 1, eff. Nov. 1, 1987.

#### Historical and Statutory Notes

The 1987 amendment designated the former section as subsection A and in subsection A added ", except as otherwise provided in this section"; and added subsection B.

#### Severability clauses, repeal of conflicting laws and effective/operative dates

Section 2 of Laws 1987, c. 72 provides for an effective date.

#### Source:

Laws 1907-08, p. 361.  
Laws 1909, p. 271.  
Comp.Laws 1909, §§ 3273, 3276.  
R.L.1910, §§ 3027, 3029.  
Laws 1916, c. 24, p. 46, § 13.  
Comp.St.1921, §§ 6096, 6098, 6261.  
Laws 1931, p. 96, § 6.  
St.1931, §§ 5766, 5769.  
26 O.S.1951, § 83.  
26 O.S.1971, §§ 122, 123.

#### Cross References

Political parties, see § 1-107 et seq. of this title.

Primary elections, see Const. Art. 3, § 3; § 1-102 et seq. of this title.

Registration of political affiliation of voters, see § 4-112 of this title.

#### Library References

Elections ⇨126(4).  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 115, 130.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**United States Supreme Court**

Freedom of association, validity of closed primaries when party rule allows participation of unaffiliated voters, see *Tashjian v. Republican Party of Connecticut*, 1986, 107 S.Ct. 544, 479 U.S. 208, 93 L.Ed.2d 514.

Qualifications for voting, party rule allowing nonaffiliated voters to participate

in primaries, see *Tashjian v. Republican Party of Connecticut*, 1986, 107 S.Ct. 544, 479 U.S. 208, 93 L.Ed.2d 514.

Right of free political association, see *Kusper v. Pontikes*, 94 S.Ct. 303, 414 U.S. 51, 38 L.Ed.2d 260 (1974).

**Notes of Decisions****Purpose 1****1. Purpose**

The plain purpose of Comp.Laws 1909, § 3273 (repealed; now this section) was

to prevent the voter at a primary election from voting different party ballots for congressional, state, and county candidates. *Ex parte Wilson*, 7 Okl.Cr. 610, 125 P. 739 (1912).

**§ 1-105. Substitute candidates**

A. In the event of the death of a political party's nominee for office prior to the date of the General Election, a substitute candidate will be permitted to have his name placed on the General Election ballot as follows:

1. If the nominee was a candidate for county office, the political party's central committee of said county shall notify the secretary of the county election board of the name of an alternative candidate to be placed on the General Election ballot. Such notice shall be submitted in writing, within five (5) days after said death has occurred and shall be signed by at least two duly authorized members of the political party's county central committee.

2. If the nominee was a candidate who filed his declaration of candidacy with the State Election Board, the state central committee of the party affected shall notify the Secretary of the State Election Board of the name of an alternative candidate to be placed on the General Election ballot. Such notice shall be submitted in writing, within five (5) days after said death has occurred and shall be signed by at least two duly authorized members of the political party's state central committee.

3. If said death should occur five (5) days or more following the Runoff Primary Election date, a special General Election shall be called by the Governor and shall be conducted according to the laws governing such elections, Section 12-101 et seq. of this title, except that there shall be no filing period or special Primary Election and the candidates in the special General Election shall be



the substitute candidate named by the central committee and the nominee of other political parties elected in the Primary or Runoff Primary, and any previously filed independent candidates.

B. In the event of the death of a candidate who was unopposed for election, a special election shall be called by the Governor. Said special election shall be conducted according to the laws governing such elections, Section 12-101 et seq. of this title.

Laws 1974, c. 153, § 1-105, operative Jan. 1, 1975. Laws 1983, c. 171, § 1, emerg. eff. June 6, 1983; Laws 1990, c. 190, § 1, eff. Sept. 1, 1990.

### Historical and Statutory Notes

The 1983 amendment rewrote the section which prior thereto read:

"In the event of the death of a political party's nominee for office, a substitute candidate will be permitted to have his name placed on the General Election ballot if the following procedure is observed:

"1. If the nominee was a candidate for county office, the political party's central committee of said county shall notify, in writing, the secretary of the county election board of said nominee's death within five (5) days after said death occurs, and shall, within fifteen (15) days after such notification, certify to the secretary the name of a substitute candidate, who shall be selected in a manner to be determined by the county central committee of said party.

"2. If the nominee was a candidate who filed his Declaration of Candidacy with the State Election Board, the political party's state central committee shall notify, in writing, the Secretary of the State Election Board of said nominee's death within five (5) days after said death occurs and shall, within fifteen (15) days after such notification, certify to the Secretary the name of a substitute candidate, who shall be selected in a manner to be determined by the state central committee of said party.

"3. Substitute candidates selected in the manner herein provided shall be required to file a Declaration of Candidacy prior to the election; provided, however, that said substitute candidate shall not be required to deposit a supporting petition or filing fee."

The 1990 amendment rewrote the section which prior thereto read:

"In the event of the death of a political party's nominee for office prior to the date of the General Election, a substitute candidate will be permitted to have his name placed on the General Election ballot if the following procedure is observed:

"A. If the nominee was a candidate for county office, the political party's central committee of said county shall notify, in writing, the secretary of the county election board of said nominee's death within five (5) days after said death occurs. The secretary of the county election board shall, immediately upon receipt of such notice, notify the Governor. If the nominee was a candidate who filed his declaration of candidacy with the State Election Board, the state central committee of the party affected shall notify the Governor within five (5) days following the death. The Governor shall, within five (5) days after receiving the notice of death, proclaim dates for a special filing period. The special filing period shall begin at 8:00 a.m. on Monday following the proclamation and shall end at 5:00 p.m. on the next succeeding Wednesday. The Governor at the same time shall proclaim the date for a Special Nominating Primary Election for the affected office only. In making such proclamation, the Governor shall observe the following procedure:

"1. If the special filing period ends before the regularly scheduled Primary Election, then the Special Nominating Primary Election shall be scheduled on the date of the regularly scheduled Runoff Primary Election; or

"2. If the special filing period ends after the regularly scheduled Primary Election, then the Special Nominating

Primary Election shall be scheduled twenty (20) days after the close of the filing period, which date may or may not coincide with the date of the regularly scheduled Runoff Primary Election.

"B. The candidate receiving the most votes at the Special Nominating Primary shall be the nominee of the party.

"C. If the Special Nominating Primary Election is conducted after the date of the regular Runoff Primary Election, then the Governor shall, at the time he proclaims the Special Nominating Primary Election, proclaim a Special General Election for the affected office only, such Special General Election to occur on the fifth Tuesday following the Special Nominating Primary Election. However, if the regularly scheduled General Election is more than three (3) weeks after the date of the Special Nominating Primary Election, then no Special General Election shall be proclaimed. In the event no Special General Election is required, then the affected office shall

appear on the regularly scheduled General Election ballot. In the event a Special General Election is required, then the affected office shall not appear on the regularly scheduled General Election ballot."

#### Severability clauses, repeal of conflicting laws and effective/operative dates

Section 2 of Laws 1990, c. 190 provides for an effective date.

#### Source:

Laws 1907-08, p. 339.  
Comp.Laws 1909, § 3191.  
R.L.1910, § 3116.  
Comp.St.1921, § 6183.  
St.1931, § 5793.  
Laws 1943, p. 97, § 1.  
Laws 1955, p. 203, § 1.  
Laws 1957, p. 183, § 1.  
Laws 1961, p. 249, § 1.  
Laws 1965, c. 337, § 1.  
26 O.S.1971, § 233.

#### Library References

Elections ¶146, 174.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 95, 167.

#### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

#### Notes of Decisions

##### Death of party's nominee 1

##### 1. Death of party's nominee

Where nominee for office of State Representative of a political party dies prior to general election, chairman of the state central committee of the party of which deceased was a nominee should file with the state election board an affidavit stating such facts, and, when the board finds that a vacancy exists, it should notify the state central committee which should thereupon nominate a substitute nominee whose name should be the order of the state election board be

placed upon official ballot for the coming general election. *Watson v. State Election Bd.*, Okl., 302 P.2d 134 (1956).

If the deceased candidate receives more votes in the primary elections than his surviving opponent, the deceased candidate is not elected to office nor is the surviving candidate elected. *Op. Atty.Gen.* No. 80-209 (Sept. 16, 1980).

The name of a partisan candidate seeking election to a county office who dies after the time for withdrawing from the primary election, but prior to the primary, must appear on the primary ballot. *Id.*

#### § 1-106. Determining dates

In determining the date of any event pertaining to elections which date is fixed by statute as occurring a certain number of days

before or after an election, neither the day of the election nor the day of the event shall be counted.

Laws 1974, c. 153, § 1-106, operative Jan. 1, 1975.

#### Historical and Statutory Notes

##### Source:

Laws 1959, p. 115, § 1.  
26 O.S.1971, § 2.

#### Library References

Time §9(1).  
WESTLAW Topic No. 378.  
C.J.S. Time § 13(1) et seq.

### § 1-107. Recognized political parties

Recognized political parties shall include parties whose candidates' names appeared on the General Election ballot in 1974, and those parties which shall be formed according to law.

Laws 1974, c. 153, § 1-107, operative Jan. 1, 1975.

#### Historical and Statutory Notes

##### Source:

Laws 1913, c. 157, p. 318, § 9.  
Comp.St.1921, § 6283.

St.1931, § 5648.  
26 O.S.1971, § 111.

#### Cross References

Nonpartisan candidates, petition for placement on ballot, see Const. Art. 3, § 3.

#### Law Review Commentaries

Annual Survey of Oklahoma Law: fication of presidential electors. 3 Okl.  
Recognition of political parties and certi- City U.L.Rev. 117 (1978).

#### Library References

Elections §121(1).  
WESTLAW Topic No. 144.  
C.J.S. Elections § 83 et seq.

#### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### United States Supreme Court

Freedom of political association as right to ballot position to candidates, see *Storer v. Brown*, 94 S.Ct. 1274, 415 U.S. 724, 39 L.Ed.2d 714 (1974), rehearing denied 94 S.Ct. 2635, 417 U.S. 926, 41 L.Ed.2d 230; *Lubin v. Panish*, 94 S.Ct. 1315, 415 U.S. 709, 39 L.Ed.2d 702 (1974); *American Party of Texas v. White*, 94 S.Ct. 1296, 415 U.S. 767, 39

L.Ed.2d 744 (1974) rehearing denied 94 S.Ct. 2414, 416 U.S. 1000, 40 L.Ed.2d 777.

Freedom of political association to have Communist Party on ballot, see *Communist Party of Indiana v. Whitcomb*, 94 S.Ct. 656, 414 U.S. 441, 38 L.Ed.2d 635 (1974) rehearing denied 94 S.Ct. 1476, 415 U.S. 952, 39 L.Ed.2d 568.

### Notes of Decisions

#### Political parties 2 Validity 1

##### 1. Validity

Establishment of May 31 deadline for filing petitions seeking recognized party status was not so early in election year process as to impose unconstitutional burden on minority parties' access to ballot, even when considered in conjunction with signature requirement of five percent of voters at prior general election. *Rainbow Coalition of Oklahoma v. Oklahoma State Election Bd.*, C.A.10 (Okl.) 1988, 844 F.2d 740.

Oklahoma statutes (§§ 1-108, 1-110, 4-112, 7-127, and 7-129 of this title) which required new party to obtain signature of five percent of voters in last election during a 90-day period were constitutionally infirm as restricting right of individuals to associate for advancement of political beliefs and right of qualified voters to cast their votes effectively. *Libertarian Party of Oklahoma v. Oklahoma State Election Bd.*, D.C.Okl., 593 F.Supp. 118 (1984).

Oklahoma failed to show that compelling or otherwise legitimate state interest was served by preventing persons without party affiliation from joining recognized parties during six months preceding filing period and then entering their nomination races, and to extent that title

14, § 80 requiring that candidate seeking nomination of political party for office of state Senator must have been registered member of Libertarian party for six months immediately preceding filing period had such restrictive effect, it constituted unconstitutional burden on right of political association and related right to vote and right of reasonable access to ballot. *Crussel v. Oklahoma State Election Bd.*, D.C.Okl., 497 F.Supp. 646 (1980).

##### 2. Political parties

"Political parties" are voluntary associations of electors having an organization and committee and having distinctive opinions on some or all of the leading political questions of controversy, and attempting through their organization to elect officers of their own party faith and make their political principles the policy of the Government and are governed by their own usages and establish their own rules. *Cooper v. Cart-Wright*, 200 Okl. 456, 195 P.2d 290 (1948).

"Political parties" are voluntary associations of electors having an organization and common and distinctive opinions on some or all of the leading political questions, and attempting through their organization to elect officers and make their principles the policy of the government. *Ex parte Wilson*, 7 Okl.Cr. 610, 125 P. 739 (1912).

## § 1-108. Formation of new political parties

A group of persons may form a recognized political party at any time except during the period between July 1 and November 15 of any even-numbered year if the following procedure is observed:

1. Notice of intent to form a recognized political party must be filed in writing with the Secretary of the State Election Board at any time except during the period between March 1 and November 15 of any even-numbered year.

2. After said notice is filed, petitions seeking recognition of a political party, in a form to be prescribed by the Secretary of the State Election Board, shall be filed with said Secretary, bearing the signatures of registered voters equal to at least five percent (5%) of the total votes cast in the last General Election either for Governor or for electors for President and Vice President. Each page of said petitions must contain the names of registered voters from a single county. Petitions may be circulated a maximum of one (1) year after notice is filed, provided that petitions shall be filed with said Secretary no later than May 31 of an even-numbered year. Said petitions shall not be circulated between May 31 and November 15 of any even-numbered year.

3. Within thirty (30) days after receipt of said petitions, the State Election Board shall determine the sufficiency of said petitions. If said Board determines there are a sufficient number of valid signatures of registered voters, the party becomes recognized under the laws of the State of Oklahoma with all rights and obligations accruing thereto.

Laws 1974, c. 153, § 1-108, operative Jan. 1, 1975. Laws 1985, c. 269, § 1.

#### Historical and Statutory Notes

The 1985 amendment, in paragraph 2, first sentence, substituted "After" for "Within ninety (90) days after" and added the last sentence of paragraph 2.

Comp.St.1921, § 6283.  
St.1931, § 5648.  
26 O.S.1971, § 111.

#### Source:

Laws 1913, c. 157, p. 318, § 9.

#### Cross References

Nonpartisan candidates, petition for placement on ballot, see Const. Art. 3, § 3.

#### Law Review Commentaries

Annual Survey of Oklahoma Law: Recognition of political parties and certification of presidential electors. Okl. City U.L.Rev. 117 (1978).

#### Library References

Elections ⇨121(1).  
WESTLAW Topic No. 144.  
C.J.S. Elections § 83 et seq.

#### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

#### United States Supreme Court

Freedom of political association as right to ballot position to candidates, see *Storer v. Brown*, 94 S.Ct. 1274, 415 U.S. 724, 39 L.Ed.2d 714 (1974), rehearing denied 94 S.Ct. 2635, 417 U.S. 926, 41 L.Ed.2d 230; *Lubin v. Panish*, 94 S.Ct. 1315, 415 U.S. 709, 39 L.Ed.2d 702

(1974); *American Party of Texas v. White*, 94 S.Ct. 1296, 415 U.S. 767, 39 L.Ed.2d 744 (1974) rehearing denied. 94 S.Ct. 2414, 416 U.S. 1000, 40 L.Ed.2d 777.

Freedom of political association to have Communist Party on ballot, see *Communist Party of Indiana v. Whit-*

comb, 94 S.Ct. 656, 414 U.S. 441, 38 L.Ed.2d 635 (1974), rehearing denied 94 S.Ct. 1476, 415 U.S. 952, 39 L.Ed.2d 568.

State committees, composition, see *Marchioro v. Chaney*, 1979, 99 S.Ct. 2243, 442 U.S. 191, 60 L.Ed.2d 816.

### Notes of Decisions

#### Construction and application 2

#### Validity 1

##### 1. Validity

Requiring political body desiring to obtain recognized party status to file petitions with Oklahoma State Election Board having signatures of registered voters equal to at least five percent of total votes cast in last general election did not unconstitutionally impinge minority parties rights under First and Fourteenth Amendments, even though signature requirement fluctuated between gubernatorial and presidential elections; five percent signature requirement was based on voter turnout at previous general election because it was most recent gauge of those voters who were politically interested and therefore most likely to sign new party petition. *Rainbow Coalition of Oklahoma v. Oklahoma State Election Bd.*, C.A.10 (Okl.) 1988, 844 F.2d 740.

Although repealed statutes (former §§ 111, 229 of this title) governing recognition of political party were somewhat less restrictive than existing statute, such fact, standing alone, did not require reversal of judgment denying injunctive relief and dismissing lawsuit challenging ballot access restrictions as unduly burdensome of First and Fourteenth Amendment rights to political association and valid access. *Arutunoff v. Oklahoma State Election Bd.*, C.A.Okl., 687 F.2d 1375 (1982) certiorari denied 103 S.Ct. 1892, 461 U.S. 913, 77 L.Ed.2d 282.

Oklahoma election law, (this section and § 5-112 of this title), which required that petition bearing signatures of five percent of total votes cast in last general election for either president or governor be presented in order to gain recognition as political party but required would-be independent candidate for state office only to file petition signed by five percent of all registered voters or, alternatively, to pay filing fee, did not discriminate against minor political parties in violation of Fourteenth Amendment rights. *Id.*

Ultimate test of whether Oklahoma statutory ballot access restrictions were unduly burdensome of First and Fourteenth Amendment rights to political association and ballot access was whether particular election laws under attack, when considered in connection with other related election laws, unduly encouraged maintenance of political status quo or were oppressive to degree that stifled exercise of First Amendment rights. *Id.*

To require new political party to demonstrate that it had some degree of political support by obtaining signatures of registered voters equal to five percent of total votes cast in preceding general election for either president or governor was not constitutionally unreasonable restriction on First and Fourteenth Amendment rights to political association and ballot access. *Id.*

This section's requirement that group forming political party must file petition bearing signatures of registered voters equal to at least 5% of total votes cast in last general election either for governor or for electors for president is constitutional as applied, although 5% requirement has resulted in higher number of signatures being required in gubernatorial election years than in presidential election years; provision does not make it virtually impossible for new political party to gain access to ballot, and new parties are free to choose either gubernatorial or presidential election years to attempt their petition drive. *Rainbow Coalition of Oklahoma v. Oklahoma State Election Bd.*, W.D.Okl.1987, 685 F.Supp. 1193, affirmed 844 F.2d 740.

This section's requirement that group forming political party must file petition by May 31 of even numbered year is constitutional although May 31 deadline may be troublesomely early for some new parties; parties have full year in which to circulate their petitions, and one new political party was able to meet deadline when it had only 90 days to circulate its petitions. *Rainbow Coalition of Oklahoma v. Oklahoma State Election Bd.*, W.D.Okl.1987, 685 F.Supp. 1193, affirmed 844 F.2d 740.

Note 1

Judgment holding Oklahoma election statutes (§§ 1-108, 1-110, 4-112, 7-127, and 7-129 of this title) unconstitutional was not subject to setting aside, although defendants contended their mistaken belief that they had 20 days to respond to motion for summary judgment was a valid basis for relief from judgment, where plaintiffs were prejudiced by defendants' failure to respond to motion, and failure to respond to motion was at best inexcusably negligent. *Libertarian Party of Oklahoma v. Oklahoma State Election Bd.*, D.C.Okl., 593 F.Supp. 118 (1984).

Oklahoma failed to show that compelling or otherwise legitimate state interest was serviced by preventing persons without party affiliation from joining recognized parties during six months preceding filing period and then entering their nomination races, and to extent that title 14, § 80 requiring that candidate seeking nomination of political party for office of state Senator must have been registered member of Libertarian party for six months immediately preceding filing period had such restrictive effect, it constituted unconstitutional burden on right

of political association and related right to vote and right of reasonable access to ballot. *Crussel v. Oklahoma State Election Bd.* D.C.Okl., 497 F.Supp. 646 (1980).

2. Construction and application

By enacting this section allowing new political parties to become recognized as late as June 30 of an election year, Oklahoma Legislature did not imply an exception for members of newly formed parties to requirement that candidate seeking nomination of political party for county or legislative office must have been registered member of that party for six months immediately preceding filing period prescribed by law. *Crussel v. Oklahoma State Election Bd.*, D.C.Okl., 497 F.Supp. 646 (1980).

Candidates for presidential elector, by swearing their support of an independent candidate for president, were not a "political party" required to become recognized by complying with this section in order to appear on general election ballot. *McCarthy v. Slater*, Okl., 553 P.2d 489 (1976).

§ 1-109. Party ceases to exist

Any recognized political party whose nominee for Governor or nominees for electors for President and Vice President fail to receive at least ten percent (10%) of the total votes cast for said offices in any General Election shall cease to be a recognized political party. Said party may regain recognition only by following the procedure prescribed for formation of new political parties. The State Election Board shall proclaim the fact of a party's failure to receive a sufficient number of votes and shall order that said party cease to be recognized.

Laws 1974, c. 153, § 1-109, operative Jan. 1, 1975.

Historical and Statutory Notes

Source:

- Laws 1913, c. 157, p. 318, § 9.
- Laws 1915, c. 169, § 1.
- Comp.St.1921, §§ 6125, 6283.
- St.1931, § 5648.
- 26 O.S.1941, § 112.
- 26 O.S.1971, § 111.

Law Review Commentaries

- Annual Survey of Oklahoma Law: Recognition of political parties and certification of presidential electors. 3 Okl. City U.L.Rev. 117 (1978).

**Library References**

Elections ⇐121(1).  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 83 et seq.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions****Construction and application 2  
Validity 1****1. Validity**

To require political party to garner ten percent of votes cast in election in which it had candidates as prerequisite to continuing recognition as political party was not per se unconstitutional. *Arutunoff v. Oklahoma State Election Bd.*, C.A.Okla., 687 F.2d 1375 (1982) certiorari denied 103 S.Ct. 1892, 461 U.S. 913, 77 L.Ed.2d 282.

**2. Construction and application**

A political party in the State of Oklahoma to remain a political party, must

receive ten percent of the votes cast for the party receiving the highest number of votes in two general elections following each other involving the election of the President of the United States and the Governor of the State of Oklahoma. Specifically, the American Party must receive ten percent of the votes cast in the 1970 general election for the Democratic nominee for the Office of Governor of the State of Oklahoma or to have received ten percent of the votes cast for the Republican nominee for President of the United States in the 1972 election. *Op.Atty.Gen. No. 72-289* (Aug. 20, 1973).

**§ 1-110. Changes in party affiliation**

The secretary of each county election board shall, within sixty (60) days after such proclamation by the State Election Board, change to Independent the party affiliation in the Oklahoma Election Management System of each registered voter of a political party which ceases to be a recognized political party.

Laws 1974, c. 153, § 1-110, operative Jan. 1, 1975. Laws 1990, 331, § 1, eff. July 1, 1990.

**Historical and Statutory Notes**

The 1990 amendment substituted "in the Oklahoma Election Management System" for "on the registration form".

**Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 22 of Laws 1990, c. 331 provides for an effective date.

**Cross References**

Registration of political affiliation of voters, see § 4-112 of this title.

**Library References**

Elections ⇐121(1).  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 83 et seq.



### § 1-111. School district and vocational-technical school district elections prohibited on certain days

Unless otherwise provided by law, in no event shall any school district or vocational-technical school district schedule an election on the same day as prescribed for state or county Primary or Runoff Primary Elections or special state or county elections. Unless otherwise provided by law, no school district or vocational-technical school district shall schedule an election on the same day as the regular municipal elections; nor shall any school district or vocational-technical school district schedule an election on the same day as the day scheduled for a special municipal election if there are voters registered at addresses within both the municipality and the affected district.

Laws 1985, c. 193, § 8, eff. Nov. 1, 1985. Laws 1988, c. 296, § 1, eff. June 1, 1990.

#### Historical and Statutory Notes

The 1988 amendment, in the first sentence, substituted "Unless otherwise provided by law, in" for "In", deleted a comma and inserted "or" following "county Primary" and deleted "or General" following "Run-off Primary" and at

the beginning of the second sentence substituted "Unless otherwise provided by law, no" for "No".

Section 13 of Laws 1988, c. 296 provides for severability and § 14 provides for an effective date.

#### Library References

Schools ⇐48(1).  
WESTLAW Topic No. 345.

C.J.S. Schools and School Districts  
§§ 93, 144.

## ARTICLE II. ORGANIZATION

### § 2-101. State Election Board—Number of members—Appointment

The State Election Board shall be composed of three (3) members, each of whom shall be appointed by the Governor upon advice and consent of the Senate.

Laws 1974, c. 153, § 2-101, operative Jan. 1, 1975. Laws 1983, c. 9, § 178, emerg. eff. March 17, 1983.

#### Historical and Statutory Notes

The 1983 amendment added ", each of whom shall be appointed by the Governor upon advice and consent of the Senate".

Comp.St.1921, § 6275.  
St.1931, § 5672.  
26 O.S.1971, § 11.

#### Source:

Laws 1913, c. 157, p. 315, § 1.



Laws 1965, c. 198, § 2.  
26 O.S.1971, §§ 12, 55.

Laws 1974, c. 153, § 2-102.  
26 O.S.Supp.1980, § 2-102.

### Constitutional Provisions

Article 3, § 2 provides:  
"The Legislature shall create a State Election Board to be charged with the supervision of such elections as the Leg-

islature shall direct. Not more than a majority of the members of said Board shall be selected from the same political party."

### Library References

Elections ⇐52.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 60.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### Notes of Decisions

#### Construction and application 2 Validity of prior law 1

section) so providing was constitutional. Welch v. Key, Okl., 365 P.2d 154 (1961).

#### 2. Construction and application

Where state central committees of two political parties casting highest number of votes at last general election of state officers timely selected and presented lists and requested governor to name one from each list as their party representatives on state election board, governor had no authority to select and appoint persons whose names were not on such lists. Welch v. Key, Okl., 365 P.2d 154 (1961).

#### 1. Validity of prior law

Legislature has power to restrict governor's selection and appointment of members of state election board to lists of names submitted by state central committees of two political parties casting highest number of votes at last general election of state officers, and former § 12 of this title (repealed; now this

### § 2-101.2. Vacancy by death or resignation—Filling

In the event of a vacancy created by death or resignation, the Governor shall, within thirty (30) days after such vacancy occurs, appoint, upon the advice and consent of the Senate, a member of the same party to fill the unexpired term from a list of five (5) nominees submitted by the party's state central committee within fifteen (15) days after said vacancy occurs.

Laws 1981, c. 286, § 3, emerg. eff. June 29, 1981.

### Historical and Statutory Notes

#### Source:

Laws 1907-08, p. 319.  
Comp.Laws 1909, § 3103.  
R.L.1910, § 3064.  
Laws 1913, c. 157, p. 316, § 4.

Comp.St.1921, §§ 6131, 6278.  
St.1931, §§ 5680, 5693.  
Laws 1965, c. 198, § 2.  
26 O.S.1971, §§ 12, 55.  
Laws 1974, c. 153, § 2-102.  
26 O.S.Supp.1980, § 2-102.

**Library References**

Elections ⇄51.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 57 et seq.

**§ 2-101.3. Failure of political parties to submit nominees**

Should a state central committee fail to submit nominees within the period prescribed, the Governor shall make his appointment from within the ranks of said party.

Laws 1981, c. 286, § 4, emerg. eff. June 29, 1981.

**Historical and Statutory Notes**

<b>Source:</b>	26 O.S.1971, § 12.
Laws 1913, c. 157, p. 316, § 4.	Laws 1974, c. 153, § 2-102.
Comp.St.1921, § 6278.	26 O.S.Supp.1980, § 2-102.
St.1931, § 5693.	

**§ 2-101.4. Vacancy by failure to attend meetings—Filling**

A vacancy shall occur when a member fails to attend five (5) consecutive meetings of the Board or when a member changes his party affiliation. It shall be the duty of the other two (2) members of the Board to notify the Governor and the state central committee affected should such a vacancy occur. Said vacancy shall be filled in the manner hereinbefore provided.

Laws 1981, c. 286, § 5, emerg. eff. June 29, 1981.

**Historical and Statutory Notes**

<b>Source:</b>	St.1931, § 5680.
Laws 1907-08, p. 319.	Laws 1965, c. 198, § 2.
Comp.Laws 1909, § 3103.	26 O.S.1971, § 55.
R.L.1910, § 3064.	Laws 1974, c. 153, § 2-102.
Comp.St.1921, § 6131.	26 O.S.Supp.1980, § 2-102.

**§ 2-101.5. Chairman and Vice Chairman of State Election Board to continue as members—Appointment of third member**

The Chairman and Vice Chairman of the State Election Board on the effective date of this act shall continue to serve as members of the State Election Board representing their respective political parties until their successors are appointed and qualified. Within thirty (30) days after the effective date of this act, the Governor shall appoint the third member of the State Election Board in the manner prescribed for filling vacancies.

Laws 1981, c. 286, § 6, emerg. eff. June 29, 1981.

**§ 2-101.6. Secretary for State Election Board—Salary**

The Secretary of the Senate shall serve as Secretary of the State Election Board at a salary established annually by the Legislature.

However, the Secretary shall not be a member of the State Election Board.

Laws 1981, c. 286, § 7, emerg. eff. June 29, 1981.

#### Historical and Statutory Notes

##### Source:

Laws 1913, c. 157, p. 137, § 5.  
Laws 1913, c. 157, p. 315, § 1.  
Comp.St.1921, §§ 6275, 6279.  
Laws 1931, p. 109, § 1.

St.1931, §§ 5672, 5694.  
Laws 1969, c. 22, § 1.  
26 O.S.1971, §§ 11, 13.  
Laws 1974, c. 153, § 2-103.  
26 O.S.Supp.1980, § 2-103.

#### Library References

Elections ¶53.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 63.

#### Notes of Decisions

##### Construction and application 2

##### Validity of prior laws 1

##### 1. Validity of prior laws

Former § 11 of this title (repealed; now this section) which provided that the secretary of the Senate shall be secretary of the election board, was not repugnant to Const. Art. 6, § 13, providing that the Governor shall commission all officers not commissioned by law. *Riley v. State*, 43 Okl. 65, 141 P. 264 (1914).

##### 2. Construction and application

In mandamus by the secretary of the Senate to require the surrender to him of the appurtenances of the office of the

state election board of which he was also secretary, under former § 11 of this title (repealed; now this section), an entry in the Senate journal of his appointment, and a commission issued to him as secretary of the state election board by the president of the Senate, held to make out a prima facie case entitling him to the relief sought. *Riley v. State*, 43 Okl. 65, 141 P. 264 (1914).

A message of the Governor to the Legislature assembled in extraordinary session was sufficient to recommend for consideration, pursuant to Const. Art. 6, § 7, the subject-matter of former § 11 of this title (repealed; now this section) which provided that the secretary of the state Senate shall be secretary of the state election board. *Id.*

#### § 2-101.7. Election of officers—Terms

On the first Monday in April, 1983, and every four (4) years thereafter, the State Election Board shall meet upon the call of the Secretary to elect a Chairman and Vice Chairman. Terms of the Chairman, Vice Chairman and member shall begin at that time.

Laws 1981, c. 286, § 8, emerg. eff. June 29, 1981.

#### Historical and Statutory Notes

##### Source:

Laws 1913, c. 157, p. 315, § 1.  
Comp.St.1921, § 6275.  
St.1931, § 5672.

26 O.S.1971, § 11.  
Laws 1974, c. 153, § 2-104.  
26 O.S.Supp.1980, § 2-104.

## Library References

Elections ⇐51.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 57 et seq.

**§ 2-101.8. Repealed by Laws 1985, c. 178, § 81, operative July 1, 1985**

## Historical and Statutory Notes

The repealed section, relating to per diem and mileage for the State Election Board, was derived from Laws 1981, c. 286, § 9. See § 500.1 et seq. of title 74.

**§§ 2-102 to 2-105. Repealed by Laws 1981, c. 286, § 10, emerg. eff. June 29, 1981**

## Historical and Statutory Notes

Section 2-105, relating to the compensation of the chairman and vice chairman of the State Election Board, was derived from:  
 Laws 1913, c. 157, p. 137, § 5.  
 Comp.St.1921, § 6279.  
 Laws 1931, p. 109, § 1.  
 St.1931, § 5694.  
 Laws 1969, c. 22, § 1.  
 26 O.S.1971, § 13.  
 Laws 1974, c. 153, § 2-105.  
 26 O.S.Supp.1980, § 2-105.  
 See §§ 2-101.1 et seq. of this title.

**§ 2-106. State Election Board duties**

The State Election Board shall perform such duties as may be prescribed by law.

Laws 1974, c. 153, § 2-106, operative Jan. 1, 1975.

## Historical and Statutory Notes

Source:  
 Laws 1913, c. 157, p. 315, § 1.  
 Comp.St.1921, § 6275.  
 St.1931, § 5672.  
 26 O.S.1971, § 11.

## Library References

States ⇐73.  
 WESTLAW Topic No. 360.  
 C.J.S. States §§ 130 to 136, 140.

## WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## Notes of Decisions

## Powers and duties of board 1

## 1. Powers and duties of board

An election board has only such power and authority as is directly vested in it by legislature, and authority which it may exercise and duty it may be required to perform must appear in statute under which it purports to act. *Brickell v. State Election Bd.*, 203 Okl. 362, 221 P.2d 785 (1950).

An election board must stay within authority delegated to it by statute and may not be forced to exercise power not granted it by legislature. *Id.*

State election board has jurisdiction, in administering election laws, as to offices filled by electors of entire state or subdivision thereof greater than county. *Pardoe v. Sellers*, 164 Okl. 80, 3 P.2d 709 (1931).

The state election board, created by Laws 1907-08, c. 31, p. 329, is a part of the executive department of the state, and is subordinate to the Secretary of the State in performing duties imposed upon it by the statute, when the Constitution requires such secretary to have such duties performed. *Trapp v. Wells Fargo Express Co.*, 22 Okl. 377, 97 P. 1003 (1908).

## § 2-107. Secretary's duties

The Secretary of the State Election Board shall be the administrative officer of the State Election Board and shall have general supervisory authority over the several county election boards. The Secretary shall have the authority to employ and fix the salaries and duties of such personnel as may be necessary to perform the duties of the State Election Board. The Secretary may promulgate, repeal or modify such rules or regulations as he deems necessary to facilitate and assist in achieving and maintaining uniformity in the application, operation and interpretation of the state and federal election laws and a maximum degree of correctness, impartiality and efficiency in administration of the election laws; provided, however, that such rules or regulations, to be binding and effective, must have been officially adopted by the State Election Board; the procedure and adoption of such rules and regulations shall be subject to the provisions of the Administrative Procedures Act. The Secretary shall promote and encourage voter registration and voter participation in elections.

Laws 1974, c. 153, § 2-107, operative Jan. 1, 1975. Laws 1979, c. 240, § 2, emerg. eff. July 1, 1979.

## Historical and Statutory Notes

The 1979 amendment, in the second sentence, deleted "an Assistant Secretary and" preceding "such personnel".

## Source:

Laws 1913, c. 157, p. 137, § 5.

Comp.St.1921, § 6279.  
Laws 1931, c. 109, § 1.  
St.1931, § 5694.  
Laws 1969, c. 22, § 1.  
26 O.S.1971, § 13.

## Library References

Elections ⇐54.

WESTLAW Topic No. 144.  
C.J.S. Elections § 54 et seq.

### § 2-107.1. Contracts for inspections, training and other functions

The Secretary of the State Election Board is hereby authorized to enter into contracts with the secretary, assistant secretary, chief clerk or other personnel of a county election board, or other persons with similar qualifications, for such purposes as conducting inspections of county election boards, training and other functions which he deems necessary.

Laws 1986, c. 270, § 3, operative July 1, 1986.

#### Library References

Elections ⇨54.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 54 et seq.

### § 2-108. Offices of State Election Board

The State Election Board shall maintain an office or offices continuously in the seat of government.

Laws 1974, c. 153, § 2-108, operative Jan. 1, 1975.

#### Historical and Statutory Notes

<b>Source:</b>	St.1931, § 5694.
Laws 1913, c. 157, p. 137, § 5.	Laws 1969, c. 22, § 1.
Comp.St.1921, § 6279.	26 O.S.1971, § 13.
Laws 1931, p. 109, § 1.	

### § 2-109. Maintenance of records—Records public

The Secretary of the State Election Board shall maintain the records of the office, and such records shall be open for public inspection during regular office hours unless otherwise provided by law.

Laws 1974, c. 153, § 2-109, operative Jan. 1, 1975.

#### Historical and Statutory Notes

<b>Source:</b>	St.1931, § 5694.
Laws 1913, c. 157, p. 137, § 5.	Laws 1969, c. 22, § 1.
Comp.St.1921, § 6279.	26 O.S.1971, § 13.
Laws 1931, p. 109, § 1.	

#### Library References

Records ⇨30.  
WESTLAW Topic No. 326.  
C.J.S. Records §§ 34, 35, 38.



**§ 2-110. County election boards—Number of members**

A county election board shall be appointed in each of the seventy-seven counties of Oklahoma and shall be composed of three (3) members.

Laws 1974, c. 153, § 2-110, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1907-08, p. 318.

Comp.Laws 1909, § 3100.

R.L.1910, § 3061.

Laws 1910-11, c. 106, p. 225, § 3.

Laws 1913, c. 157, p. 316, § 2.

Comp.St.1921, §§ 6128, 6276.

St.1931, §§ 5674, 5675.

Laws 1965, c. 198, § 1.

26 O.S.1971, §§ 21, 22.

**Library References**

Elections ⇐51.

WESTLAW Topic No. 144.

C.J.S. Elections § 57 et seq.

**§ 2-111. Members appointed by State Election Board—  
Terms—Parties to submit nominations—Vacancies**

The State Election Board shall appoint two members of each county election board, to serve terms of four (4) years each. No later than April 15, 1975, and every four (4) years thereafter, the county central committees of the two political parties with the largest number of registered voters in the state, based upon the latest January 15 registration report, shall each submit to the State Election Board a nominee for membership on the county election board. Said nomination must be submitted in writing and signed by at least two members of each county central committee. The State Election Board shall be confined to said nominees in making appointments, one from each party, to the county election board. Said appointments shall be made no later than May 1, 1975, and every four (4) years thereafter. In the event of a vacancy, the State Election Board shall, within sixty (60) days after such vacancy occurs, appoint a member of the same party to fill the unexpired term, based on a nomination submitted by said party's county central committee in the manner hereinbefore provided within thirty (30) days after said vacancy occurs. Should a county central committee fail to submit a nominee within the prescribed period of time, the State Election Board shall appoint a member of the county election board from the ranks of said party within the county. Vacancies shall occur when a member fails to attend five consecutive meetings of the board or when a member changes his party affiliation. It shall be the duty of the other two members of the board to notify the Secretary of the State Election Board should

such vacancy occur. Said vacancy shall be filled in the manner hereinbefore provided.

Laws 1974, c. 153, § 2-111, operative Jan. 1, 1975.

#### **Historical and Statutory Notes**

<b>Source:</b>	Laws 1910-11, c. 106, p. 225, § 3.
Laws 1907-08, p. 318.	Comp.St.1921, § 6128.
Comp.Laws 1909, § 3100.	St.1931, § 5675.
R.L.1910, § 3061.	Laws 1965, c. 198, § 1.
	26 O.S.1971, § 21.

#### **Library References**

Elections ⇐49, 51.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 56, 57 et seq.

### **§ 2-111.1. Secretaries of county election boards—Appointment—Terms**

The State Election Board shall appoint the secretary of each county election board for a term of two (2) years beginning May 1, 1983, and every two (2) years thereafter; provided, however, that on October 1, 1981, a secretary shall be appointed in each county for the balance of a term of two (2) years ending April 30, 1983. Laws 1981, c. 329, § 8, emerg. eff. June 30, 1981.

#### **Historical and Statutory Notes**

Section 12 of Laws 1981, c. 329, directs codification.

#### **Library References**

Elections ⇐49, 51.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 56, 57 et seq.

### **§ 2-111.2. Election of officers of county election boards**

On the first Monday in June, 1983, and every four (4) years thereafter, the county election board shall meet upon call of the secretary to elect a chairman and vice-chairman. The secretary can be elected neither chairman nor vice-chairman but shall be a voting member of the county election board.

Laws 1981, c. 329, § 9, emerg. eff. June 30, 1981.

#### **Library References**

Elections ⇐51.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 57 et seq.

**§ 2-112. Secretary appointed by State Election Board**

The State Election Board shall appoint the secretary of each county election board. The State Election Board shall have the authority to remove the secretary of any county election board at any time.

Laws 1974, c. 153, § 2-112, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1907-08, p. 318.  
Comp.Laws 1909, § 3100.  
R.L.1910, § 3061.

Laws 1910-11, c. 106, p. 225, § 3.  
Comp.St.1921, § 6128.  
St.1931, § 5675.  
Laws 1965, c. 198, § 1.  
26 O.S.1971, § 21.

**Cross References**

Removal of officers, see title 22, § 1181 et seq.

**Library References**

Elections ¶51.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 57 et seq.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions****Construction and application 1**

Op.Atty.Gen. No. 77-104 (March 31, 1977).

**1. Construction and application**

A secretary of a county election board is a county rather than a state officer.

**§ 2-113. Repealed by Laws 1981, c. 329, § 11, emerg. eff. June 30, 1981****Historical and Statutory Notes**

The repealed section, relating to the organization of the county election board, was derived from:

Laws 1907-08, p. 319.  
Comp.Laws 1909, § 3101.

R.L.1910, § 3062.  
Comp.St.1921, § 6129.  
St.1931, § 5676.  
26 O.S.1971, § 23.  
Laws 1974, c. 153, § 2-113.  
26 O.S.Supp.1980, § 2-113.

**§ 2-114. Removal of chairman and vice-chairman**

The State Election Board shall have the authority to remove any chairman or vice-chairman of any county election board at any time.

Laws 1974, c. 153, § 2-114, operative Jan. 1, 1975.

**Cross References**

Removal of officers, see title 22, § 1181 et seq.

**Library References**

Elections ⇐51.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 57 et seq.

**§ 2-115. Compensation of chairman and vice-chairman**

The chairman and vice-chairman of each county election board shall be paid Twenty-five Dollars (\$25.00) per diem in lieu of subsistence for each meeting of the county election board and shall be allowed mileage reimbursement at the rate prescribed for travel by state employees. Said per diem and mileage reimbursement shall be paid by the State Election Board, except for meetings chargeable to other governmental units as provided by law; provided, the State Election Board shall not pay such reimbursement for more than forty meetings per fiscal year.

Laws 1974, c. 153, § 2-115, operative Jan. 1, 1975. Laws 1983, c. 171, § 2, emerg. eff. June 6, 1983; Laws 1988, c. 101, § 1, emerg. eff. April 1, 1988.

**Historical and Statutory Notes**

The 1983 amendment, in the first sentence, substituted "Twenty-five Dollars (\$25.00)" for "Twenty Dollars (\$20.00)".

The 1988 amendment, in the first sentence, substituted ", not to exceed forty (40) meetings per fiscal year," following "each meeting of the county election board" and, in the second sentence, added "; provided, the State Election Board shall not pay such reimbursement for more than forty meetings per fiscal year".

Laws 1945, p. 98, § 1.  
 Laws 1947, p. 46, § 1.  
 Laws 1949, p. 63, § 2.  
 Laws 1953, p. 102, §§ 1, 2.  
 Laws 1953, p. 103, § 1.  
 Laws 1953, p. 112, § 22.  
 Laws 1957, p. 171, § 1.  
 Laws 1961, p. 241, § 1.  
 Laws 1965, c. 489, § 1.  
 Laws 1967, c. 254, §§ 1, 2.  
 Laws 1968, c. 389, § 1.  
 26 O.S.1971, §§ 24a, 24b.

**Source:**

Laws 1937, p. 142, § 1.

**Cross References**

Travel reimbursement, see title 74, § 500.1 et seq.

**Library References**

Elections ⇐53.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 63.

**§ 2-116. Duties of county election board**

The county election board shall perform such duties as may be prescribed by law.

Laws 1974, c. 153, § 2-116, operative Jan. 1, 1975.

**Library References**

Elections ¶54.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 54 et seq.

**. WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions****Jurisdiction 1**

County election board has original jurisdiction to hear election contest involving office of judge of superior court. *Id.*

**1. Jurisdiction**

County election board has jurisdiction of election contests over offices filled by electors of single county, except District Judges and members of Legislature. *Pardoe v. Sellers*, 164 Okl. 80, 3 P.2d 709 (1931).

Since a county election board has no judicial power, it cannot determine on affidavits the legality of a precinct election and arbitrarily refuse to consider returns regularly made from such precinct. *Election Board of Kingfisher County v. State*, 43 Okl. 337, 142 P. 984 (1914).

**§ 2-117. Secretary's duties—Appointment of assistant secretary and chief clerk—Compensation**

The secretary of the county election board shall be the administrative officer of the county election board and shall have general supervisory authority over the several precinct election boards within the county. In counties having seventeen thousand five hundred or more registered voters, the secretary shall have the authority to employ and/or terminate an assistant secretary and such other employees as are necessary to perform the duties of the county election board. In counties having fewer than seventeen thousand five hundred registered voters, the secretary shall employ a chief clerk and such other employees as are necessary to perform the duties of the county election board. The secretary shall be charged with the operational responsibilities of the board, including, but not limited to, supervision, defining job positions and responsibilities of the employees, preparation of the annual budget, preparation and filing of all reports, and the implementation of policy, findings and actions lawfully prescribed or determined by the county election board. The minimum salary of the assistant secretary shall be equal to the salary of the highest salaried first or chief deputy or assistant to any county officer in the same county, or shall be equal to ninety percent (90%) of the scheduled salary of a full-time secretary in the same county, whichever is lower. The minimum salary of the chief clerk shall be equal to one-half (1/2) of the salary of the highest salaried first or chief deputy or assistant to any county officer in the same county, or ninety percent (90%) of the scheduled salary of a full-time secretary in the same county.

whichever is lower. Salaries of additional personnel, including personnel employed temporarily, shall not exceed the salary of the assistant secretary or chief clerk and shall be comparable to salaries paid for the same positions in other offices within the county. The salaries of the assistant secretary, chief clerk and other personnel shall be paid from county funds on a monthly basis. Laws 1974, c. 153, § 2-117, operative Jan. 1, 1975.

**Historical and Statutory Notes**

**Source:**

Laws 1957, p. 178, § 20.  
Laws 1961, p. 245, § 1.

Laws 1968, c. 389, § 2.  
26 O.S.1971, § 93.20.

**Library References**

Elections § 51, 54.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 54 et seq., 57 et seq.

**Notes of Decisions**

- Chief clerk 3**
- Compensation and salaries 4**
- Construction and application 1**
- Files 5**
- Number of employees 2**
- Records and files 5**

**1. Construction and application**

"Shall" implies a command or mandate, and thus this section which provides that counties having fewer than 17,500 registered voters shall employ a chief clerk for the county election board, rules out the idea of discretion on the county's part. *Morton v. Adair County Excise Bd.*, Okl., 780 P.2d 707 (1989).

The chief clerk in counties having less than 17,500 registered voters is a statutory office and unquestionably within the category of employees necessary to perform the duties of the county election board. Op.Atty.Gen. No. 79-40 (April 17, 1979).

**2. Number of employees**

The county excise board and the board of county commissioners are without authority to participate in determining the number of employees necessary to perform the duties of the county election board and cannot use the guise of "budgetary responsibilities" to do indirectly what they cannot do directly. Op.Atty.Gen. No. 79-40 (April 17, 1979).

**3. Chief clerk**

Where the budget for the clerk of the county election board has been approved for the fiscal year and funds are available to pay such salaries, the Board of County Commissioners does not have the authority to reduce the salary of the clerk of the County Election Board. The Board of County Commissioners does not have the authority to set the hours of operation for the County Election Board. Op.Atty.Gen. No. 71-188 (June 17, 1971).

**4. Compensation and salaries**

In determining minimum salary of assistant secretary of county election board according to this section, phrase "first or chief deputy or assistant" refers to those individuals designated as such of record in county clerk's office pursuant to 19 O.S.1981, § 180.65. Op.Atty.Gen. No. 85-92 (Nov. 1, 1985).

The county excise board and county commissioners have no authority to designate or "deem" a county election board secretary as a part-time officer for salary purposes regardless of whether the secretary was appointed prior to the amendment of § 2-118 of this title and regardless of whether the secretary filed a new election (notice) with the Secretary of the State Election Board after the effective date of § 2-118, as amended. Op.Atty.Gen. No. 79-40 (April 17, 1979).

It is the mandatory duty of the county excise board to appropriate adequate

## Note 4

funds for the operating expenses of the county election board, including adequate funds to pay the county's portion of the secretary's salary. Id.

## 5. Records and files

Secretary of county election board is custodian of records and files of board,

and is one whose duty it is to receive, retain, and preserve papers such as challenge to correctness of announced result of county election, required by law to be filed with board. *Pardoe v. Dean*, 172 Okl. 101, 44 P.2d 84 (1935).

## § 2-118. Compensation of secretaries

A. Except as provided for in subsection B of this section, the secretary of each county election board shall be paid an annual salary according to the following schedule:

Registered Voters	Salary
0 to 5,000	\$ 5,604.00
5,001 to 10,000	8,556.00
10,001 to 15,000	11,496.00
15,001 to 17,500	14,436.00
17,501 to 25,000	17,388.00
25,001 to 50,000	22,692.00
50,001 or more	30,936.00

The salary and fringe benefits paid to each secretary shall be paid from county funds on a monthly basis and shall be reimbursed from funds appropriated by the Legislature for that purpose at a rate of not to exceed one hundred twenty-five percent (125%) of the above-specified salaries. Claims for said reimbursement shall be filed according to procedures prescribed by the Secretary of the State Election Board and approved by the Director of State Finance. Said claims for reimbursement shall only be paid for actual expenditures made by the county. The number of registered voters, for the purposes of this section, shall be determined by the number of registered voters, excluding inactive voters, in the county on January 1, 1979, and every two (2) years thereafter.

B. For the fiscal year beginning July 1, 1990, the salary of the secretary of each county election board shall be the same as it was for the fiscal year ending June 30, 1990, adjusted by a One Thousand Dollar (\$1,000.00) increase calculated using the salary of the secretary as of June 30, 1990, irrespective of changes in the numbers of registered voters, either active or inactive, in the county. Laws 1974, c. 153, § 2-118, operative Jan. 1, 1975. Laws 1975, c. 103, § 1, eff. May 2, 1975; Laws 1976, c. 228, § 5, emerg. eff. June 15, 1976; Laws 1978, c. 232, § 1, eff. July 1, 1978; Laws 1979, c. 240, § 3, emerg. eff. July 1, 1979; Laws 1980, c. 306, § 2, emerg. eff. June 17, 1980; Laws 1981, c. 329, § 5, eff. July 1, 1981; Laws 1982, c. 298, § 4, emerg. eff. May 28, 1982; Laws 1985, c. 261, § 4, emerg. eff. July 15, 1985; Laws 1987, c. 203, § 50, operative July 1, 1987; Laws 1988, c. 247, § 7, operative July 1, 1988; Laws 1989, c. 369, § 38, operative July 1, 1989; Laws 1990, c. 264, § 46, operative July 1, 1990.

**Historical and Statutory Notes**

As originally enacted this section read:

"The secretary of each county election board shall be paid an annual salary according to the following schedule:

Registered Voters	Salary
0 to 5,000	\$ 3,000
5,001 to 10,000	4,500
10,001 to 15,000	6,000
15,001 to 25,000	7,500
25,001 to 50,000	9,000
50,001 to 100,000	10,500
100,000 or more	12,000

One-half (1/2) of the secretary's salary shall be paid from state funds and one-half (1/2) from county funds, and the salary shall be paid on a monthly basis. Unless the secretary of a county election board files a written notice with the Secretary of the State Election Board to become a full-time secretary, his salary shall be seventy-five percent (75%) of the scheduled salary; provided, that said secretary of the county election board shall have a continuing option in said regard."

The 1975 amendment changed the salary schedule to read:

"Registered Voters	Salary
0 to 5,000	\$ 3,000
5,001 to 10,000	4,500
10,001 to 15,000	6,000
15,001 to 17,500	7,500
17,501 to 25,000	9,000
25,001 to 50,000	10,500
50,001 or more	12,000"

The 1976 amendment, at the end of the section, added: "In addition to the annual salaries hereinabove provided, the secretary of each county election board shall be paid an additional annual amount according to the following schedule, said additional amount to be paid in monthly increments, from state funds at the same time as the salaries provided hereinabove are paid:

Registered Voters	Amount
0 to 5,000	\$ 200
5,001 to 10,000	400
10,001 to 15,000	600
15,001 to 17,500	800
17,501 to 25,000	1,000
25,001 to 50,000	2,000

Registered Voters	Amount
50,001 or more	4,000"

The 1978 amendment changed the salary schedule to read:

"Registered Voters	Salary
0 to 5,000	\$ 3,400
5,001 to 10,000	5,300
10,001 to 15,000	7,200
15,001 to 17,500	9,100
17,501 to 25,000	11,000
25,001 to 50,000	14,500
50,001 or more	20,000"

; in the second sentence, substituted "with the contributions of the state and county being reduced equally if the Secretary elects to be a part-time employee" for "; provided that said secretary of the county election board shall have a continuing option in said regard"; and deleted the provisions added by the 1976 amendment.

The 1979 amendment changed the salary schedule to read:

"Registered Voters	Salary
0 to 5,000	\$ 3,800
5,001 to 10,000	5,800
10,001 to 15,000	7,800
15,001 to 17,500	9,800
17,501 to 25,000	11,800
25,001 to 50,000	15,400
50,001 or more	21,000"

and deleted the last sentence which prior thereto read: "Unless the secretary of a county election board files a written notice with the Secretary of the State Election Board to become a full-time secretary, his salary shall be seventy-five percent (75%) of the scheduled salary with the contributions of the state and county being reduced equally if the Secretary elects to be a part-time employee."

The 1980 amendment added a second sentence which read: "The number of registered voters, for the purposes of this section, shall be determined by the number of registered voters in the county on January 1, 1979, and every two (2) years thereafter."

The 1981 amendment rewrote the section to read:



"The secretary of each county election board shall be paid an annual salary according to the following schedule:

<u>"Registered Voters</u>	<u>Salary</u>
0 to 5,000	\$ 4,712
5,001 to 10,000	7,192
10,001 to 15,000	9,672
15,001 to 17,500	12,152
17,501 to 25,000	14,632
25,001 to 50,000	19,096
50,001 or more	26,040

"The salary and fringe benefits paid to each secretary shall be paid from county funds on a monthly basis and shall be reimbursed from funds appropriated by the Legislature for that purpose at a rate of not to exceed one hundred twenty-five percent (125%) of the above specified salaries. Claims for said reimbursement shall be filed according to procedures prescribed by the Secretary of the State Election Board and approved by the Director of State Finance. Said claims for reimbursement shall only be paid for actual expenditures made by the county. The number of registered voters, for the purposes of this section, shall be determined by the number of registered voters excluding inactive voters, in the county on January 1, 1979, and every two (2) years thereafter."

The 1982 amendment changed the salary schedule to read:

<u>"Registered Voters</u>	<u>Salary</u>
0 to 5,000	\$ 5,184.00
5,001 to 10,000	7,920.00
10,001 to 15,000	10,644.00
15,001 to 17,500	13,368.00
17,501 to 25,000	16,104.00
25,001 to 50,000	21,012.00
50,001 or more	28,644.00"

The 1985 amendment changed the salary schedule to read:

<u>"Registered Voters</u>	<u>Salary</u>
0 to 5,000	\$ 5,604.00
5,001 to 10,000	8,566.00
10,001 to 15,000	11,496.00
15,001 to 17,500	14,436.00
17,501 to 25,000	17,388.00

<u>"Registered Voters</u>	<u>Salary</u>
25,001 to 50,000	22,692.00
50,001 or more	30,936.00"

The 1987 amendment designated the former section as subsection A and in subsection A, first sentence, substituted "Except as provided for in subsection B of this section, the" for "The"; and added subsection B.

The 1988 amendment, in subsection B, substituted "1988" for "1987" following "July 1," and inserted "adjusted by five percent (5%) increase calculated using the salary of the secretary as of June 30, 1986,".

The 1989 amendment, in subsection B, substituted "1989" for "1988" following "July 1," "1989" for "1986" following "June 30," in two places and "Four Hundred Dollars (\$400.00)" for "five percent (5%)".

The 1990 amendment, in subsection B, substituted "1990" for "1989" throughout the subsection and substituted "One Thousand Dollars (\$1,000.00)" for "Four Hundred Dollars (\$400.00)".

#### **Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 2 of Laws 1978, c. 232, provides that this act shall become effective July 1, 1978.

Section 14 of Laws 1981, c. 329 provides for an effective date.

Section 9 of Laws 1988, c. 247 provides for severability and § 10 provides for an operative date.

#### **Source:**

- Laws 1937, p. 142, § 1.
- Laws 1945, c. 98, § 1.
- Laws 1947, p. 46, § 1.
- Laws 1949, p. 63, § 2.
- Laws 1953, p. 102, §§ 1, 2.
- Laws 1953, p. 103, § 1.
- Laws 1953, p. 112, § 22.
- Laws 1957, p. 171, § 1.
- Laws 1957, p. 178, § 20.
- Laws 1961, p. 241, § 1.
- Laws 1961, p. 245, § 1.
- Laws 1965, c. 489, § 1.
- Laws 1968, c. 389, §§ 1, 2.
- 26 O.S.1971, §§ 24a, 24b, 93.20.

#### **Library References**

Elections ⇐53.

WESTLAW Topic No. 144.  
C.J.S. Elections § 63.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

**Appropriation of funds 3**  
**Construction and application 1**  
**Status of secretary 2**

**1. Construction and application**

A county election board secretary serving at the time of the effective date (July 1, 1978) of this section, as amended, continues to serve in the same status as either a full-time or part-time secretary until he/she gives written notice to the Secretary of the State Election Board of his/her election to change that status. Op.Atty.Gen. No. 79-40 (April 17, 1979).

**2. Status of secretary**

The county excise board and county commissioners have no authority to designate or "deem" a county election board secretary as a part-time officer for salary

purposes regardless of whether the secretary was appointed prior to the amendment of this section and regardless of whether the secretary filed a new election (notice) with the Secretary of the State Election Board after the effective date of this section, as amended. Op.Atty.Gen. No. 79-40 (April 17, 1979).

A secretary of a county election board is a county rather than a state officer. Op.Atty.Gen. No. 77-104 (March 31, 1977).

**3. Appropriation of funds**

It is the mandatory duty of the county excise board to appropriate adequate funds for the operating expenses of the county election board, including adequate funds to pay the county's portion of the secretary's salary. Op.Atty.Gen. No. 79-40 (April 17, 1979).

**§ 2-119. Appropriations to county election boards**

In addition to the salary paid the secretary and assistant secretary or chief clerk, it shall be the mandatory duty of the county excise board to appropriate annually adequate funds for operating expenses of the county election board in the discharge of its duties and responsibilities.

Laws 1974, c. 153, § 2-119, operative Jan. 1, 1975.

**Historical and Statutory Notes**

**Source:**

Laws 1907-08, p. 332.  
 Comp.Laws 1909, § 3164.  
 R.L.1910, § 3097.  
 Laws 1910-11, c. 106, p. 230, § 10.  
 Comp.St.1921, § 6164.

St.1931, § 5707.  
 Laws 1953, p. 111, § 21.  
 Laws 1957, p. 178, § 21.  
 26 O.S.1971, § 93.21.  
 Laws 1972, c. 226, § 12.  
 26 O.S.Supp.1972, § 103.21.

**Cross References**

Appropriation of public money, see title 68, § 2482 et seq.

**Library References**

Counties ¶62.  
 WESTLAW Topic No. 104.  
 C.J.S. Counties § 98.

## WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## Notes of Decisions

**Construction and application 1**  
**Election expenses 2**

of the secretary's salary. Op.Atty.Gen.  
 No. 79-40 (April 17, 1979).

**1. Construction and application**

It is the mandatory duty of the county excise board to appropriate adequate funds for the operating expenses of the county election board, including adequate funds to pay the county's portion

**2. Election expenses**

Expense of holding elections constitutes valid claim against county payable from appropriations for such purposes. Protest of Kansas City Southern Ry. Co., 157 Okl. 246, 11 P.2d 500 (1932).

**§ 2-120. Repealed by Laws 1979, c. 240, § 30, emerg. eff. June 1, 1979**

**Historical and Statutory Notes**

The repealed section, relating to the certification of registered voters by the secretary of the county election board

was derived from Laws 1974, c. 153, § 2-120.

**§ 2-121. Offices of county election boards**

It shall be the mandatory duty of the county commissioners of each county to furnish, at county expense, in each county seat a suitable office for the county election board. Said office shall provide adequate space for storage of election records and supplies, adequate space for the exercise of other functions required by law of the county election board and shall be equipped with suitable furniture and office equipment and a telephone. Said office shall be convenient to the public, shall have furniture, furnishings and fixtures and other equipment comparable to other county offices within the county, and necessary to the operation of said office. Laws 1974, c. 153, § 2-121, operative Jan. 1, 1975.

**Historical and Statutory Notes**

**Source:**

Laws 1957, p. 178, § 22.  
 26 O.S.1971, § 93.22.

**Library References**

Counties ⇐134.  
 WESTLAW Topic No. 104.  
 C.J.S. Counties § 174.

**§ 2-122. Maintenance of records—Records public**

The secretary of the county election board shall maintain the records of the office, and such records shall be open for public

inspection during regular office hours unless otherwise provided by law. In counties having seventeen thousand five hundred or more registered voters, the county election board office shall be open a minimum of six (6) hours per day, excluding Saturdays, Sundays and holidays; in counties having fewer than seventeen thousand five hundred registered voters, the county election board office shall be open a minimum of three (3) consecutive hours per day, excluding Saturdays, Sundays and holidays. The hours open for all election boards shall include 11:30 a.m. through 1:00 p.m. each regular work day.

Laws 1974, c. 153, § 2-122, operative Jan. 1, 1975. Laws 1981, c. 329, § 7, emerg. eff. June 30, 1981.

**Historical and Statutory Notes**

The 1981 amendment added the last sentence.

**Library References**

Records ⇨30.  
 WESTLAW Topic No. 326.  
 C.J.S. Records §§ 34, 35, 38.

**§ 2-123. Precinct election boards—Number of members**

Each precinct election board within each county shall be composed of three (3) members.

Laws 1974, c. 153, § 2-123, operative Jan. 1, 1975.

**Historical and Statutory Notes**

<b>Source:</b>	Laws 1910-11, c. 106, p. 226, § 5.
Laws 1907-08, p. 320.	Comp.St.1921, § 6132.
Comp.Laws 1909, § 3104.	St.1931, § 5681.
R.L.1910, § 3065.	26 O.S.1971, § 31.

**Library References**

Elections ⇨51.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 57 et seq.

**§ 2-124. Judge and clerk appointed by county election board—Terms—Parties to submit lists—Vacancies**

The county election board shall appoint two members of each precinct election board, to serve terms of four (4) years each. No later than June 15, 1975, and every four (4) years thereafter, the county central committees of the two parties with the highest number of registered voters in the state, based on the latest January 15 registration report, shall submit a list of three nominees for each

precinct to the county election board. The county election board shall be confined to the list of nominees submitted by either party and shall appoint one member of each precinct election board from each party no later than July 1, 1975, and every four (4) years thereafter. If no list is submitted by a county central committee for any precinct by the specified date, or if the nominees for a precinct are unable to serve, then the county election board shall appoint one member of said precinct election board from the ranks of said party within the precinct. Terms shall begin July 1, 1975, and every four (4) years thereafter. In the event of a vacancy, the county election board shall fill the unexpired term from the last list previously submitted by the county central committee. If there is no prior list, then the vacancy shall be filled from within the ranks of the same party within the affected precinct. The county election board shall designate one member as judge and the other as clerk for each precinct.

Laws 1974, c. 153, § 2-124, operative Jan. 1, 1975. Laws 1979, c. 240, § 4, emerg. eff. June 1, 1979.

#### Historical and Statutory Notes

The 1979 amendment, in the penultimate sentence, inserted "the vacancy shall be filled".

Comp.Laws 1909, §§ 3105, 3108, 3109, 3111.

R.L.1910, §§ 3066, 3069, 3070, 3072.  
Comp.St.1921, §§ 6133, 6136, 6137, 6139.

St.1931, §§ 5682, 5685, 5686, 5688.  
26 O.S.1971, §§ 32 to 34, 36.

#### Source:

Laws 1907-08, pp. 320, 322, 323.

#### Library References

Elections ⇨51.

WESTLAW Topic No. 144.

C.J.S. Elections § 57 et seq.

### § 2-125. Inspector appointed by county election board

Each county election board shall appoint the inspector for each precinct election board within the county. The board shall have the authority to remove any inspector in the county at any time.

Laws 1974, c. 153, § 2-125, operative Jan. 1, 1975.

#### Cross References

Removal of officers, see title 22, § 1181 et seq.

#### Library References

Elections ⇨51.

WESTLAW Topic No. 144.

C.J.S. Elections § 57 et seq.

**§ 2-126. Inspector's duties**

The inspector shall be the principal administrative officer of the precinct election board.

Laws 1974, c. 153, § 2-126, operative Jan. 1, 1975.

**Historical and Statutory Notes**

<p><b>Source:</b> Laws 1907-08, pp. 324, 332, 339. Comp.Laws 1909, §§ 3114, 3164, 3190. R.L.1910, §§ 3075, 3097.</p>	<p>Laws 1910-11, c. 106, p. 230, § 10. Comp.St.1921, §§ 6142, 6164, 6182. Laws 1931, p. 93, § 1. St.1931, §§ 5691, 5707. 26 O.S.1971, § 37.</p>
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**Library References**

Elections ⇄54.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 54 et seq.

**§ 2-127. Duties of precinct election boards**

The precinct election board shall perform such duties as may be prescribed by law.

Laws 1974, c. 153, § 2-127, operative Jan. 1, 1975.

**Library References**

Elections ⇄54.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 54 et seq.

**§ 2-128. Appointment of counters**

Counters for each precinct in each county shall be appointed by the county election board only as authorized by the State Election Board for any election. Insofar as is possible, no more than one-half (1/2) of the counters in any precinct shall be members of the same party.

Laws 1974, c. 153, § 2-128, operative Jan. 1, 1975.

**Historical and Statutory Notes**

<p><b>Source:</b> Laws 1907-08, p. 324. Comp.Laws 1909, § 3129. R.L.1910, § 3077. Comp.St.1921, § 6144. Laws 1929, c. 241, p. 304, § 3. Laws 1931, p. 95, § 4. St.1931, § 5797. Laws 1937, p. 137, § 3.</p>	<p>Laws 1943, p. 89, § 2, State Question No. 312, Referendum Petition No. 89. Adopted special election July 11, 1944. Laws 1955, p. 209, § 1. Laws 1961, p. 258, § 1. Laws 1965, c. 372, § 1. Laws 1965, c. 489, § 2. Laws 1968, c. 224, § 1. 26 O.S.1971, §§ 127, 361, 374.</p>
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## Library References

Elections ¶51.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 57 et seq.

## WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## Notes of Decisions

## Prior laws 1

Rogers v. Reynolds, 43 Okl. 528, 143 P. 515 (1914).

## 1. Prior laws

R.L.1910, § 3077 (repealed; now this section) provided for equitable distribution of counters between all organized political parties, not exceeding four.

Any one judge could prevent ballot from being counted under Laws 1899, c. 13, p. 154, § 48 (now repealed). Rober-son v. Hubler, 11 Okl. 297, 67 p. 477 (1902).

## § 2-128.1. Additional precinct election board members

In anticipation of large numbers of voters in specific precincts at any election, the Secretary of the State Election Board may authorize the secretary of any county election board to appoint additional precinct election board members, in multiples of three, to assist the regular precinct election officials in processing voters. The Secretary of the State Election Board shall prescribe procedures to be used in such cases.

Laws 1985, c. 193, § 9, eff. Nov. 1, 1985.

## § 2-129. Compensation of inspectors, judges, clerks and counters

The inspector shall be paid Fifty Dollars (\$50.00) for each election and shall be allowed mileage reimbursement at the rate provided by the State Travel Reimbursement Act<sup>1</sup> for mileage incurred to receive or return ballots and materials for the election. Judges, clerks and counters shall be paid Thirty-seven Dollars (\$37.00) for each election. An additional Two Dollars (\$2.00) per election shall be paid to each inspector, judge, clerk and counter of a precinct from the funds of the county. Compensation provided herein shall be paid for any state, county, municipal or school district election; provided, however, that compensation for elections conducted concurrently shall not exceed in total the amount herein prescribed. Said compensation shall be paid by the State Election Board for all regular Primary, Runoff Primary and General Elections, all state-wide special elections and all special elections for United States Representatives or United States Senators and State Senators or State Representatives.

Laws 1974, c. 153, § 2-129, operative Jan. 1, 1975. Laws 1979, c. 240, § 5, emerg. eff. July 1, 1980; Laws 1981, c. 286, § 1, eff. July 1, 1981.

<sup>1</sup> Section 500.1 et seq. of title 74.

**Historical and Statutory Notes**

The 1979 amendment, in the first sentence, substituted "Forty Dollars (\$40.00)", for "Thirty-five Dollars (\$35.00)" and "mileage incurred to receive or return ballots and materials for the election" for "two (2) trips to and from his home to the county seat for each election" and in the second sentence substituted "Twenty-five Dollars (\$25.00)" for "Fifteen Dollars (\$15.00)".

The 1981 amendment, in the first sentence, substituted "Fifty Dollars (\$50.00)" for "Forty Dollars (\$40.00)" and in the second sentence substituted "Thirty-seven Dollars (\$37.00)" for "Twenty-five Dollars (\$25.00)".

**Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 12 of Laws 1981, c. 286 provides for an effective date.

**Source:**

Laws 1933, c. 199, § 6.  
Laws 1937, p. 142, § 2.  
Laws 1947, p. 46, § 2.  
Laws 1949, p. 62, § 1.  
Laws 1961, p. 258, § 1.  
Laws 1965, c. 489, § 3.  
Laws 1968, c. 53, § 1.  
Laws 1970, c. 55, § 1.  
26 O.S.1971, §§ 374, 556a.  
Laws 1973, c. 49, § 1.

**Library References**

Elections ⇨53.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 63.

**§ 2-130. Removal of judges, clerks and counters**

The county election board shall have the authority to remove any precinct judge, clerk or counter at any time.

Laws 1974, c. 153, § 2-130, operative Jan. 1, 1975.

**Cross References**

Removal of officers, see title 22, § 1181 et seq.

**Library References**

Elections ⇨51.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 57 et seq.

**§ 2-131. Eligibility for membership on county and precinct election boards**

To be eligible for membership on a county or precinct election board, or to serve as a counter for a precinct election board, one must be a registered voter of the county or precinct, whichever is applicable, in which he will serve and demonstrate competence to perform his duties. Persons thus qualified and appointed shall be trained in their duties in a manner prescribed by the Secretary of the State Election Board.

Laws 1974, c. 153, § 2-131, operative Jan. 1, 1975. Laws 1976, c. 90, § 1, emerg. eff. May 6, 1976.



**Historical and Statutory Notes**

The 1976 amendment, in the first sentence, deleted “, be not older than seven-ty-five (75) years of age” following “, in which he will serve”.

**Library References**

Elections ⇐51.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 57 et seq.

**§ 2-132. Disqualification of county and precinct election board members**

No person shall serve on a county election board or precinct election board, or as a counter for a precinct election board, at any election in which he is a candidate for office, is a deputy or regular employee of a candidate for office or is related within the third degree by either consanguinity or affinity to a candidate for office. In the event a member of a precinct election board is disqualified for one of the aforementioned reasons, it shall be the duty of the secretary of the county election board to appoint a suitable replacement for the official for said election. Any person so disqualified shall resign his office or position no later than ten (10) days following the close of the filing period during which such candidacy was filed.

Laws 1974, c. 153, § 2-132, operative Jan. 1, 1975. Laws 1983, c. 171, § 3, emerg. eff. June 6, 1983.

**Historical and Statutory Notes**

The 1983 amendment added the last sentence.

Laws 1910-11, c. 106, p. 227, § 6.  
Comp.St.1921, § 6135.  
St.1931, § 5684.

**Source:**

Laws 1907-08, p. 322.  
Comp.Laws 1909, § 3107.  
R.L.1910, § 3068.

Laws 1935, p. 120, § 1.  
Laws 1943, p. 87, § 1.  
Laws 1953, p. 113, § 1.  
26 O.S.1971, § 51.

**Library References**

Elections ⇐55.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 58, 59.

**§ 2-133. Legal defense services**

A. The members of the State Election Board and all persons employed within the organizational framework of the State Election Board shall be entitled to free defense services by the Attorney General in any civil suit resulting from alleged acts or omissions which the Attorney General has determined to have occurred within the scope of or arising out of the official duties performed by these persons in behalf of the State Election Board and the state.

B. All members of county election boards and all persons employed or appointed within the organizational framework of county election boards, including voter registrars and members of precinct election boards, shall be entitled to free defense services by the district attorney in any civil suit resulting from alleged acts or omissions which the district attorney has determined to have occurred within the scope of or arising out of the official duties performed by these persons in behalf of the county election board, the county and the state.

C. The fact that the Attorney General or district attorney omits to provide such defense as provided within this act shall not be admissible in any such civil suit and any mention of such fact shall be deemed grounds for mistrial.

Added by Laws 1976, c. 90, § 6, emerg. eff. May 6, 1976.

#### Historical and Statutory Notes

Section 7 of Laws 1976, c. 90, provided for codification.

#### Library References

Elections ⇐57.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 64.

### ARTICLE III. GENERAL ADMINISTRATION

#### § 3-101. Elections to be on Tuesdays

No election required to be conducted by any county election board shall be scheduled for a day other than Tuesday.

Laws 1974, c. 153, § 3-101, operative Jan. 1, 1975.

#### § 3-101.1. Oklahoma Election Management System defined

As used in this title, Oklahoma Election Management System shall mean the computers and computer data maintained and operated by the State Election Board and the county election boards.

Laws 1990, c. 331, § 2, eff. July 1, 1990.

#### Library References

Elections ⇐38.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 76, 77.

#### § 3-102. Forms provided by State Election Board

All forms required by law for state and county elections, except such forms as are applicable only to county elections, shall be provided by the State Election Board.

Laws 1974, c. 153, § 3-102, operative Jan. 1, 1975.

**§ 3-103. Registration forms provided by State Election Board**

Forms required for implementation of registration and election laws shall be prescribed by the Secretary of the State Election Board of a uniform character suitable for the voting system in use. Laws 1974, c. 153, § 3-103, operative Jan. 1, 1975.

**United States Supreme Court**

Disenfranchising convicted felons who have completed their sentences and paroles, see *Richardson v. Ramirez*, 94 S.Ct. 2655, 418 U.S. 24, 41 L.Ed.2d 551 (1974) on remand 117 Cal.Rptr. 562, 528 P.2d 378, 12 C.3d 972.

**§ 3-104. Costs paid by county**

The cost of rent for polling places, ballot boxes, locks and keys, voting booths and United States flags shall be paid from county funds. The cost of central registries, maps and other materials required to be maintained by the county election board shall be paid from county funds. The cost of other supplies necessary for the conduct of state elections shall be paid from state funds. The purchase and maintenance of computer hardware, software and related supplies used in the Oklahoma Election Management System shall be paid from state funds.

Laws 1974, c. 153, § 3-104, operative Jan. 1, 1975. Laws 1990, c. 331, § 3, eff. July 1, 1990.

**Historical and Statutory Notes**

The 1990 amendment, in the second sentence, substituted "The" for "In addition, the" at the beginning and deleted "and precinct" following "cost of central" and added the last sentence.

**Library References**

Counties ⇨134.  
WESTLAW Topic No. 104.  
C.J.S. Counties § 174.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions****Validity 1**

relating to costs incurred by county election boards. Op.Atty.Gen. No. 80-63 (May 9, 1980).

**1. Validity**

Const. Art. 10, § 9 is not violated by this section and § 3-105 of this title.

**§ 3-105. Costs of county elections**

All costs for any county election not held concurrently with a state election shall be paid from county funds.

Laws 1974, c. 153, § 3-105, operative Jan. 1, 1975.

**Library References**

Counties ⇨134.  
WESTLAW Topic No. 104.  
C.J.S. Counties § 174.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions****Validity 1**

relating to costs incurred by county election boards. Op.Atty.Gen. No. 80-63 (May 9, 1980).

**1. Validity**

Const. Art. 10, § 9 is not violated by § 3-104 of this title and this section,

**§ 3-105.1. Election personnel—Compensation and benefits—  
Election expenses**

A. When any county, municipality, school district or other governmental entity authorizes an election to be conducted by the county election board, the secretary of the county election board shall, not less than thirty-five (35) days prior to the election, submit to the governmental entity for whom the election is authorized:

1. An itemized estimate of the number of precinct inspectors, judges, clerks and counters necessary for the election; and
2. An estimate of the compensation and employer's share of any benefits to be provided to each precinct inspector, judge, clerk and counter.

B. Not less than fifteen (15) days prior to the election, the county, municipality, school district or other governmental entity authorizing the election shall submit to the secretary of the county election board an amount of funds equal to the estimate of compensation and benefits for precinct inspectors, judges, clerks and counters as provided in subsection A of this section. If such amount is not submitted ten (10) days prior to the election, the secretary of the county election board shall not be required to hold the election. Upon receipt of the funds, the secretary of the county election board shall deposit the funds in the County Election Board Special Depository Account.

C. The secretary of the county election board shall issue vouchers for the compensation and benefits of precinct inspectors, judges, clerks and counters from the County Election Board Special Depository Account, pursuant to Section 681 et seq. of Title 19 of the Oklahoma Statutes. The secretary of the county election board shall provide the vouchers to the precinct inspector, except the voucher for the inspector, at the time the inspector receives supplies and ballots for the election. The vouchers shall be distributed to the appropriate precinct judges, clerks and counters upon closing of the polls on the day of the election, according to procedures to be prescribed by the Secretary of the State Election Board. Each precinct inspector, judge, clerk or counter shall sign a form prescribed by the Secretary of the State Election Board acknowledging receipt of compensation and benefits. The inspector shall return the form, together with any unclaimed vouchers, to the county election board, together with the results of the election and other supplies and materials. At such time, the secretary of the county election board shall provide a voucher for payment to the inspector. The secretary of the county election board shall return any unclaimed vouchers to the county treasurer within seven (7) days after the election. If any additional vouchers for compensation and benefits are required, the secretary of the county election board shall issue such vouchers not less than seven (7) days after the election. In no event shall compensation be made until after services have been rendered.

D. As soon as practicable after conducting an election for a municipality, school district, or other governmental entity, except the state or county, the secretary of the county election board shall submit a claim to the governing body of the entity for whom the election was conducted. The claim shall itemize all expenses associated with the election, and shall deduct any amount paid by the municipality, school district or other governmental entity for the compensation and employer's share of any benefits provided to precinct inspectors, judges, clerks and counters pursuant to the provisions of subsection B of this section. Upon receipt of such itemized claim, the governing body shall make payment to the county election board within thirty (30) days. Upon receipt of the payment, the secretary of the county election board shall deposit the payment in the County Election Board Special Depository Account. The secretary shall disburse payments for the expenses incurred in the election, pursuant to Section 681 et seq. of Title 19 of the Oklahoma Statutes.

E. The State Election Board shall provide the compensation and employer's share of benefits for precinct inspectors, judges, clerks and counters in the payment made to the respective counties for

elections for which said precinct inspectors, judges, clerks and counters are paid by the State Election Board, in the same manner as provided in subsections A and B of this section. For the foregoing elections, the county shall place in the County Election Board Special Depository Account an amount of funds equal to Two Dollars (\$2.00) for each inspector, judge, clerk and counter at each election in the same manner as provided in subsections A and B of this section. The Secretary of the State Election Board shall prescribe a procedure by which the State Election Board or the county shall be reimbursed for any overpayment made to a county election board for compensation and employer's share of benefits paid to precinct inspectors, judges, clerks and counters.

Laws 1984, c. 210, § 4, operative Jan. 1, 1985. Laws 1986, c. 1, § 1, eff. July 1, 1986.

#### Historical and Statutory Notes

The 1986 amendment rewrote the section which prior thereto read:

"As soon as practicable after conducting an election for a municipality, school district, or other governmental entity, the secretary of the county election board shall submit a claim to the governing body of the entity for whom the election was conducted. The claim shall itemize all expenses associated with the election, including the compensation and employer's share of any benefits provided to precinct election officials. Upon receipt of such itemized claim, the governing body shall make payment to the county election board within thirty (30) days. Upon receipt of the payment, the secretary of the county election board shall deposit the payment in the County Election Board Special Depository Account. The secretary shall disburse payments for the expenses incurred in

the election, including a payment to the county treasurer for the total compensation and employer's share of benefits provided to precinct election officials. Within thirty (30) days after said payment has been made, the county shall issue warrants to the precinct election officials for the appropriate amounts. The State Election Board shall include the employer's share of benefits provided to precinct election officials in the payment made to the respective counties for elections for which said precinct election officials' compensation is paid by the State Election Board."

**Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 6 of Laws 1984, c. 210 provides for operative dates.

Section 2 of Laws 1986, c. 1 provides for an effective date.

#### Library References

Elections ¶53.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 63.

### § 3-105.2. Distribution of vouchers by mail

In lieu of the procedure for distribution of vouchers for precinct inspectors, judges, clerks and counters provided in Section 3-105.1 of Title 26 of the Oklahoma Statutes, the secretary of the county election board may distribute the vouchers by United States mail. When vouchers are distributed by United States mail, the vouchers

shall be distributed by mailing no later than the Tuesday next succeeding the day of the election.

Laws 1988, c. 101, § 3, emerg. eff. April 1, 1988:

### § 3-106. Costs for counties with voting machines

In counties with voting machines, the State Election Board shall, for state elections, pay in addition to the salaries of the inspector, judge and clerk in each precinct an additional amount equal to the number of counters which would have been authorized in said county had voting machines not been in use in said election. Provided further, the State Election Board shall reimburse said counties for the actual cost of ballots and supplies not to exceed what it would have been required to provide if voting machines or devices had not been in use.

Laws 1974, c. 153, § 3-106, operative Jan. 1, 1975. Laws 1978, c. 57, § 1, emerg. eff. March 17, 1978.

#### Historical and Statutory Notes

The 1978 amendment added the second sentence.

#### Library References

Counties ¶134.  
WESTLAW Topic No. 104.  
C.J.S. Counties § 174.

### § 3-107. State Election Board Revolving Fund

There is hereby created in the State Treasury a revolving fund for the State Election Board to be designated "The State Election Board Revolving Fund." The fund shall consist of monies received by the State Election Board pursuant to statutory provisions, but not including appropriated funds. The revolving fund shall be a continuing fund not subject to fiscal year limitations and shall be under the administrative direction of the Secretary of the State Election Board. Expenditures from said fund shall be made pursuant to the laws of this state and the statutes relating to the said Board without legislative appropriation. Warrants for expenditures from said fund shall be drawn by the State Treasurer, based on claims signed by an authorized employee or employees of the said Board and approved for payment by the Director of State Finance.

Laws 1974, c. 153, § 3-107, operative Jan. 1, 1975. Laws 1979, c. 47, § 11, emerg. eff. April 9, 1979.

**Historical and Statutory Notes**

The 1979 amendment, in the last sentence, substituted "State Treasurer" for "State Auditor".

**Cross References**

Appropriation of public money, see title 68, § 2482 et seq.  
State warrants, see title 62, § 551 et seq.

**Library References**

States ⇐127.  
WESTLAW Topic No. 360.  
C.J.S. States § 228.

**§ 3-108. County Election Board Special Depository Account**

A special depository account, to be designated "County Election Board Special Depository Account," shall be used in each county for receipt and disbursement of monies received by said county election board pursuant to statutory provisions, but not including appropriated funds. The special depository account shall be a continuing fund not subject to fiscal year limitations and shall be under the administrative direction of the secretary of the county election board. Said special depository account shall be established and administered pursuant to Section 681, et seq., of Title 19, Oklahoma Statutes.

Laws 1974, c. 153, § 3-108, operative Jan. 1, 1975.

**Library References**

Counties ⇐161.  
WESTLAW Topic No. 104.  
C.J.S. Counties § 195.

**§ 3-109. Training for county election board personnel**

Prior to the General Election of 1976, and every two (2) years thereafter, the Secretary of the State Election Board shall cause to be conducted a training program for the members and employees of each county election board. The Secretary of the State Election Board shall cause regular inspections to be made of each county election board to achieve uniformity in administration of the election laws.

Laws 1974, c. 153, § 3-109, operative Jan. 1, 1975.

**Library References**

Elections ⇐51.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 57 et seq.



**§ 3-110. Reimbursement for training**

The Secretary of the State Election Board shall be authorized to conduct a statewide or regional training program for members and employees of county election boards, in which event said members and employees shall be paid, from state funds, reimbursement for expenses at the rate provided by the State Travel Reimbursement Act.<sup>1</sup>

Laws 1974, c. 153, § 3-110, operative Jan. 1, 1975. Laws 1979, c. 240, § 6, emerg. eff. July 1, 1979.

<sup>1</sup> Section 500 et seq. of title 74.

**Historical and Statutory Notes**

The 1979 amendment substituted "state" for "county" preceding "funds".

**Library References**

Elections ⇄51.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 57 et seq.

**§ 3-111. Training for voter registrars and precinct election board personnel**

Prior to the General Election in 1976, and every two (2) years thereafter, the Secretary of the State Election Board shall cause to be conducted a training program in each county for voter registrars, precinct inspectors, judges, clerks and counters. Persons attending such training programs shall be allowed mileage reimbursement at the rate provided by the State Travel Reimbursement Act<sup>1</sup> to be paid from county funds.

Laws 1974, c. 153, § 3-111, operative Jan. 1, 1975.

<sup>1</sup> Section 500.1 et seq. of Title 74.

**Library References**

Elections ⇄51.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 57 et seq.

**§ 3-112. Precinct election board instruction booklets**

The Secretary of the State Election Board, for each statewide election, shall cause each precinct election board to be provided with a booklet of instructions for conducting the election.

Laws 1974, c. 153, § 3-112, operative Jan. 1, 1975.

**Library References**

Elections ⇐197.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 192, 196.

**§ 3-113. Instructions to voters**

Instructions to voters describing the manner for casting one's vote shall be posted outside each polling place and inside each voting booth or upon each voting machine. Said instructions shall be prescribed by the Secretary of the State Election Board.

Laws 1974, c. 153, § 3-113, operative Jan. 1, 1975.

**§ 3-114. Public information**

It shall be the duty of the secretary of each county election board to disseminate information about the dates and times of elections, locations of polling places, names and addresses of voter registrars and other data as he deems necessary to inform the general public of same. Sample ballots shall be made available to the general public.

Laws 1974, c. 153, § 3-114, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1907-08, p. 362.  
 Comp.Laws 1909, § 3280.  
 R.L.1910, § 3034.

Comp.St.1921, § 6103.  
 Laws 1927, c. 203, § 8.  
 St.1931, § 5765.  
 Laws 1955, p. 206, § 8.  
 26 O.S.1971, §§ 114, 278.

**Cross References**

Sample ballots, see § 6-117 of this title.

**Library References**

Elections ⇐197.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 192, 196.

**§ 3-115. Establishment of precincts—Map of precinct required**

It shall be the duty of each county election board to establish boundaries for voting precincts in the county. A large map showing said precincts shall be maintained in the county election board office at all times.

Laws 1974, c. 153, § 3-115, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1907-08, p. 321.

Comp.Laws 1909, § 3106.

R.L.1910, § 3067.

Laws 1913, c. 157, p. 323, § 24.

Comp.St.1921, §§ 6134, 6298.

Laws 1927, c. 48, p. 68, § 1.

Laws 1927, c. 48, p. 69, § 2.

St.1931, §§ 5683, 5696.

Laws 1953, p. 104, § 2.

Laws 1961, p. 242, § 1.

26 O.S.1971, §§ 25, 116.

Laws 1972, c. 226, § 3.

26 O.S.Supp. 1972, § 103.3.

**Library References**

Elections ¶46, 48.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 53, 54.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions****Construction and application 1  
Irregularities or misconduct of officers**

2

**1. Construction and application**

In view of former R.L.1910, § 3067 and Laws 1913, c. 157, § 24 (repealed; now this section) it was the duty of the county election board to create, alter, or discontinue voting precincts, so that no precinct contain more than 200 voters, unless in extreme cases of necessity, and such duty could be enforced by mandamus by any qualified elector. *Becknell v. State*, 68 Okl. 264, 172 P. 1094 (1918).

A county election board was vested by Laws 1913, c. 157, § 24 (repealed; now this section and § 3-116 of this title) with discretion as to the boundaries of the precincts created by them, and judgment of the trial court, ordering that

certain boundaries be established was modified on mandamus so as to leave the boundaries of the proposed district to the discretion of the county election board. *Id.*

**2. Irregularities or misconduct of officers**

Complaint of state political party elector alleging that governor and attorney general had permitted county election boards to draw precinct lines as authorized by former §§ 25 (repealed; now this section) and 102.2 (repealed) of this title in disproportionate manner so as to dilute the votes of plaintiffs in the selection of the members of the state central committee did not state a justiciable issue as between the parties. *Todd v. Oklahoma State Democratic Central Committee*, D.C.Okl., 361 F.Supp. 491 (1973).

**§ 3-116. Precinct boundaries**

A. The boundary line of any precinct shall not cross the boundary line of any congressional, legislative or county commissioner district.

B. Boundaries of all precincts shall enclose a contiguous area and follow clearly visible, definable and observable physical boundaries which are based upon criteria established and recognized by the Bureau of the Census of the United States Department of Commerce for purposes of defining census blocks for its decennial census, provided that no municipal boundary that is not such a

visible, definable and observable physical boundary shall be used as a precinct boundary.

Laws 1974, c. 153, § 3-116, operative Jan. 1, 1975. Laws 1979, c. 240, § 7, emerg. eff. June 1, 1979; Laws 1990, c. 213, § 2, emerg. eff. May 18, 1990.

### Historical and Statutory Notes

The 1979 amendment substituted "county commissioner" for "commissioner's" in subsection A.

The 1990 amendment designated the former section as subsection A; and added subsection B.

#### Source:

Laws 1913, c. 157, p. 323, § 24.  
Comp.St.1921, § 6298.  
Laws 1927, c. 48, p. 69, § 2.  
St.1931, § 5696.  
Laws 1945, p. 99, § 1.  
26 O.S.1971, §§ 26, 116.

### Library References

Elections ¶46.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 53.

### Notes of Decisions

#### Precinct boundaries 1

##### 1. Precinct boundaries

The changing of voting precinct boundaries in no wise nullifies or affects the validity of a registration certificate theretofore lawfully issued to a qualified elector in such precinct, and no such change either requires, authorizes, or permits a registrar to re-register any

such elector. *Fitzpatrick v. Childs*, 102 Okl. 166, 228 P. 485 (1924).

In election contest for office of county commissioner, the fact that after boundaries of election precinct were fixed the boundaries of commissioner's district were altered so as to divide the precinct was not sufficient cause for rejecting entire precinct returns. *Cobb v. Berry*, 67 Okl. 29, 168 P. 46 (1917).

## § 3-117. Precincts within municipalities

If the governing board of any municipality requests in writing that precinct boundaries be altered to conform to ward boundaries of said municipality, the county election board may, at its discretion, make such alterations if such alterations conform to the requirements contained in Sections 3-116 and 3-118 of this title; provided, however, that all expenses incurred in making such alterations shall be paid by the municipality.

Laws 1974, c. 153, § 3-117, operative Jan. 1, 1975. Laws 1990, c. 213, § 3, emerg. eff. May 18, 1990.

### Historical and Statutory Notes

The 1990 amendment inserted "if such alterations conform to the requirements

contained in Sections 3-116 and 3-118 of this title".

### Library References

Elections ¶46.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 53.

### § 3-118. Changes in precincts—Notice—Transfer of affected voters' registration

The county election board in each county may change the boundaries of, abolish or consolidate any precinct, subject to the limitations provided by law, by observing the following procedure:

1. No precinct shall be created, divided, abolished or consolidated, or any boundary otherwise changed between January 1 of any year which last digit is nine and December 31 of any year which last digit is zero.

2. After January 1, 1992, a county election board shall only change a precinct by dividing or consolidating a precinct into two or more precincts in a manner which will conform to designated census geography except when it becomes necessary for reasons of a lack of an adequate available polling place, or when road conditions hinder or impede a voter's ability to vote, or to accomplish reapportionment, it becomes necessary to consolidate a part of a precinct with adjacent precincts, a part or parts may be consolidated.

3. Changes may not become effective until notices of such changes have been posted and mailed as provided in this paragraph for thirty (30) days. One notice shall be posted at the door of the polling place for the affected precinct, one notice posted at the door of the county courthouse and one notice shall be mailed to the State Election Board.

4. The registration of each registered voter affected by such change shall be transferred as provided by law by the secretary of the county election board without any request from said voter.

5. Each registered voter whose registration is transferred as hereinbefore provided shall be notified of such transfer in writing by the secretary of the county election board. At the same time, the voter shall be issued a new voter identification card and shall be instructed to destroy his former voter identification card.

Laws 1974, c. 153, § 3-118, operative Jan. 1, 1975. Laws 1990, c. 213, § 4, emerg. eff. May 18, 1990.

#### Historical and Statutory Notes

The 1990 amendment, in the introductory paragraph, deleted "hereinbefore" preceding "provided" and inserted "by law" following "provided"; inserted paragraphs 1 and 2; redesignated former paragraph 1 as paragraph 3, and in paragraph 3, inserted "and mailed as provided in this paragraph" in the first sentence, inserted a period following "thirty (30) days" which formed the sec-

ond sentence, and in the second sentence, inserted "shall be" preceding "posted", deleted "and" and inserted a comma following "precinct", and at the end of the sentence, added "and one notice shall be mailed to the State Election Board"; and redesignated former paragraphs 2 and 3 as paragraphs 4 and 5.

**Source:**

Laws 1913, c. 157, p. 323, § 24.  
Comp.St.1921, § 6298.

Laws 1927, c. 48, p. 69, § 2.  
St.1931, § 5696.  
26 O.S.1971, § 116.

**Library References**

Elections ¶46.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 53.

**United States Supreme Court**

Reorganization of county election districts, jurisdiction, see *United States v. Board of Supervisors of Warren County,*

*Mississippi*, 1977, 97 S.Ct. 833, 429 U.S. 642, 51 L.Ed.2d 106.

**§ 3-118.1. Changes in precincts prohibited pending reapportionment—Deadline for changes following reapportionment**

A. Beginning on the effective date of this act, and until the enactment of the 1991 legislative apportionment, the county election board in each county shall not change the boundaries of, abolish or consolidate any precinct or subprecincts.

B. By March 1, 1992, the county election board in each county shall have changed the boundary of any precinct or subprecinct to comply with Section 3-116 of Title 26 of the Oklahoma Statutes. Laws 1990, c. 213, § 5, emerg. eff. May 18, 1990.

**Repeal**

*Repealed by Laws 1990, c. 213, § 6, effective October 1, 1991*

**§ 3-119. Creation of subprecincts**

Where fewer than one hundred registered voters are affected, an area constituting the maximum area possible without crossing boundaries of any congressional, legislative or county commissioner district may be designated as a subprecinct. Registration records shall be maintained for subprecincts in like manner as for other precincts. Subprecincts need not have a polling place separate from another precinct, nor shall they be required to have a precinct election board. The secretary of the county election board may authorize registered voters of a subprecinct to vote at a specific adjacent precinct. Provided, separate boxes and election materials shall be there afforded for the subprecinct in order that a separate certification will be made of the subprecinct's election results. Appropriate ballots shall be issued to the voters of the subprecinct. Laws 1974, c. 153, § 3-119, operative Jan. 1, 1975. Laws 1979, c. 240, § 8, emerg. eff. June 1, 1979.

**Historical and Statutory Notes**

The 1979 amendment inserted "county" preceding "commissioner district" in the first sentence.

**Source:**  
26 O.S.1971, § 25a.  
Laws 1972, c. 167, § 1.

**Library References**

Elections ⇨46, 48.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 53, 54.

**§ 3-120. Polling places—Tort liability**

There shall be one (1) polling place for each precinct, said polling place to be located within the geographic boundaries of such precinct. The State Election Board shall be authorized to adopt rules and regulations providing exceptions to the aforesaid requirement. Persons, businesses, churches and any other nongovernmental entities providing space for use as a polling place shall not be held liable for any torts arising from any incident occurring in such space during the period when such space is used as a polling place. Laws 1974, c. 153, § 3-120, operative Jan. 1, 1975. Laws 1979, c. 240, § 9, emerg. eff. June 1, 1979; Laws 1981, c. 296, § 1, eff. July 1, 1981.

**Historical and Statutory Notes**

The 1979 amendment added the second sentence.

**Severability clauses, repeal of conflicting laws and effective/operative dates**

The 1981 amendment added the third sentence.

Section 2 of Laws 1981, c. 296 provides for an effective date.

**Cross References**

Electioneering prohibited, see § 7-108 of this title.

**Library References**

Elections ⇨201.  
Negligence ⇨32(1).  
WESTLAW Topic Nos. 144, 272.

C.J.S. Elections § 195.  
C.J.S. Negligence §§ 63(32) et seq.,  
63(108) et seq.

**§ 3-121. Ballot boxes**

There shall be one ballot box for each precinct. Said ballot box shall be constructed of substantial material and shall be equipped with three locks so that the keys of one lock will not unlock the others. Each box shall be equipped with an opening in the top through which a ballot may be inserted, but must be constructed in such a manner that the box must be unlocked before the ballots can be removed.

Laws 1974, c. 153, § 3-121, operative Jan. 1, 1975.

**Historical and Statutory Notes**

<b>Source:</b>	Comp.St.1921, § 6170.
Laws 1907-08, p. 334.	Laws 1931, p. 92, § 2.
Comp.Laws 1909, § 3170.	St.1931, § 5713.
R.L.1910, § 3103.	

**Cross References**

Counting of ballots, see § 7-125 et seq. of this title.

**Library References**

Elections ⇨217.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 194, 204.

**§ 3-122. Voting booths**

The secretary of the county election board shall cause at least two voting booths to be provided in each precinct. Said booths shall contain a counter or shelf and shall be constructed in such a manner that a member of the precinct election board can determine whether more than one person is in the booth, but in such a manner as to insure secrecy by the voter in marking his ballots. Laws 1974, c. 153, § 3-122, operative Jan. 1, 1975.

**Historical and Statutory Notes**

<b>Source:</b>	Comp.St. 1921, § 6165.
Laws 1907-08, p. 333.	St.1931, § 5708.
Comp. Laws 1909, § 3165.	Laws 1967, c. 39, § 1.
R.L.1910, § 3098.	

**Library References**

Elections ⇨201.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 195.

**§ 3-123. Board to provide polling places**

The board of education of any school district, and the governing board of any municipality, shall furnish a room or rooms in any school building or municipal building for use as a polling place at no cost.

Laws 1974, c. 153, § 3-123, operative Jan. 1, 1975. Laws 1979, c. 240, § 10, emerg. eff. June 1, 1979.

**Historical and Statutory Notes**

The 1979 amendment deleted “; provided, however, that such use shall not interfere with the use for which such room or rooms is primarily designed” from the end of the section.

**Source:**  
Laws 1907-08, p. 333.  
Comp.Laws 1909, § 3165.  
R.L.1910, § 3098.  
Comp.St.1921, § 6165.



St.1931, § 5708.  
Laws 1967, c. 39, § 1.

#### Library References

Elections ⇨201.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 195.

### § 3-124. Official seals

The State Election Board and each county election board shall have official seals, which seals shall be affixed to Certificates of Election and other official acts of said Board. Each board shall maintain written minutes of all official acts of said board, and such minutes shall be public record.

Laws 1974, c. 153, § 3-124, operative Jan. 1, 1975.

#### Historical and Statutory Notes

<b>Source:</b>	R.L.1910, § 3095.
Laws 1907-08, p. 332.	Comp.St.1921, § 6162.
Comp.Laws 1909, § 3162.	St.1931, § 5705.

#### Library References

Elections ⇨265.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 240.

### § 3-125. Oaths of office

All persons appointed as members of the State Election Board or a county election board shall, before entering upon the duties of their offices, take and subscribe to the oath of office prescribed by the Constitution for state and county officers. Said oaths shall be retained in the office of the Clerk of the Supreme Court, with regard to members of the State Election Board, and in the office of the county clerk, with regard to members of a county election board.

Laws 1974, c. 153, § 3-125, operative Jan. 1, 1975.

#### Historical and Statutory Notes

<b>Source:</b>	Comp.St.1921, §§ 6140, 6141.
Laws 1907-08, p. 323.	St.1931, §§ 5689, 5690.
Comp.Laws 1909, §§ 3112, 3113.	26 O.S.1971, §§ 52, 53.
R.L.1910, §§ 3073, 3074.	

#### Library References

Elections ⇨51.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 57 et seq.

## WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## Notes of Decisions

**Failure to take oath**

ration of Town of Big Cabin, Craig County, 132 Okl. 200, 270 P. 75 (1928).

**1. Failure to take oath**

Election officials' failure to take oath, not shown to have affected result, does not require setting aside result of election, in absence of fraud. In re Incorporation

The failure of inspectors, judges, and clerks of an election to take the oath prescribed by law, in the absence of fraud or willful neglect, does not invalidate the election. *State v. Barnes*, 22 Okl. 191, 97 P. 997 (1908).

**§ 3-126. Maintenance of records**

Records required to be maintained by the State Election Board or any county election board in the performance of their duties shall be retained for a period of twenty-two (22) months, unless otherwise provided by law. However, the State Election Board and county election boards shall continuously maintain records of all official acts and certifications made by such boards.

Laws 1974, c. 153, § 3-126, operative Jan. 1, 1975. Laws 1983, c. 171, § 4, emerg. eff. June 6, 1983.

## Historical and Statutory Notes

The 1983 amendment, in the first sentence, substituted "twenty-two (22) months" for "two (2) years".

## Library References

Records ⇨30.  
WESTLAW Topic No. 326.  
C.J.S. Records §§ 34, 35, 38.

**§ 3-127. Maintenance of election results**

The State Election Board, with regard to elections certified by same, and the county election boards, with regard to elections certified by same, shall retain permanently results of said elections by precinct.

Laws 1974, c. 153, § 3-127, operative Jan. 1, 1975.

## Library References

Elections ⇨197.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 192, 196.

Repealed

**§ 3-128. Repealed by Laws 1990, c. 331, § 21, eff. July 1, 1990****Historical and Statutory Notes**

The repealed section, relating to the use of electronic data processing equipment, was derived from Laws 1974, c. 153, § 3-128.

**Library References**

Elections ⇐109.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 47.

**§ 3-129. Publication of state directory and other materials**

The Secretary of the State Election Board is authorized to publish the Roster of State and County Officials, along with election results and statistics, lists of candidates filing for office and such other publications as he deems necessary for the discharge of his duties. Laws 1974, c. 153, § 3-129, operative Jan. 1, 1975. Laws 1981, c. 329, § 6, emerg. eff. June 30, 1981.

**Historical and Statutory Notes**

The 1981 amendment deleted ", biennially, the Directory of Oklahoma and" following "authorized to publish".

**Library References**

Elections ⇐197.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 192, 196.

**ARTICLE IV. VOTER REGISTRATION****§ 4-101. Persons entitled to become registered voters—Exceptions**

Every person who is a qualified elector as defined by Section 1 of Article III of the Oklahoma Constitution shall be entitled to become a registered voter in the precinct of his residence, with the following exceptions:

1. Persons convicted of a felony shall be ineligible to register for a period of time equal to the time prescribed in the judgment and sentence, when such convictions have become final.

2. Any person who has been adjudged to be an incapacitated person as such term is defined by Section 1-111 of Title 30 of the Oklahoma Statutes, shall be ineligible to register to vote. When such incapacitated person has been adjudged to be no longer incapacitated such person shall be eligible to become a registered voter. The provisions of this paragraph shall not prohibit any person adjudged to be a partially incapacitated person as such term is defined by Section 1-111 of Title 30 of the Oklahoma Statutes

from being eligible to register to vote unless the order adjudging the person to be partially incapacitated restricts such persons from being eligible to register to vote.

Laws 1974, c. 75, § 1, emerg. eff. April 19, 1974. Renumbered from § 93.31 by Laws 1976, c. 90, § 10, emerg. eff. May 6, 1976. Laws 1979, c. 240, § 11, emerg. eff. June 1, 1979; Laws 1989, c. 174, § 1, eff. Nov. 1, 1989.

### Historical and Statutory Notes

The 1979 amendment rewrote the section which prior thereto read:

"Every person who is a qualified elector as defined by Section 1 of Article III of the Oklahoma Constitution shall be entitled to become a registered voter in the precinct of his residence."

The 1989 amendment rewrote the second paragraph which prior thereto read:

"Persons who have been adjudged 'mentally incompetent' as defined by Section 3 of Title 43A of the Oklahoma Statutes shall be ineligible to register until they have been declared mentally competent by a court of competent jurisdiction."

and deleted former paragraph 3 which prior thereto read:

"'Mentally retarded persons' as defined in Section 3 of Title 43A of the Oklahoma Statutes shall be ineligible to register."

### Severability clauses, repeal of conflicting laws and effective/operative dates

Section 26 of Laws 1974, c. 75 was a severability provision.

Section 2 of Laws 1989, c. 174 provides for an effective date.

### Source:

Laws 1907-08, p. 341.  
Comp.Laws 1909, § 3193.  
Laws 1910 p. 241.  
R.L.1910, § 3118.  
Laws 1910-11, c. 106, p. 231, § 12.  
Laws 1916, c. 24, p. 42, § 9.  
Comp.St.1921, §§ 6185, 6257.

St.1931, §§ 5643, 5659.

Laws 1944, Ex.Sess. p. 2, § 1.

26 O.S.1951, § 79.

26 O.S.1961, § 61.

### Title of Act:

An Act relating to elections; requiring registration; providing for registration; stipulating qualifications for registration; authorizing certain personnel to register electors; providing for appointment of registrars, number of registrars and qualifications; allowing compensation; permitting registrar to serve in additional capacities; designating hours and locations for registrars; specifying time, procedure and forms for registration; providing for identification card; requiring maintenance of registration forms; allowing transfer of registration; providing for change of residence and political affiliation; designating procedure to cancel registration and maintaining forms; providing for reregistration; requiring registration reports; providing for a general repealer and repealing all of chapter 4 of title 26, Oklahoma Statutes 1971, as amended by sections 1 through 7 of chapter 211 and sections 1 through 12 of chapter 226, O.S.L.1972 (26 O.S.Supp.1973, §§ 93.3, 93.4, 101b, 101f, 102.3, 102.7, 101, 103.1, 103.03, 103.4, 103.5, 103.6, 103.7, 103.8, 103.9, 103.16, 103.20, and 103.21) and as last amended by section 1, chapter 10, O.S.L. 1973 (26 O.S.Supp.1973, § 102.1) except §§ 93.13, 93.20, 93.21, 93.22, 93.23, 103.1, 103.4, and 103.20; providing for severability; and declaring an emergency. Laws 1974, c. 75.

### Law Review Commentaries

Conflict of laws: Establishment of student voter domicile in Oklahoma. Roger G. Addison. 30 Okl.L.Rev. 194 (1977).

## Library References

Elections ¶59 et seq., 98.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 16, 40.

## WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## United States Supreme Court

Disenfranchising convicted felons who have completed their sentences and paroles, see *Richardson v. Ramirez*, 1974, 94 S.Ct. 2655, 418 U.S. 524, 38 L.Ed.2d 705, on remand 117 Cal.Rptr. 562, 528 P.2d 378, 12 Cal.3d 912.

Limitation of right to vote to persons who had "rendered" property for taxation, see *Hill v. Stone*, 1975, 95 S.Ct. 1637, 421 U.S. 289, 44 L.Ed.2d 172, rehearing denied 95 S.Ct. 2617, 422 U.S. 1029, 45 L.Ed.2d 686.

## Notes of Decisions

Construction and application 1  
Residence 2

## 1. Construction and application

The qualification of electors was fixed by unambiguous provisions of the Constitution and statutory law, and the common law affords no aid in proper interpretation of the Constitution and statute relating to electors. *Hines v. Winters*, Okl., 320 P.2d 1114 (1958).

## 2. Residence

Word "reside" within former section 61 of this title (repealed; now this section) which specified qualifications of electors to be entitled to vote, meant to be in residence, one's place of abode, as distinguished from place where one is employed or office or place devoted strictly to commercial enterprise. *John-*

*son v. State Election Bd.*, Okl., 370 P.2d 551 (1962).

Both faculty members and students at University of Oklahoma, whether living in university owned housing situated within annexed area of the City of Norman or private housing situated within the annexed area of the City of Norman, may register and vote in Norman city elections, county, state and federal elections if their legal residence is where they are living and if they are otherwise qualified electors. *Op. Atty. Gen. No. 70-168* (June 8, 1970).

Both faculty members and students living in university owned housing not situated within annexed area of the City of Norman, may not vote in Norman city elections; but, if they are qualified electors who have established their residence where they are living they may register and vote in the county, state and federal elections. *Id.*

## § 4-102. Registration required

No person shall be permitted to vote in any election conducted by any county election board unless such person is a registered voter, unless otherwise provided by law.

Laws 1974, c. 75, § 2, emerg. eff. April 19, 1974. Renumbered from § 93.32 by Laws 1976, c. 90, § 10, emerg. eff. May 6, 1976.

## Historical and Statutory Notes

## Source:

Laws 1916, c. 24, p. 33, § 2.  
 Comp.St.1921, § 6250.

St.1931, § 5652.

26 O.S.1951, § 72.



**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions****Prior laws 1****Time for registration 2****1. Prior laws**

As used in former § 93.1 of this title (repealed) which provided that any person who will become a qualified elector in any precinct before the "next ensuing election" to be held in precinct is entitled to register, quoted words apply to primary as well as general elections, and where it would be impossible for plaintiff to have resided in county for six months on or before next primary election, he would not be a qualified elector in such election and could not become candidate for nomination for office of county attorney at such election. Coun-

ty Election Bd. of Coal County v. Robinson, Okl., 352 P.2d 920 (1960).

Former § 79 of this title (repealed; now this section) was not applicable to elector whose certificate of registration was canceled upon his failure to vote at three successive elections while he was in the armed forces, where elector was a qualified elector prior to closing of previous registration period. Rorem v. Gill, 191 Okl. 198, 127 P.2d 822 (1942).

**2. Time for registration**

In determining beginning of period for registration of voters, election day must be excluded. Cecil v. Geren, 135 Okl. 33, 273 P. 238 (1929) certiorari denied 49 S.Ct. 418, 279 U.S. 859, 73 L.Ed. 1000.

**§ 4-104. Time and place of registration**

The secretary of each county election board and his assistant secretary and other designated employees shall be authorized to register voters at any place within the county during the time prescribed by law.

Laws 1974, c. 75, § 4, emerg. eff. April 19, 1974. Renumbered from § 93.34 by Laws 1976, c. 90, § 10, emerg. eff. May 6, 1976. Laws 1979, c. 240, § 12, emerg. eff. June 1, 1979.

**Historical and Statutory Notes**

The 1979 amendment substituted "and other designated employees" for "or chief clerk".

**Source:**

Laws 1916, c. 24, p. 34, § 4.

Laws 1916, c. 24, p. 42, § 9.  
Comp.St.1921, §§ 6252, 6257.  
St.1931, §§ 5654, 5659.

Laws 1944, Ex.Sess. p. 2, § 1.  
26 O.S.1951, §§ 74, 79.

**Library References**

Elections ⇐105.

WESTLAW Topic No. 144.

C.J.S. Elections § 39.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

Notes of Decisions

**Discrimination 2**  
**Prior laws 1**

**1. Prior laws**

Proviso to Comp.St. 1921, § 6252 (repealed; now this section) which made requirement for registration of qualified voters inapplicable to school district election did not violate Const. Art. 3, § 6 (repealed; see, now, Const. Art. 3, § 4), relating to registration of electors. *Lofitis v. School Dist. No. 52 of Beckham County*, 144 Okl. 281, 290 P. 1101 (1930).

Under Comp.St. 1921, §§ 6252, 6256, 6259, 6261 (repealed; see, now, §§ 4-104, 4-111 et seq., 4-120.1 et seq. of this title) mere fact alone that duly qualified elector was independent candidate for county officer did not preclude him from right to vote in primary election of party of which he was registered voter. *Ruggles v. Montgomery*, 107 Okl. 89, 230 P. 236 (1924).

When an elector had once been lawfully registered pursuant to Comp.St. 1921, §§ 6252 to 6255 (repealed; see, now, §§ 4-104, 4-111 to 4-115 of this title), he could never be required to re-register except where qualifications of electors were changed by constitutional amendment as provided by former § 86 of this title. *Fitzpatrick v. Childs*, 102 Okl. 166, 228 P. 485 (1924).

Comp.St. 1921, § 6252 (repealed; now this section) was the only section of the registration laws relating to the procedure for registration of electors and applied to a person applying for registration upon a previous registration certificate, canceled on account of change of residence or politics, pursuant to former § 78 of this title Comp.St. 1921, § 6256 (repealed; see, now, §§ 4-116 to 4-119 of this title) and it also furnished an adequate remedy at law by appeal where any such person was refused registration

by any registration officer. *Determan v. State*, 89 Okl. 242, 215 P. 423 (1923).

Under Laws 1916, c. 24, p. 34, providing for registration of voters, the proviso to former § 74 of this title Comp.St. 1921, § 6252 (repealed; now this section) which provided that the provisions of the Act shall not apply to any school district election, held an independent enactment and that the registration law did not apply to school district elections. *Board of Education of Oklahoma City v. Woodworth*, 89 Okl. 192, 214 P. 1077 (1923).

**2. Discrimination**

A negro asserting discrimination against him by county election officials acting under color of Laws 1916, c. 24, § 4 (repealed; now this section) was not required to pursue state procedure for determining claim of discrimination before commencing action in federal court for damages where procedure opened under Oklahoma statute for judicial review had all indicia of conventional judicial procedure, and did not confer on Oklahoma courts any discretionary or initiatory functions characteristic of administrative agencies. *Lane v. Wilson*, 59 S.Ct. 872, 307 U.S. 268, 83 L.Ed. 1281 (1939).

Provisions of Laws 1916, c. 24, §§ 4, 9 (repealed; now this section) construed in connection with Laws 1916, c. 24, § 2 (repealed; see, now, § 4-102 of this title), that all citizens who were qualified to vote in 1916 but had not voted in 1914 were required to register, save in exceptional circumstances, between April 30 and May 11, 1916, in default of which registration they were perpetually disenfranchised, and exempting from such provisions persons who had registered in 1914 are invalid as discriminatory against colored citizens in violation of U.S.Const. Amend. 15. *Id.*

**§ 4-105. Appointment of registrars—Registration of students**

In addition, the secretary of each county election board shall appoint as voter registrars at least one person for every one thousand registered voters in the county, as enumerated by the latest January 15 registration report; provided further, however, that the total number of voter registrars in any county need not exceed one



hundred. The secretary of each county election board, or his designated qualified voting registrar, may visit each high school in his or her county, with concurrence of the school board of each school district, one time during the second semester of each school year, for the purpose of registering all eligible students who wish to register. All political parties in the county must be represented among the voter registrars. Said voter registrars shall be located in such a manner geographically as to provide convenient access for all qualified electors of the county. The secretary shall have the authority to remove any voter registrar at any time for any reason. To be eligible to become a voter registrar, one must be a registered voter of the county, and must demonstrate competence to perform his duties. Voter registrars shall be trained in their duties in a manner prescribed by the Secretary of the State Election Board. Laws 1974, c. 75, § 5, emerg. eff. April 19, 1974. Renumbered from § 93.35 by Laws 1976, c. 90, § 10, emerg. eff. May 6, 1976. Laws 1980, c. 276, § 1, emerg. eff. June 13, 1980.

#### Historical and Statutory Notes

The 1980 amendment inserted the second sentence.

#### Source:

Laws 1916, c. 24, p. 33, § 3.  
Laws 1917, c. 159, p. 253, § 1.  
Comp.St.1921, § 6251.  
St.1931, § 5653.  
Laws 1945, p. 98, § 1.

Laws 1945, p. 99, § 1.  
Laws 1949, p. 214, § 1.  
26 O.S.1951, § 73.  
Laws 1953, p. 104, § 4.  
Laws 1959, p. 116, § 1.  
Laws 1965, c. 504, § 3.  
Laws 1971, c. 293, § 4.  
Laws 1972, c. 226, § 4.  
26 O.S.Supp.1972, § 103.4.

#### Library References

Elections ⇐100.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 42.

### § 4-105.1. Termination of registrar filing declaration of candidacy

Any voter registrar who files a declaration of candidacy for any political office shall be terminated as a voter registrar.

Laws 1985, c. 193, § 2, eff. Nov. 1, 1985.

#### Library References

Elections ⇐100.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 42.

### § 4-106. Compensation of registrars—Waiver

Each voter registrar shall receive as sole compensation for his services seventy-five cents (\$0.75) per registration, transfer or

change of political affiliation transacted by said voter registrar, payable from county funds. Said compensation may be waived if the voter registrar is a regular employee of a municipality, school district or other governmental subdivision who conducts registration transactions during the hours of his regular employment. A waiver may be granted only upon execution of a written request for same from the voter registrar to the secretary of the county election board:

Laws 1974, c. 75, § 6, emerg. eff. April 19, 1974. Renumbered from § 93.36 by Laws 1976, c. 90, § 10, emerg. eff. May 6, 1976. Laws 1982, c. 298, § 5, emerg. eff. May 28, 1982; Laws 1985, c. 193, § 1, eff. Nov. 1, 1985.

**Historical and Statutory Notes**

The 1982 amendment substituted "seventy-five cents (\$0.75)" for "fifty cents (\$0.50)" in the first sentence.

The 1985 amendment added the second and third sentences.

**Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 10 of Laws 1985, c. 193 provides for an effective date.

**Source:**

Laws 1916, c. 24, p. 33, § 3.

Laws 1917, c. 159, p. 253, § 1.  
Comp.St.1921, § 6251.  
St.1931, § 5653.

Laws 1945, p. 98, § 1.

Laws 1945, p. 99, § 1.

Laws 1949, p. 214, § 1.

26 O.S.1951, § 73.

Laws 1953, p. 111, § 20.

Laws 1957, p. 182, § 10.

Laws 1959, p. 118, § 14.

Laws 1961, p. 243, § 3.

Laws 1972, c. 226, § 11.

26 O.S.Supp.1972, § 103.20.

**Library References**

Elections ⇐102.

WESTLAW Topic No. 144.

C.J.S. Elections § 44.

**§ 4-107. Additional capacity of registrars**

Voter registrars may serve simultaneously as precinct inspectors, judges, clerks or counters.

Laws 1974, c. 75, § 7, emerg. eff. April 19, 1974. Renumbered from § 93.37 by Laws 1976, c. 90, § 10, emerg. eff. May 6, 1976.

**Historical and Statutory Notes**

**Source:**

Laws 1916, c. 24, p. 33, § 3.

Laws 1917, c. 159, p. 253, § 1.

Comp.St.1921, § 6251.

St.1931, § 5653.

Laws 1945, p. 98, § 1.

Laws 1945, p. 99, § 1.

Laws 1949, p. 214, § 1.

26 O.S.1951, § 73.

**Library References**

Elections ⇐103.

WESTLAW Topic No. 144.

C.J.S. Elections § 43.

**§ 4-108. Hours**

Voter registrars shall be available for registration, transfers or changes of political affiliation for a minimum of three (3) continuous hours per day, during the time prescribed by law for making such transactions, such hours to be determined by the secretary of the county election board.

Laws 1974, c. 75, § 8, emerg. eff. April 19, 1974. Renumbered from § 93.38 by Laws 1976, c. 90, § 10, emerg. eff. May 6, 1976.

**Library References**

Elections ⇐103, 105.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 39, 43.

**§ 4-109. Locations**

The secretary of the county election board shall assign the locations at which voter registrars may conduct registration transactions.

Laws 1974, c. 75, § 9, emerg. eff. April 19, 1974. Renumbered from § 93.39 by Laws 1976, c. 90, § 10, emerg. eff. May 6, 1976.

**Library References**

Elections ⇐97.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 38.

**§ 4-109.1. Voter registrar located in adjacent county**

With the written consent of the secretary of each county election board involved, a voter registrar may be located in an adjacent county for purposes of conducting registration transactions, but shall be limited to registration transactions for voters whose residence is in the county for which the voter registrar is appointed. The secretaries of the county election boards may assign locations in an adjacent county on a temporary or continuing basis as long as secretaries of both county election boards are in agreement.

Laws 1987, c. 161, § 1, eff. Nov. 1, 1987.

**Historical and Statutory Notes**

**Severability clauses, repeal of conflicting laws and effective/operative dates** Section 2 of Laws 1987, c. 161 provides for an effective date.

**§ 4-110. Time for conducting registration transactions**

Registration transactions may be made at any time except election days and the ten (10) days immediately preceding an election, and three (3) days thereafter. Persons authorized to register voters

shall not be required to conduct registration transactions on Sundays or legal holidays. In the event an election is scheduled in only a portion of a county, registration will close ten (10) days prior to such election only in the portion of the county which is affected. Laws 1974, c. 75, § 10, emerg. eff. April 10, 1974. Renumbered from § 93.40 by Laws 1976, c. 90, § 10, emerg. eff. May 6, 1976.

#### Historical and Statutory Notes

<b>Source:</b>	St.1931, § 5659.
Laws 1916, c. 24, p. 42, § 9.	Laws 1944, Ex.Sess. p. 2, § 1.
Comp.St.1921, § 6257.	26 O.S.1951, § 79.

#### Library References

Elections ¶105.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 39.

#### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

#### Notes of Decisions

##### Construction and application 1

##### 1. Construction and application

Under former §§ 75 to 77 (repealed; see, now, § 4-111 et seq. of this title), the only restriction as to time of registration other than in change of registration

on ground of change of politics was that it should be done in time to allow the entry to be made on county registration books, which is to be done not less than seven days before the next election, and such requirement is "directory" rather than "mandatory". *Roorem v. Gill*, 191 Okl. 198, 127 P.2d 822 (1942).

## § 4-111. Procedure for registration

Any qualified elector desiring to become a registered voter shall appear, in person, in the county of his residence, before a person authorized to register voters in said county. The person conducting the registration shall put the applicant under oath and inform him that any willful false statement said applicant makes will subject him to prosecution for perjury. Said applicant then shall swear to or affirm the facts on the registration form, and his answers shall be recorded in his presence by permanent writing or typewriting. Applicant shall sign the registration form in the presence of the person conducting the registration and shall be issued a voter identification card.

Laws 1974, c. 75, § 11, emerg. eff. April 19, 1974. Renumbered from § 93.41 by Laws 1976, c. 90, § 10, emerg. eff. May 6, 1976.

#### Historical and Statutory Notes

<b>Source:</b>	Comp.St.1921, §§ 6254, 6255.
Laws 1916, c. 24, pp. 37, 38, §§ 6, 7.	
T.26 to 28 O.S.A.—4	

St.1931, §§ 5656, 5657.  
Laws 1949, p. 214, § 2.  
26 O.S.1951, §§ 76, 77.

### Library References

Elections ⇐106.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 39, 46.

## § 4-112. Registration forms

The Secretary of the State Election Board shall devise a registration form to be used for registering voters. Said registration form shall contain the following information: Voter's full name and sex, date of birth, height, weight, color of eyes, color of hair, place of residence and mailing address; the name of the political party recognized by the laws of the State of Oklahoma with which the voter is affiliated; an oath of the voter's eligibility to become a registered voter; and such other information as may be deemed necessary by the Secretary to identify said voter and to ascertain his eligibility. Persons not affiliated with any political party recognized by the laws of the State of Oklahoma shall be designated as Independents.

Laws 1974, c. 75, § 12, emerg. eff. April 19, 1974. Renumbered from § 93.42 by Laws 1976, c. 90, § 10, emerg. eff. May 6, 1976.

### Historical and Statutory Notes

<b>Source:</b>	St.1931, §§ 5655 to 5657.
Laws 1916, c. 24, pp. 36 to 38, §§ 5 to 7.	Laws 1949, p. 214, § 2.
Comp.St.1921, §§ 6253, 6254, 6255.	26 O.S.:1951, §§ 75, 76, 77.

### Library References

Elections ⇐106.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 39, 46.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### Notes of Decisions

**Marital status** 2  
**Validity** 1

tration rolls were not unconstitutional. *Rainbow Coalition of Oklahoma v. Oklahoma State Election Bd.*, C.A.10 (Okla.) 1988, 844 F.2d 740.

#### 1. Validity

Section 1-110 of this title and this section which precluded members of unrecognized political parties from designating their party affiliation on voter regis-

This section which required that voter register only as member of recognized political party or as independent is constitutional as applied; unlimited party registration would increase burden on

state and county election boards to segregate voters into separate categories for potentially unlimited number of parties rather than three categories presently used, there could be confusion surrounding party names that were similar to each other, and registrars would need additional training in dealing with unlimited number of parties. *Rainbow Coalition of Oklahoma v. Oklahoma State Election Bd.*, W.D.Okl.1987, 685 F.Supp. 1193, affirmed 844 F.2d 740.

Judgment holding Oklahoma election statutes unconstitutional was not subject to setting aside, although defendants contended their mistaken belief that

they had 20 days to respond to motion for summary judgment was a valid basis for relief from judgment, where plaintiffs were prejudiced by defendants' failure to respond to motion, and failure to respond to motion was at best inexcusably negligent. *Libertarian Party of Oklahoma v. Oklahoma State Election Bd.*, D.C.Okl., 593 F.Supp. 118 (1984).

**2. Marital status**

Registration of married woman with term "Mrs." before her name approved. *Huff v. State Election Board*, 168 Okl. 277, 32 P.2d 920 (1934).

**§ 4-113. Voter identification cards**

The Secretary of the State Election Board shall devise a voter identification card which shall be issued to every person who becomes a registered voter in Oklahoma. Said voter identification card shall contain such information as is necessary to determine a registered voter's eligibility.

Laws 1974, c. 75, § 13, emerg. eff. April 19, 1974. Renumbered from § 93.43 by Laws 1976, c. 90, § 10, emerg. eff. May 6, 1976.

**Historical and Statutory Notes**

**Source:**

Laws 1916, c. 24, p. 38, § 7.  
Comp.St.1921, § 6255.

St.1931, § 5657.  
Laws 1949, p. 214, § 2.  
26 O.S.1951, § 77.

**Library References**

Elections ⇐106.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 39, 46.

**§ 4-114. Maintenance of registration information**

The secretary of each county election board shall cause the registration information of every registered voter in said county to be entered into the Oklahoma Election Management System.

Laws 1974, c. 75, § 14, emerg. eff. April 19, 1974. Renumbered from § 93.44 by Laws 1976, c. 90, § 10, emerg. eff. May 6, 1976. Laws 1990, c. 331, § 4, eff. July 1, 1990.

**Historical and Statutory Notes**

The 1990 amendment rewrote the section which prior thereto read:

"The secretary of each county election board shall cause the original registra-

tion forms of every registered voter in said county to be separated by precinct and to be retained separately in precinct registries. A precinct registry shall be maintained in a secure manner in the

offices of the county election board, except as otherwise provided by law."

Laws 1916, c. 24, p. 42, § 9.  
Comp.St.1921, §§ 6253, 6255, 6257.  
St.1931, §§ 5655, 5657, 5659.  
Laws 1944, Ex.Sess. p. 2, § 1.  
Laws 1949, p. 214, § 2.  
26 O.S.1951, §§ 75, 77, 79.

**Source:**

Laws 1916, c. 24, p. 36, § 5.  
Laws 1916, c. 24, p. 38, § 7.

**Library References**

Elections ⇨106.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 39, 46.

**§ 4-115. Central registry**

The secretary of each county election board shall cause registration forms of every registered voter in said county to be retained in a central registry in alphabetical order. Said central registry shall be maintained in a secure manner in the offices of the county election board.

Laws 1974, c. 75, § 15, emerg. eff. April 19, 1974. Renumbered from § 93.45 by Laws 1976, c. 90, § 10, emerg. eff. May 6, 1976. Laws 1990, c. 331, § 5, eff. July 1, 1990.

**Historical and Statutory Notes**

The 1990 amendment, in the first sentence, deleted "conformed duplicate" preceding "registration forms".

Comp.St.1921, § 6253.  
St.1931, § 5655.  
26 O.S.1951, § 75.

**Source:**

Laws 1916, c. 24, p. 36, § 5.

**Library References**

Elections ⇨106.  
Records ⇨30.  
WESTLAW Topic Nos. 144, 326.

C.J.S. Elections §§ 39, 46.  
C.J.S. Records §§ 34, 35, 38.

**§ 4-116. Transfer of registration**

If a registered voter of a county changes his residence to another precinct within the same county, he shall be entitled to transfer his registration upon executing a form prescribed by the Secretary of the State Election Board before a person authorized to register voters. The secretary of the county election board shall change the registration information of such registered voter in the Oklahoma Election Management System and shall issue a new voter identification card to the voter. Information given by the voter shall be under oath.

Laws 1974, c. 75, § 16, emerg. eff. April 19, 1974. Renumbered from § 93.46 by Laws 1976, c. 90, § 10, emerg. eff. May 6, 1976. Laws 1979, c. 240, § 13, emerg. eff. June 1, 1979; Laws 1990, c. 331, § 6, eff. July 1, 1990.

**Historical and Statutory Notes**

The 1979 amendment rewrote the section which prior thereto read:

"If a registered voter of a county changes his residence to another precinct within the same county, he shall be entitled to a transfer upon his executing an application on a form to be prescribed by the Secretary of the State Election Board and presenting, or mailing, said form along with his voter identification card to the county election board or to a voter registrar. If the application is in proper form, the secretary of the county election board shall transfer the original registration form of such registered voter to the proper precinct registry and shall note the transfer on the original and duplicate registration forms and upon the voter identification card. Thereafter, the secretary shall immediately return said voter identification card to the registered voter."

The 1990 amendment, in the first sentence, inserted "his registration" following "entitled to transfer", and in the second sentence, substituted "change" for "transfer" following "county election board shall", deleted "original" preceding "registration", substituted "information" for "form", substituted "in" for "to" following "such registered voter", and substituted "Oklahoma Election Management System" for "proper precinct registry".

**Source:**

- Laws 1916, c. 24, p. 41, § 8.
- Comp.St.1921, § 6256.
- St.1931, § 5658.
- Laws 1941, p. 93, § 1.
- Laws 1949, p. 216, § 3.
- 26 O.S.1951, § 78.

**Library References**

- Elections ⇐119.
- WESTLAW Topic No. 144.
- C.J.S. Elections § 52.

**§ 4-117. Change of residence within same county**

If a registered voter of a county has changed his residence within the same county, and has not executed a transfer as hereinbefore provided, he shall be entitled to a transfer upon his executing an application on a form to be prescribed by the Secretary of the State Election Board and presenting said form along with his voter identification card to the inspector of the precinct in which he is registered on the day of the next ensuing election. Upon doing so, said registered voter shall be permitted to vote in said precinct, and only in said precinct, for the election being conducted on that day only. The inspector shall deliver said transfer form to the secretary of the county election board, who shall transfer such registration in accordance with the application.

Laws 1974, c. 75, § 17, emerg. eff. April 19, 1974. Renumbered from § 93.47 by Laws 1976, c. 90, § 10, emerg. eff. May 6, 1976. Laws 1990, c. 306, § 2, emerg. eff. May 30, 1990.

**Historical and Statutory Notes**

The 1990 amendment, in the first sentence, deleted "to another precinct" following "changed his residence".

**Source:**

- Laws 1916, c. 24, p. 41, § 8.

- Comp.St.1921, § 6256.
- St.1931, § 5658.
- Laws 1941, p. 93, § 1.
- Laws 1949, p. 216, § 3.
- 26 O.S.1951, § 78.



**Library References**

Elections ⇐119.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 52.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions****Construction and application 1**  
**Prior laws 2****1. Construction and application**

Under this section, voter, who had moved from ward some nine years earlier and had previously unsuccessfully attempted to change his registration, could vote in old precinct after executing a form at polling place furnished by Election Board entitled "Transfer On Election Day" and his vote was thus properly counted in that ward election. *Moore v. Hayes*, Okl., 744 P.2d 934 (1987).

**2. Prior laws**

The words "upon complying with all the provisions of this act, with reference to the original registration of electors",

in former § 78 of this title (repealed; see, now, §§ 4-116 to 4-119 of this title) did not restrict time within which holder of registration certificate canceled under former § 87 of this title (repealed; see, now, § 4-120 et seq. of this title) could reregister, but had reference to other things required in original registration, such as furnishing information to be placed in the registration certificate, and verifying such information under oath before the precinct registrar. *Rorem v. Gill*, 191 Okl. 198, 127 P.2d 822 (1942).

A qualified elector who held a certificate of registration canceled under former § 87 of this title (repealed; see, now, § 4-120 et seq. of this title) could reregister by the same method as that provided for an elector who had changed his place of residence. *Id.*

**§ 4-118. Change of residence to another county**

Any registered voter who changes his residence to another county may apply for registration as an initial registrant in the second county. Said person shall inform the person registering him of his prior registration. The secretary of the election board of the second county shall immediately notify the secretary of the State Election Board of such transaction.

Laws 1974, c. 75, § 18, emerg. eff. April 19, 1974. Renumbered from § 93.48 by Laws 1976, c. 90, § 10, emerg. eff. May 6, 1976. Laws 1990, c. 331, § 7, eff. July 1, 1990.

**Historical and Statutory Notes**

The 1990 amendment, in the third sentence, substituted "State Election Board" for "election board in the first county".

**Source:**

Laws 1916, c. 24, p. 41, § 8.

Comp.St.1921, § 6256.

St.1931, § 5658.

Laws 1941, p. 93, § 1.

Laws 1949, p. 216, § 3.

26 O.S.1951, § 78.

**Library References**

Elections ⇐119.

WESTLAW Topic No. 144.

C.J.S. Elections § 52.

**§ 4-119. Change of political affiliation**

Any registered voter may change his political affiliation by appearing before a person authorized to register voters and executing a form prescribed by the Secretary of the State Election Board at any time prescribed by law for registration transactions except during the period from 5:00 p.m. on July 1 through 5:00 p.m. on September 30 in any even-numbered year. Information given by the voter shall be under oath.

Laws 1974, c. 75, § 19, emerg. eff. April 19, 1974. Renumbered from § 93.49 by Laws 1976, c. 90, § 10, emerg. eff. May 6, 1976. Laws 1979, c. 240, § 14, emerg. eff. June 1, 1979.

**Historical and Statutory Notes**

The 1979 amendment, in the first sentence, substituted "July 1" for "June 15" and "September 30" for "October 7" and added the second sentence.

Comp.St.1921, § 6256.  
St.1931, § 5658.

Laws 1941, p. 93, § 1.  
Laws 1949, p. 216, § 3.  
26 O.S.1951, § 78.

**Source:**

Laws 1916, c. 24, p. 41, § 8.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**United States Supreme Court**

Right of free political association, see *Kusper v. Pontikes*, 1974, 94 S.Ct. 303, 414 U.S. 51, 38 L.Ed.2d 260.

**Notes of Decisions****In general 1****1. In general**

Except as specifically provided in Comp.St.1921, § 6256 (repealed; see, now, §§ 4-116 to 4-119 of this title), no elector under the guise of necessity of a

change in a registration certificate by virtue of a change of residence or of the boundary lines of a voting precinct could obtain a registration certificate designating him as a member of a political party other than that designated in his original certificate. *Fitzpatrick v. Childs*, 102 Okl. 166, 228 P. 485 (1924).

**§ 4-120. Cancellation of registrations**

The registration of any registered voter may be canceled only for one of the following reasons: Written notice from the voter; failure to vote; death; conviction of a felony; judicial determination of mental incompetence; or registration in another county or state.

Laws 1974, c. 75, § 20, emerg. eff. April 19, 1974. Renumbered from § 93.50 and amended by Laws 1976, c. 90, §§ 2, 10, emerg. eff. May 6, 1976; Laws 1979, c. 240, § 15, emerg. eff. June 1, 1979; Laws 1981, c. 45, § 1, emerg. eff. April 8, 1981.

### Historical and Statutory Notes

As originally enacted this section read:

"The registration of any registered voter may be cancelled only for one of the following reasons: Written notice from the voter; failure to vote; death; conviction of a felony; commitment to an institution for mental illness; or registration in another county or state.

"1. A registered voter may have his name removed from the registries of a county by appearing before a person authorized to register voters in said county and executing a written notice for same.

"2. Immediately following each statewide general election, the secretary of each county election board shall cancel the registration of any registered voter who has failed to vote in a statewide primary, runoff primary or general election during that calendar year and the immediately preceding calendar year. In the event a voter's registration is cancelled in said manner, it shall be the duty of the secretary of the county election board no later than January 1 of the following year to notify said voter of such cancellation by mail and to enclose a form prescribed by the Secretary of the State Election Board which will enable the voter to renew or to transfer his registration within the county by returning said form no later than January 31 of the same year.

"3. The State Department of Health shall each month forward to each county election board a certified list of all deaths of residents of that county that have occurred within the state for the immediately preceding month. The secretary of the county election board shall then use said list to ascertain those voters who are deceased, and shall thereafter remove such deceased person's name from the registries. Said list shall be maintained as a permanent record in the office of the county election board and shall be used only for the purposes hereinbefore described. It shall be unlawful for the secretary of a county election board to disclose or permit disclosure of information contained in said lists. In addition, the registration of a deceased voter may be cancelled by the secretary of a county election board upon the execution by the next of kin of said deceased voter of a form and upon the nature of proof of the fact thereof as

prescribed by the Secretary of the State Election Board. Said form must be executed either in person by said next of kin at the county election board office, in which case it shall be witnessed by the secretary, assistant secretary or chief clerk, or at the voter's precinct polling place on the day of any election, in which case it shall be witnessed by the inspector of said precinct.

"4. The court clerk in each county shall prepare each month a list of all persons convicted of felonies, which convictions have become final within such county, and deliver said list to the secretary of the county election board. The secretary shall cancel the registrations of all registered voters included on said list, and such persons shall be ineligible for registration for a period of time equal to the time prescribed in the judgment and sentence.

"5. The secretary of each county election board shall cancel the registration of all registered voters who have registered in another county in Oklahoma, or in another state, upon receipt of notice of same."

The 1976 amendment, in paragraph 2, first sentence, substituted "No later than June 1 of the year" for "Immediately", substituted "the immediately preceding two (2) calendar years" for "that calendar year and the immediate preceding calendar year" and, in the second sentence, substituted "June 1 to mail notice to said voter of such cancellation" for "January 1 of the following year to notify said voter of such cancellation by mail" and substituted "June 30" for "January 31".

The 1979 amendment, in the introductory paragraph, substituted "judicial determination of mental incompetence" for "commitment to an institution for mental illness"; in paragraph 2, first sentence, substituted "No later than June 1 of the year" for "Immediately" and "the immediate preceding two (2) calendar years" for "that calendar year and the immediate preceding calendar year" and in the second sentence substituted "June 1 to mail notice to said voter of such cancellation" for "January 1 of the following year to notify said voter of such cancellation by mail" and "June 30" for "January 31"; in paragraph 3, last sen-

tence, substituted "or other designated employees" for "assistant secretary or chief clerk,"; inserted a new paragraph 5 which read:

"The court clerk in each county shall prepare each month a list of all persons who have been adjudged mentally incompetent and hold said list for the secretary of the county election board. The secretary shall cancel the registration of each registered voter included on said list, and such person shall be ineligible for registration until he has been declared mentally competent by a court of competent jurisdiction."

; and redesignated former paragraph 5 as paragraph 6.

The 1981 amendment deleted paragraphs 1 to 6.

**Source:**

- Laws 1916, c. 24, p. 43, § 11.
- Laws 1916, c. 24, p. 49, § 17.
- Comp.St.1921, §§ 6259, 6265.
- St.1931, §§ 5661, 5667.
- 26 O.S.1951, §§ 81, 87.
- Laws 1957, p. 177, § 14.
- Laws 1961, p. 244, § 1.
- Laws 1965, c. 465, § 1.
- Laws 1967, c. 7, § 1.

**Library References**

- Elections ⇄108.
- WESTLAW Topic No. 144.
- C.J.S. Elections § 48.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

**Failure to vote 1**

**1. Failure to vote**

Former § 79 of this title (repealed; see, now, §§ 4-110, 4-114 of this title) was not applicable to elector whose certificate of registration was canceled upon his failure to vote at three successive elections while he was in the armed forces, where elector was a qualified elector prior to closing of previous registration period.

*Roem v. Gill*, 191 Okl. 198, 127 P.2d 822 (1942).

Under Comp.St.1921, §§ 6252, 6256, 6259, 6261 (repealed; see, now, § 4-104, 4-111 et seq. of this title), mere fact alone that duly qualified elector was independent candidate for county officer did not preclude him from right to vote in primary election of party of which he was registered voter. *Ruggles v. Montgomery*, 107 Okl. 89, 230 P. 236 (1924).

**§ 4-120.1. Voluntary cancellation of registration**

A registered voter may have his name removed from the registries of a county by appearing before a person authorized to register voters in said county and executing a written notice for same. Laws 1981, c. 45, § 2, emerg. eff. April 8, 1981.

**Historical and Statutory Notes**

Section 12 of Laws 1981, c. 45 directs codification.

**Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 13 of Laws 1981, c. 45 provides for severability and § 14 provides for the repeal of conflicting laws.

**Title of Act:**

An Act relating to elections; amending section 20, chapter 75, O.S.L.1974, as renumbered by section 10, chapter 90, O.S.L.1976, and as amended by section 15, chapter 240, O.S.L.1979 (26 O.S.Supp. 1980, Section 4-120), which relates to cancellation of registration; deleting cer-

tain provisions; specifying voluntary voter removal; establishing cancellation provision for failure to vote; establishing provision for holding certain cancelled registration forms; cancelling registration of convicted felons, mental incompetents, transients and deceased persons; establishing registry of cancelled voters; providing for reregistration; directing certification of certain lists; repealing sections 21 and 22, chapter 75 O.S.L.1974, as renumbered by section 10,

chapter 90, O.S.L.1976 and section 23, chapter 75 O.S.L.1974, as renumbered by section 10, chapter 90, O.S.L.1976, and as amended by section 16, chapter 240, O.S.L.1979 (26 O.S.Supp.1980, sections 4-121, 4-122 and 4-123), which relate to cancellation, reregistration and certification provisions; directing codification; providing for severability; repealing conflicting laws; and declaring an emergency. Laws 1981, c. 45.

### Library References

Elections ⇨108.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 48.

### § 4-120.2. Inactive voters

No later than June 1, 1985, and every four (4) years thereafter, registered voters who have not voted in an election wherein a precinct registry is used, in person, during the preceding four (4) years shall be designated in the Oklahoma Election Management System as inactive voters. An inactive voter may renew active status by voting in an election wherein a precinct registry is used, in person, during four (4) calendar years following his designation as an inactive voter. If said voters fail to vote during a period of eight (8) consecutive calendar years, then the registration information of said voter shall be removed from the central registry and the Oklahoma Election Management System and destroyed. No voter registration shall be canceled for failure to vote except as herein provided.

Laws 1981, c. 45, § 3, emerg. eff. April 8, 1981. Laws 1983, c. 171, § 5, emerg. eff. June 6, 1983; Laws 1990, c. 331, § 8, eff. July 1, 1990.

### Historical and Statutory Notes

As originally enacted this section read:  
"No later than June 1, 1985, and every four (4) years thereafter, the secretary of each county election board shall determine the names of registered voters who have not voted in statewide primary, runoff primary or general election during the preceding four (4) years. The registration forms of said voters shall be placed in a separate location within the appropriate precinct registry. Duplicate registration for said voters shall likewise be placed in a separate location in the central registry. If said voters fail to vote during a period of eight (8) consecutive calendar years, then the original

and duplicate registration forms of said voter shall be removed from the registries and destroyed. A voter whose registration form has been placed in a separate location in the precinct registry shall be deemed an inactive voter. An inactive voter may renew his registration by voting, either in person or by absentee ballot, during four (4) calendar years following the placing of his voter registration in separate registries. Upon so renewing his registration, said voter shall be returned to his former status as a registered voter. No voter registration shall be cancelled for failure to vote except as herein provided."

The 1983 amendment, in the sixth sentence, substituted "in an election wherein a precinct registry is used," for "either" and deleted "or by absentee ballot following "in person".

The 1990 amendment rewrote the section.

#### Library References

Elections ⇐108.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 48.

### § 4-120.3. Deceased persons—Cancellation of registration

The State Health Department shall each month transmit to the Secretary of the State Election Board a certified list of all deaths of residents that have occurred within the state for the immediately preceding month. The Secretary of the State Election Board shall transmit said list to the secretary of the county election board who shall then use said list to ascertain those voters who are deceased, and shall thereafter remove such deceased person's name from the central registry and the Oklahoma Election Management System. Said list shall be used only for the purposes hereinbefore described. In addition, the registration of a deceased voter may be canceled by the secretary of a county election board upon the execution by the next of kin of said deceased voter of a form and upon the nature of proof of the fact thereof as prescribed by the Secretary of the State Election Board. Said form must be executed either in person by said next of kin at the county election board office, in which case it shall be witnessed by the secretary or other designated employees, or at the voter's precinct polling place on the day of any election, in which case it shall be witnessed by the inspector of said precinct. Laws 1981, c. 45, § 4, emerg. eff. April 8, 1981. Laws 1990, c. 331, § 9, eff. July 1, 1990.

#### Historical and Statutory Notes

The 1990 amendment, in the first sentence, substituted "transmit" for "forward" and "the Secretary of the State Election Board" for "each county election board" and deleted "of that county" following "all deaths of residents", in the second sentence, inserted "Secretary of the State Election Board shall transmit said list to the" following "The" and

"who" following "county election board" and substituted "central registry and the Oklahoma Election Management System" for "registries", and deleted the former fourth sentence which read: "It shall be unlawful for the secretary of a county election board to disclose or permit disclosure of information contained in said list."

#### Library References

Elections ⇐108.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 48.

**§ 4-120.4. Convicted felons—Cancellation of registration**

The Department of Corrections shall transmit each month a list of all persons convicted of felonies, which convictions have become final, and deliver said list to the Secretary of the State Election Board. The Secretary of the State Election Board shall transmit said list to the secretary of each county election board who shall cancel the registrations of all registered voters included on said list, and such persons shall be ineligible for registration for a period of time equal to the time prescribed in the judgment and sentence. Laws 1981, c. 45, § 5, emerg. eff. April 8, 1981. Laws 1990, c. 331, § 10, eff. July 1, 1990.

**Historical and Statutory Notes**

The 1990 amendment, in the first sentence, substituted "Department of Corrections" for "court clerk in each county", substituted "transmit" for "prepare", deleted "within such county" following "become final", substituted "Secretary" for "secretary" and substituted "State Election Board" for "county election board" and, in the second sentence, inserted "Secretary of the State Election Board shall transmit said list to the" and "of each county election board who".

**§ 4-120.5. Mentally incompetent persons—Cancellation of registration**

The court clerk in each county shall prepare each month a list of all persons who have been adjudged mentally incompetent and hold said list for the secretary of the county election board. The secretary shall cancel the registration of each registered voter included on said list, and such person shall be ineligible for registration until he has been declared mentally competent by a court of competent jurisdiction.

Laws 1981, c. 45, § 6, emerg. eff. April 8, 1981.

**Library References**

Elections ⇐108.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 48.

**§ 4-120.6. Registration in another county or state—Cancellation of registration**

The secretary of each county election board shall cancel the registration of all registered voters who have registered in another county in Oklahoma, or in another state, upon receipt of notice of same.

Laws 1981, c. 45, § 7, emerg. eff. April 8, 1981.

**Library References**

Elections ⇐108.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 48.

**§ 4-120.7. Registration forms—Removal from registries—Destruction**

The registration form of registered voters whose registration has been canceled, upon written notice of the voter, death, conviction of a felony, judicial determination of mental incompetence or registration in another county or state in the manner hereinbefore provided, shall be removed from the central registry and maintained separately for a period of twenty-two (22) months by the secretary of each county election board. Reason for cancellation and date of said cancellation shall be noted on said registration form. After twenty-two (22) months, the registration form shall be destroyed. Laws 1981, c. 45, § 8, emerg. eff. April 8, 1981. Laws 1983, c. 171, § 6, emerg. eff. June 6, 1983; Laws 1990, c. 331, § 11, eff. July 1, 1990.

**Historical and Statutory Notes**

The 1983 amendment substituted "twenty-two (22) months" for "two (2) years" in two places.

The 1990 amendment, in the first sentence, deleted "original and duplicate" following "The", substituted "form" for "forms" following "registration" and sub-

stituted "central registry" for "registries", in the second sentence substituted "form" for "forms", and in the last sentence, deleted "both" following "twenty-two (22) months," and "original and duplicate" preceding "registration" and substituted "form" and "forms".

**Library References**

Elections ⇐108.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 48.

**§ 4-120.8. Reregistration of canceled voter**

A person whose registration has been canceled according to law shall be required to register again in the manner provided by law for initial registrations before he can vote in an election for which registration is required.

Laws 1981, c. 45, § 9, emerg. eff. April 8, 1981.

**Library References**

Elections ⇐108.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 48.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.



## Notes of Decisions

Construction and application 2  
Prior laws 1

## 1. Prior laws

A qualified elector who held a certificate of registration canceled under former § 87 of this title (repealed; see, now, § 4-120 of this title) could reregister by the same method as that provided for an elector who changed his place of residence. *Rorem v. Gill*, 191 Okl. 198, 127 P.2d 822 (1942).

An elector who failed to vote at three successive elections by reason of his services in federal armed forces, and whose certificate of registration had been canceled, was not required to reregister not less than ten or more than twenty days before the next succeeding election, but could do so at any time. *Id.*

When an elector once lawfully registered pursuant to Comp.St.1921, §§ 6252 to 6255 (repealed; see, now, §§ 4-104, 4-111 et seq. of this title), he could never be required to re-register except where qualifications of electors were changed by constitutional amendment as provided by Comp.St.1921,

§ 6264 (repealed). *Fitzpatrick v. Childs*, 102 Okl. 166, 228 P. 485 (1924).

Comp.St.1921, § 6252 (repealed; see, now, § 4-104 of this title) was the only section of the registration laws relating to the procedure for registration of electors and applied to a person applying for registration upon a previous registration certificate, canceled on account of change of residence or politics, pursuant to Comp.St.1921, § 6256 (repealed; see, now, §§ 4-117 to 4-119 of this title), and it also furnished an adequate remedy at law by appeal where any such person was refused registration by any registration officer. *Determan v. State*, 89 Okl. 242, 215 P. 423 (1923).

## 2. Construction and application

In those precincts in city where re-registration had not been waived, electors must have been re-registered in accordance with the provisions of the statute requiring re-registration, in order to qualify as registered voters and be thereby qualified to sign initiative and referendum petitions. In re Referendum Petition No. 11, City Ordinance No. 7375, City of Oklahoma City, Okl., 294 P.2d 548 (1956).

## § 4-120.9. Repealed by Laws 1990, c. 331, § 21, eff. July 1, 1990

## Historical and Statutory Notes

The repealed section, relating to the certification by the county election board to the State Election as to the number of registered voters in each pre-

inct in the county, was derived from Laws 1990, c. 45, § 10.

See § 7-102.1 of this title.

## §§ 4-121 to 4-123. Repealed by Laws 1981, c. 45, § 11, emerg. eff. April 8, 1981

## Historical and Statutory Notes

Section 4-121 related to the removal of original registration forms; § 4-122 related to reregistration; and § 4-123 related to certification as to the number of registered voters. They were derived from:

Laws 1974, c. 75, §§ 21 to 23.

Laws 1976, c. 90, § 10.

Laws 1979, c. 240, § 16.

See § 4-120.7 et seq. of this title.

**§ 4-124. Repealed by Laws 1979, c. 240, § 30, emerg. eff. June****Historical and Statutory Notes<sup>1</sup>, 1979**

The repealed section, relating to county election board records, was derived from:

Laws 1916, c. 24, p. 38, § 7.  
Laws 1916, c. 24, p. 42, § 9.  
Comp.St.1921, §§ 6255, 6257.

St.1931, §§ 5657, 5659.  
Laws 1944, Ex.Sess., p. 2, § 1.  
Laws 1949, p. 214, § 2.  
26 O.S.1951, §§ 77, 79.  
Laws 1974, c. 75, § 24.  
Laws 1976, c. 90, § 10.

**ARTICLE V. FILING****§ 5-101. Declarations of candidacy required**

A person may become a candidate for office and have his name appear on a ballot only after he files a declaration of candidacy as hereinafter provided.

Laws 1974, c. 153, § 5-101, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1907-08, p. 368.  
Comp.Laws 1909, § 3291.  
R.L.1910, § 3041.  
Comp.St.1921, § 6110.

St.1931, § 5777.  
Laws 1959, p. 120, S.B. No. 250, § 1.  
Laws 1961, p. 249, § 1.  
Laws 1967, c. 375, § 1.  
26 O.S.1971, § 161.

**Cross References**

Municipal primary elections, see title 11, § 16-109.

**Law Review Commentaries**

Dimensions of newly emergent, quasi-fundamental right to political candidacy. Dennis W. Arrow. 6 Okl. City U.L.Rev. 1 (1981).

**Library References**

Elections ¶126(1).  
WESTLAW Topic No. 144.  
C.J.S. Elections-§ 111 et seq.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

**In general** 1  
**Armed forces personnel** 3  
**Persons not registered as voters** 2

State Senator. Op.Atty.Gen. No. 76-315 (Aug. 23, 1976).

**1. In general**

A second filing of a Declaration of Candidacy by a person for the Office of County Commissioner has the effect of withdrawing his prior filing of a Declaration of Candidacy for the Office of

Since a second filing of a Declaration of Candidacy by a person for the Office of County Commissioner has the effect of withdrawing his prior filing of a Declaration of Candidacy for the Office of State Senator, said candidate should be considered as an unopposed candidate and deemed to have been elected pursuant to § 6-102 of this title. *Id.*

**Note 2****2. Persons not registered as voters**

One otherwise qualified may become a candidate at primary election though not registered as a voter in his precinct where he has become a qualified elector since close of last registration period and there will be no succeeding registration period until after the date when notification and declaration of candidacy must be filed. *Brown v. State Election Bd.*, 197 Okl. 169, 170 P.2d 200 (1946).

**3. Armed forces personnel**

A member of the United States Army in Germany was entitled to have his name placed on ballot at primary election where such member's notification and declaration was executed and filed by member's father at member's request. *State ex rel. Bailey v. State Election Bd.*, 197 Okl. 167, 170 P.2d 206 (1946).

**§ 5-102. Candidates filing with Secretary of State Election Board**

Candidates for United States Senator, United States Representative, state officer, State Senator, State Representative, district judge, associate district judge and district attorney shall file Declarations of Candidacy with the Secretary of the State Election Board.

Laws 1974, c. 153, § 5-102, operative Jan. 1, 1975. Laws 1987, c. 33, § 6, emerg. eff. April 20, 1987.

**Historical and Statutory Notes**

The 1983 amendment deleted "Judge of the Court of Appeals" following "State Representative."

**Cross References**

Financial disclosure statement, see title 74, § 4223.

**Library References**

Elections ⇨126(1).  
WESTLAW Topic No. 144.  
C.J.S. Elections § 111 et seq.

**§ 5-103. Candidates filing with secretary of county election board**

Candidates for county office shall file declarations of candidacy with the secretary of the county election board in the county in which said candidates seek election.

Laws 1974, c. 153, § 5-103, operative Jan. 1, 1975.

**Cross References**

Financial disclosure statement, see title 74, § 4223 of this title.

**Library References**

Elections ⇨126(1).  
WESTLAW Topic No. 144.  
C.J.S. Elections § 111 et seq.

### § 5-104. Party must be recognized

Candidates may file for the nomination of a political party only if said party is recognized by the laws of the State of Oklahoma. Laws 1974, c. 153, § 5-104, operative Jan. 1, 1975.

#### Cross References

Recognized political parties, see § 1-107 of this title.

#### Library References

Elections ⇐123.

WESTLAW Topic No. 144.

C.J.S. Elections § 89 et seq.

#### United States Supreme Court

Freedom of political association to have Communist Party on ballot, see *Communist Party of Indiana v. Whitcomb*, 94 S.Ct. 656, 414 U.S. 441, 38 L.Ed.2d 635 (1974) rehearing denied 94 S.Ct. 1476, 415 U.S. 952, 39 L.Ed.2d 568.

### § 5-105. Candidate must be registered—Exceptions

A. To file as a candidate for nomination by a political party to any state or county office, a person must have been a registered voter of that party for the six-month period immediately preceding the first day of the filing period prescribed by law and, under oath, so state. Provided, this requirement shall not apply to a candidate for the nomination of a political party which attains recognition less than six (6) months preceding the first day of the filing period required by law. However, the candidate shall be required to have registered with the newly recognized party within fifteen (15) days after such party recognition.

B. To file as an independent candidate for any state or county office, a person must have been registered to vote as an independent for the six-month period immediately preceding the first day of the filing period prescribed by law and, under oath, so state. Laws 1974, c. 153, § 5-105, operative Jan. 1, 1975. Laws 1981, c. 178, § 4, emerg. eff. May 18, 1981; Laws 1987, c. 27, § 1, eff. Nov. 1, 1987.

#### Historical and Statutory Notes

As originally enacted this section read:

"In order to file as a candidate for nomination of a political party, a person must be a registered voter of said party."

The 1981 amendment rewrote the section in its present form except as amended in 1987.

The 1987 amendment designated the former section as subsection A and added subsection B.

#### Severability clauses, repeal of conflicting laws and effective/operative dates

Section 2 of Laws 1987, c. 27 provides for an effective date.

**Cross References**

Registration of political affiliation of voters, see § 4-112 of this title.

**Law Review Commentaries**

Dimensions of newly emergent, quasi-fundamental right to political candidacy. Dennis W. Arrow. 6 Okl. City U.L.Rev. 1 (1981).

**Library References**

Elections ⇐126(4).  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 115, 130.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

**Purpose 2**  
**Validity 1**

lot. Davis v. State Election Bd. of Oklahoma, Okl., 762 P.2d 932 (1988).

**1. Validity**

Political disaffiliation requirement for independent candidates, requiring that independent candidate for any state or county office be registered to vote as an independent for six-month period immediately preceding first day of filing period, did not unconstitutionally restrict independent candidate's access to the bal-

**2. Purpose**

Requirement that independent candidates be disaffiliated from a political party for six months before filing for office was means of requiring a candidate to provide an objective manifestation of either party affiliation or nonpartisanship by registering to vote in accord with that status. Davis v. State Election Bd. of Oklahoma, Okl., 762 P.2d 932 (1988).

**§ 5-105a. Misdemeanor embezzlement and felony offenders barred from public office for certain time—Pardons**

A. A person who has been convicted of a misdemeanor involving embezzlement or a felony under the laws of this state or of the United States or who has entered a plea of guilty or nolo contendere to such misdemeanor involving embezzlement or felony or who has been convicted of a crime in another state which would have been a misdemeanor involving embezzlement or a felony under the laws of this state or has entered a plea of guilty or nolo contendere to such crime shall not be eligible to be a candidate for or to be elected to any state, county, municipal, judicial or school office or any other elective office of any political subdivision of this state for a period of fifteen (15) years following completion of his sentence or during the pendency of an appeal of such conviction or plea.

B. The provisions of this section shall not be construed to preclude a person who has received a pardon from being eligible for or from holding public office.

Laws 1986, c. 234, § 1, emerg. eff. June 11, 1986.

**Library References**

- |                                    |  |
|------------------------------------|--|
| Elections ⇨126(4).                 | C.J.S. Elections §§ 115, 130.              |
| Officers and Public Employees ⇨31. | C.J.S. Officers and Public Employees § 22. |
| Pardon and Parole ⇨24.             | C.J.S. Pardon and Parole §§ 17 to 26.      |
| WESTLAW Topic Nos. 144, 283, 284.  |  |

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

**Construction and application 2  
Validity 1**

**1. Validity**

This section rendering persons pleading guilty to certain offenses ineligible to be candidate for or to be elected to any county office for period of 15 years following completion of sentence, absent pardon, did not impose additional punishment for prior offense already punishable in some other manner, and thus was not unconstitutional as ex post facto law as applied to prospective candidate who pled guilty to knowingly concealing stolen property and prospective candidate who pled guilty to embezzlement; this section essentially provided for qualifications for candidate for public office ensuring that candidates possess high moral qualities, and was not designed to punish offenders. *Golden v. Okfuskee County Election Bd., Okl., 723 P.2d 982 (1986).*

This section, which forbids certain criminally convicted persons from running for or holding elected public office

in Oklahoma; is constitutional and does not represent a prohibited bill of attainder or ex post facto law, as forbidden by U.S.C.A. Const. Art. 1, § 10 and Const. Art. 2, § 15. *Op.Atty.Gen. No. 88-48 (7-6-88).*

**2. Construction and application**

Prospective candidate who entered plea of guilty to felony offense of knowingly concealing stolen property and prospective candidate who entered plea of guilty to felony offense of embezzlement were ineligible to be candidates for or to be elected to any county office for period of 15 years following completion of their sentences, absent pardon. *Golden v. Okfuskee County Election Bd., Okl., 723 P.2d 982 (1986).*

This section disqualifies certain convicted criminals from being candidates for, or elected to, public office after suffering state or federal convictions, but does not prevent the same individuals from holding public employment. *Op. Atty.Gen. No. 86-79 (November 24, 1986).*

**§ 5-106. Candidate may file for only one office**

Candidates may file for no more than one office at any election. Laws 1974, c. 153; § 5-106, operative Jan. 1, 1975.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

**Construction and application 1**

**1. Construction and application**

Former § 162 of this title (repealed; see, now, §§ 5-107 to 5-109 of this title)

which required elector becoming a candidate for an office to file declaration containing stipulation that candidate will accept such nomination and will qualify for office precluded an elector from becoming a candidate for nomina-

**Note 1**

tion for more than one office at the same primary election. *Riley v. Cordell*, 200 Okl. 390, 194 P.2d 857 (1948).

A second filing of a Declaration of Candidacy by a person for the Office of County Commissioner has the effect of withdrawing his prior filing of a Declaration of Candidacy for the Office of State Senator. Op. Atty. Gen. No. 76-315 (Aug. 23, 1976).

Since a second filing of a Declaration of Candidacy by a person for the Office of County Commissioner has the effect of withdrawing his prior filing of a Declaration of Candidacy for the Office of State Senator, said candidate should be considered as an unopposed candidate and deemed to have been elected pursuant to § 6-102 of this title. *Id.*

**§ 5-107. Identical names prohibited**

No person may become a candidate for any office enumerated in Section 5-102 of this title whose name is identical to the name of the incumbent or of any publicly announced candidate for such office, or similar thereto, where it appears that the identity or similarity of names is used for the purpose of confusing the voters.

Any person desiring to become a candidate for one of said offices whose name is identical or similar to the name of the incumbent or of any publicly-announced candidate for said office shall observe the following procedure.

The potential candidate shall file a preliminary declaration of candidacy with the Secretary of the State Election Board between the hours of 8 a.m. on Monday and 5 p.m. on Friday of the third week prior to the beginning of the regular filing period. The preliminary declaration of candidacy shall be accompanied by a cashier's or certified check in the amount of Two Hundred Fifty Dollars (\$250.00).

When such a preliminary declaration of candidacy is filed the Secretary of the State Election Board shall immediately set the matter for hearing and shall cause at least five (5) days' notice to be given by publication in one issue of a newspaper of general circulation in the state so that any person may object to said filing and be heard thereon at said hearing.

At said hearing the candidate may present proof and testimony of his good faith. The burden of proof shall be upon the candidate to show that his candidacy is in good faith and is not intended to confuse the voters.

After a full and complete hearing the State Election Board shall render its decision, and if it finds that he is acting in good faith and not for the purpose of confusing the voters, said candidate shall be permitted to file a declaration of candidacy during the regular filing period, and his deposit shall be returned to him. If the Board finds that said candidate's candidacy is designed for the purpose of confusing the voters, he shall not be permitted to file as a candidate,

and the balance of his deposit, after the costs of the hearing are deducted, shall be returned to him.

Laws 1974, c. 153, § 5-107, operative Jan. 1, 1975. Laws 1976, c. 90, § 5, emerg. eff. May 6, 1976.

**Historical and Statutory Notes**

The 1976 amendment, in the first paragraph, inserted "enumerated in Section 5-102 of this title" and added the second through sixth paragraphs.

**Source:**

Laws 1943, p. 87, § 1.  
26 O.S.1971, § 162c.

**Library References**

Names ⇄16(1);  
WESTLAW Topic No. 269.  
C.J.S. Names § 14.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

**Construction and application 1**

**1. Construction and application**

The Supreme Court could not add, by judicial interpretation, to classifications of persons required under former § 162

of this title (repealed; now this section), to file notifications, declarations, and affidavits, but must accord legislature's unambiguous language its fair, reasonable, plain and ordinary import or meaning. *Murphy v. State Election Bd.*, 203 Okl. 129, 218 P.2d 917 (1950).

**§ 5-108. Adopting name of incumbent prohibited**

No person may become a candidate for any office who adopts or has adopted a name identical or similar to that of the incumbent of such office, or of any candidate who has previously made public announcement of his candidacy for such office.

Laws 1974, c. 153, § 5-108, operative Jan. 1, 1975.

**Historical and Statutory Notes**

**Source:**

Laws 1943, p. 87, § 1.  
26 O.S.1971, § 162c.

**Law Review Commentaries**

Law of change of name in Oklahoma.  
Clarence M. Mills. 23 Okl.B.J. 1748  
(Oct. 25, 1952).

**Library References**

Elections ⇄126(1).  
WESTLAW Topic No. 144.  
C.J.S. Elections § 111 et seq.



### § 5-109. Adopting name of person of state or national reputation prohibited

No person may become a candidate for any office who adopts or has adopted the name of any person of state or national reputation, living or dead.

Laws 1974, c. 153, § 5-109, operative Jan. 1, 1975.

#### Library References

Elections ¶126(1).  
WESTLAW Topic No. 144.  
C.J.S. Elections § 111 et seq.

#### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

#### Notes of Decisions

##### Construction and application 1

##### 1. Construction and application

One adopting, appropriating or using a name substantially different from, though similar to name of person of statewide reputation, was not within former § 162 of this title (repealed; now

this section). *Murphy v. State Election Bd.*, 203 Okl. 129, 218 P.2d 917 (1950).

A person named "R. W. Pat Murphy" was not required to file notification, declaration, and affidavits, on ground of his adoption, appropriation or use of name of person of statewide reputation named "W. A. Pat Murphy"; two names being substantially different. *Id.*

### § 5-110. Filing period

Declarations of candidacy provided herein must be filed with the secretary of the appropriate election board no earlier than 8:00 a.m. on the first Monday after Independence Day of any even-numbered year and no later than 5:00 p.m. on the next succeeding Wednesday. Said declarations of candidacy may be transmitted by United States mail, but in no event shall the secretary of any election board accept said declarations after the time prescribed by law.

Laws 1974, c. 153, § 5-110, operative Jan. 1, 1975.

#### Historical and Statutory Notes

##### Source:

Laws 1933, c. 62, p. 116, § 2.  
Laws 1937, p. 135, § 1.  
Laws 1939, p. 142, § 1.  
Laws 1941, p. 102, § 1.  
Laws 1943, p. 90, § 3, State Question No. 311, Referendum Petition No.

89, adopted special election July 11, 1944.  
Laws 1945, p. 101, § 1.  
Laws 1961, p. 248, § 2.  
Laws 1967, c. 32, § 2.  
26 O.S.1971, § 163.

#### Library References

Elections ¶120, 126.  
WESTLAW Topic No. 144.

C.J.S. Elections §§ 89 et seq., 111 et seq.

## Notes of Decisions

## Construction and application 1

## 1. Construction and application

Where Independence Day fell on Sunday, period for filing as candidate for house of representatives began on next day, Monday, July 5. *Hendrix v. State ex rel. Oklahoma State Election Bd.*, 554 P.2d 770 (1976).

Filing of notification and declaration of candidacy for political party nomination for office at primary election in statutory form with proper officer within time is mandatory. *Bare v. Patterson*, 200 Okl. 420, 195 P.2d 281 (1948).

The state election board was without authority to place candidate's name on general election ballot as a nonpartisan

candidate for office of United States Senator where candidate did not file a notification and declaration of candidacy, and a petition to place candidate's name on ballot was not filed with secretary of board within the time prescribed by law for filing notification and declaration of candidacy as required by former §§ 162, 163 of this title (repealed; see, now, this section and § 5-111 of this title). *Maddox v. Hunt*, 183 Okl. 465, 83 P.2d 553 (1938).

The first legal day for filing declaration and notification of candidacy for the election to be held in 1976 will be on Monday, July 5, 1976, even though said date falls on a legal holiday. *Op. Atty. Gen. No. 76-116* (Feb. 6, 1976).

## § 5-111. Declaration of candidacy forms

Forms to be used for filing declarations of candidacy shall be prescribed by the Secretary of the State Election Board and shall contain the following information: name of the candidate; the candidate's place of residence and his mailing address; name of the office sought; the candidate's date of birth; party affiliation of candidate seeking political party nomination; precinct and county wherein the candidate is a registered voter; an oath wherein the candidate swears or affirms that he is qualified to become a candidate for the office which he is seeking, and that, if elected, he will be qualified to hold said office; and any additional information which the Secretary deems necessary. A declaration of candidacy form must be signed by the candidate, and the signature must be properly notarized by a notary public or other person authorized by law to administer oaths.

Laws 1974, c. 153, § 5-111, operative Jan. 1, 1975.

## Historical and Statutory Notes

## Source:

Laws 1933, c. 62, p. 114, § 1.

Laws 1941, p. 100, § 1.

26 O.S.1971, § 162.

## Library References

Elections ¶126, 156, 158.  
WESTLAW Topic No. 144.

C.J.S. Elections §§ 90, 111 et seq., 135,  
138.

## WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## Notes of Decisions

Affidavits	3
Construction and application	2
Good faith	4
Sufficiency of forms	5
Validity of prior laws	1

**1. Validity of prior laws**

The additional qualification under former § 162 of this title (repealed; now this section) that one had to be a qualified elector at time of filing his notification and declaration to become a candidate in the primary election for nomination as candidate of his party for member of House of Representatives did not conflict with requirement of Const. Art. 5, § 17, that members of House of Representatives must be at least 21 years of age at time of their election. *Stafford v. State Election Bd.*, 203 Okl. 132, 218 P.2d 617 (1950).

**2. Construction and application**

Notification and declaration of candidacy required to be filed by member of political party seeking nomination for office held merely statement of present intention as distinguished from pledge or obligation as to future acts, and creates no enforceable legal obligation to vote for party nominees in general election. *Swindall v. State Election Board*, 168 Okl. 97, 32 P.2d 691 (1934).

**3. Affidavits**

Electors' supporting affidavits may be filed separately, and all filing papers may be amended under proper circum-

stances. *Bare v. Patterson*, 200 Okl. 420, 195 P.2d 281 (1948).

The provisions of former § 162 of this title (repealed; now this section) for filing of electors' affidavits were not mandatory and failure to file them did not nullify notification and declaration otherwise in perfect form and not disputed, but such provisions were directory, and county election board's authority to strike filing of one whose candidacy was contrary to law did not relate to regularity of filing. *Id.*

**4. Good faith**

Former § 162 of this title (repealed; now this section) required that notification and declaration of candidacy for office at primary election be made in good faith, but did not require personal appearance or presence of one giving such notification and declaration, and the affiant was subject to the criminal laws. *State ex rel. Bailey v. State Election Bd.*, 197 Okl. 167, 170 P.2d 206 (1946).

**5. Sufficiency of forms**

When notification and declaration of person shows on its face that declarant does not possess and cannot possibly acquire qualifications of qualified elector on or before primary election, such notification and declaration is insufficient to warrant acceptance thereof by election board and such person is not entitled to have his name placed on primary ballot as a candidate. *County Election Bd. of Coal County v. Robinson*, Okl., 352 P.2d 920 (1960).

**§ 5-111.1. Declaration of candidacy—Signature of candidate**

To be valid, a Declaration of Candidacy submitted to the secretary of any county election board or to the Secretary of the State Election Board shall be signed by the candidate in writing. The candidate shall personally subscribe his name to the Declaration of Candidacy, and no agent, representative or employee of the candidate may sign on the candidate's behalf. The signature must be the original, handwritten signature or autograph of the candidate. No facsimile, reproduction, typewritten or other substitute signature or autograph will be valid.

Laws 1988, c. 101, § 4, emerg. eff. April 1, 1988.

## § 5-112. Petitions and filing fees

A declaration of candidacy must be accompanied by a petition supporting a candidate's filing signed by five percent (5%) of the registered voters eligible to vote for a candidate in the first election wherein the candidate's name could appear on the ballot, as reflected by the latest January 15 registration report; or by a cashier's check or certified check in the amount of Two Hundred Dollars (\$200.00) for candidates filing with the Secretary of the State Election Board or the secretary of a county election board; provided, however, such cashier's check or certified check shall be in the amount of One Thousand Five Hundred Dollars (\$1,500.00) for candidates for Governor, One Thousand Dollars (\$1,000.00) for candidates for United States Senator and Seven Hundred Fifty Dollars (\$750.00) for candidates for the United States Congress, and Five Hundred Dollars (\$500.00) for candidates for Lieutenant Governor, Corporation Commission, Attorney General, State Auditor and Inspector, State Superintendent of Public Instruction, State Treasurer, Commissioner of Insurance and Commissioner of Labor. Laws 1974, c. 153, § 5-112, operative Jan. 1, 1975. Laws 1978, c. 11, § 1, emerg. eff. Feb. 7, 1978; Laws 1988, c. 48, § 1, emerg. eff. March 21, 1988; Laws 1990, c. 306, § 3, emerg. eff. May 30, 1990.

### Historical and Statutory Notes

The 1978 amendment, at the end of the section, added ", One Thousand Dollars (\$1,000.00) for candidates for United States Senator and Seven Hundred Fifty Dollars (\$750.00) for candidates for the United States Congress, and Five Hundred Dollars (\$500.00) for candidates for Lieutenant Governor, Corporation Commission, Attorney General, State Auditor and Inspector, State Superintendent of Public Instruction, State Treasurer and Commissioner of Insurance."

The 1988 amendment deleted a comma following "Secretary of the State

Election Board" and deleted "in the amount of Fifty Dollars (\$50.00) for candidates filing with" preceding "the secretary of the county election board".

The 1990 amendment deleted "and" following "State Treasurer" and added "and Commissioner of Labor" at the end of the section.

#### Source:

Laws 1923-24, c. 151, p. 214.  
St.1931, § 5650.  
26 O.S.1971, § 229.

### Library References

Elections § 126(1).  
WESTLAW Topic No. 144.  
C.J.S. Elections § 111 et seq.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### United States Supreme Court

Freedom of political association as right to ballot position to candidates, see *Storer v. Brown*, 94 S.Ct. 1274, 415 U.S.

724, 39 L.Ed.2d 714 (1974) rehearing denied 94 S.Ct. 2635, 417 U.S. 926, 41 L.Ed.2d 230; Lubin v. Panish, 94 S.Ct. 1315, 415 U.S. 709, 39 L.Ed.2d 702

(1974); American Party of Texas v. White, 94 S.Ct. 1296, 415 U.S. 767, 39 L.Ed.2d 744 (1974) rehearing denied 94 S.Ct. 2414, 416 U.S. 1000, 40 L.Ed.2d 777.

### Notes of Decisions

#### Construction and application 2

#### Prior laws 3

#### Validity 1

#### 1. Validity

Oklahoma election law (§ 1-108 of this title and this section), which required that petition bearing signatures of five percent of total votes cast in last general election for either president or governor be presented in order to gain recognition as political party but required would-be independent candidate for state office only to file petition signed by five percent of all registered voters or, alternatively, to pay filing fee, did not discriminate against minor political parties in violation of Fourteenth Amendment rights. Arutunoff v. Oklahoma State Election Bd., C.A.Okl., 687 F.2d 1375 (1982) certiorari denied 103 S.Ct. 1892, 461 U.S. 913, 77 L.Ed.2d 282.

If filing fee requirement is of an amount that most candidates could be expected to pay from their own resources, or through modest contributions, and if other means of reasonable and alternative access to the ballot are provided, the existence of the fee does not of itself compel close scrutiny under the Fourteenth Amendment, and it may be sustained if it can be shown to have some rational basis. Clegg v. Oklahoma State Election Bd., Okl., 637 P.2d 103 (1981).

Oklahoma method of placing candidates on ballot by requiring either a \$1,500 filing fee or a petition signed by five per cent of voters is not unconstitutional as being discriminatory against indigents. Burns v. Slater, Okl., 559 P.2d 428 (1977).

#### 2. Construction and application

Where political party seeking to be placed on ballot presented a petition containing over 23,000 signatures, under statute requiring 5,000 signatures, where it was not shown that possible irregularities would appear if the signatures were checked, and where it appeared that the signatures were genuine, protestants could not successfully contend that Secretary of State did not allow them time to verify signatures which appeared on the petition. Application of American Party, Okl., 444 P.2d 465 (1968).

#### 3. Prior laws

Joint resolution adopted by House of Representatives and Senate and duly approved by governor authorizing any political party to submit a list of candidates for nomination in election when sufficient number of voters have petitioned, and carried forward in 1941 statutes as part of the permanent laws of the state, was intended to and does have the effect of a "general law" and was not intended to be temporary. Cooper v. Cartwright, 200 Okl. 456, 195 P.2d 290 (1948).

### § 5-113. Forfeiture of filing fee

Said check shall be forfeited to the election board with which it was filed and proceeds therefrom shall be deposited in the State Election Board Revolving Fund if the declaration of candidacy was filed with the Secretary of the State Election Board, or shall be deposited in the County Election Board Special Depository Account if the declaration of candidacy was filed with the secretary of the county election board unless the candidate is unopposed in the Primary Election, becomes a candidate in the Runoff Primary Election or receives more than fifteen percent (15%) of the votes

cast for the office for which he is a candidate at the first election wherein his name appears on a ballot, in which case said check shall be returned to the candidate immediately.

Laws 1974, c. 153, § 5-113, operative Jan. 1, 1975. Laws 1983, c. 171, § 7, emerg. eff. June 6, 1983.

**Historical and Statutory Notes**

The 1983 amendment substituted "deposited in the State Election Board Revolving Fund if the declaration of candidacy was filed with the Secretary of the State Election Board, or shall be deposit-

ed in the County Election Board Special Depository Account if the declaration of candidacy was filed with the secretary of the county election board" for "used by said board to defray election expenses".

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

**Refunds 2**  
**Validity 1**

the electoral process. *Clegg v. Oklahoma State Election Bd., Okl., 637 P.2d 103 (1981).*

**1. Validity**

This section providing for refund of filing fee if a candidate is unopposed in the primary election, becomes a candidate in the runoff election, or receives more than 50% of the votes cast for the office for which he was a candidate did not violate equal protection; the conditions placed upon refund were reasonable and constituted a valid exercise of state authority to regulate and preserve

**2. Refunds**

Candidate, who filed for election as an independent and thus was not eligible to appear on the primary ballot, was not entitled to refund of his filing fee under this section providing for refund of filing fees to candidates who are unopposed in the primary. *Clegg v. Oklahoma State Election Bd., Okl., 637 P.2d 103 (1981).*

**§ 5-114. Designation of term**

In all primary elections where there are two or more nominations to be made for the same office in name, one of said offices being for a longer term than the other, each candidate, in filing for nomination for said office, shall state whether he is filing for the long or short term, and the same shall be reflected on the ballot for said offices.

Laws 1974, c. 153, § 5-114, operative Jan. 1, 1975.

**Historical and Statutory Notes**

**Source:**

Laws 1916, c. 25, p. 53, § 3.  
Comp.St.1921, § 6192.

St.1931, § 5768.  
26 O.S.1971, § 164.

**§ 5-115. Withdrawals from primary**

Any candidate may withdraw his candidacy only upon filing a written notice of withdrawal as a candidate with the secretary of

the election board which accepted said candidate's declaration of candidacy. Said notice shall be signed by the candidate, whose signature shall be notarized by a notary public, and shall be filed on or before 5:00 p.m. on the Friday following the close of the filing period prescribed by law.

Laws 1974, c. 153, § 5-115, operative Jan. 1, 1975.

### Historical and Statutory Notes

#### Source:

Laws 1907-08, p. 339.  
Comp.Laws 1909, § 3191.  
R.L.1910, § 3116.  
Comp.St.1921, § 6183.  
St.1931, § 5793.

Laws 1943, p. 97, § 1.  
Laws 1955, p. 203, § 1.  
Laws 1957, p. 183, § 1.  
Laws 1961, p. 249, § 1.  
Laws 1965, p. 337, § 1.  
26 O.S.1971, § 233.

### Library References

Elections ⇐146.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 95.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### Notes of Decisions

#### Construction and application 1 Death 2

and deemed to have been elected pursuant to § 6-102 of this title. Id.

#### 1. Construction and application

A second filing of a Declaration of Candidacy by a person for the Office of County Commissioner has the effect of withdrawing his prior filing of a Declaration of Candidacy for the Office of State Senator. Op.Atty.Gen. No. 76-315 (Aug. 23, 1976).

The State Election Board, through its Secretary, should treat a withdrawal by filing a second Declaration of Candidacy in the same manner as a withdrawal would be treated under this section. Id.

Since a second filing of a Declaration of Candidacy by a person for the Office of County Commissioner has the effect of withdrawing his prior filing of a Declaration of Candidacy for the office of state senator, said candidate should be considered as an unopposed candidate

#### 2. Death

The name of a partisan candidate seeking election to a county office who dies after the time for withdrawing from the primary election, but prior to the primary, must appear on the primary ballot. Op.Atty.Gen. No. 80-209 (Sept. 16, 1980).

If the deceased candidate receives more votes in the primary elections than his surviving opponent, the deceased candidate is not elected to office nor is the surviving candidate elected. Id.

In such event, the failure to elect a candidate and the resulting failure of an elected candidate to qualify for, and enter into the duties of, the office will necessitate the taking of appropriate steps to fill the term of office as provided by law. Id.

### § 5-116. Withdrawals from runoff primary

A candidate in a Runoff Primary Election may withdraw his candidacy upon filing a written notice of withdrawal as a candidate

with the secretary of the election board which accepted said candidate's declaration of candidacy. Said notice shall be signed by the candidate, whose signature shall be notarized by a notary public, and shall be filed on or before 5:00 p.m. on the Monday following the date of the Primary Election.

Laws 1974, c. 153, § 5-116, operative Jan. 1, 1975.

#### Historical and Statutory Notes

##### Source:

Laws 1907-08, p. 339.  
Comp.Laws 1909, § 3191.  
R.L.1910, § 3116.  
Comp.St.1921, § 6183.  
St.1931, § 5793.

Laws 1943, p. 97, § 1.  
Laws 1955, p. 203, § 1.  
Laws 1957, p. 183, § 1.  
Laws 1961, p. 249, § 1.  
Laws 1965, p. 337, § 1.  
21 O.S.1971, § 233.

#### Library References

Elections ⇐146.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 95.

### § 5-116.1. Withdrawal from general election

A candidate in a General Election may withdraw his candidacy upon filing a written notice of withdrawal as a candidate with the secretary of the election board which accepted said candidate's declaration of candidacy. Said notice shall be signed by the candidate, whose signature shall be notarized by a notary public, and shall be filed on or before 5:00 p.m. on the Monday following the date of the Runoff Primary Election.

Laws 1983, c. 171, § 21, emerg. eff. June 6, 1983.

### § 5-117. Declarations of candidacy must be accepted—Exceptions

The secretary of any election board shall accept any declaration of candidacy which he is authorized to accept, except such declaration which on its face shows the candidate to be unqualified to become a candidate for the office he seeks. Such acceptance shall entitle the candidate to have his name appear on the appropriate ballots unless said candidate withdraws his candidacy according to law, or unless a contest to said candidacy is sustained in the manner hereinafter described.

Laws 1974, c. 153, § 5-117, operative Jan. 1, 1975.

#### Law Review Commentaries

Dimensions of newly emergent, quasi-fundamental right to political candidacy. Dennis W. Arrow. 6 Okl. City U.L.Rev. 1 (1981).



## Library References

Elections ¶146.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 95.

## Notes of Decisions

## In general 1

## 1. In general

Where candidate leased residential dwelling in District 91 from October 1973, with intent to change his residence to that dwelling, lived there 60% of the time, and thereafter began a course of repairing the dwelling to make it more livable for himself and his family, he had right to stand for election to House of Representatives in District 91 as of

July 10, 1974 even though his family lived in mobile home in District 98 and his children went to school there. *Box v. State Election Bd. of Oklahoma, Okl., 526 P.2d 936 (1974).*

The action of the county election board in placing an applicant's name on ballot as a candidate for an office is in nature of a judgment of that body in its semi-judicial capacity and that judgment cannot be collaterally attacked. *Murphy v. Darnell, Okl., 268 P.2d 860 (1954).*

## § 5-118. Contests of candidacy

Any candidate, hereafter referred to as petitioner, may contest the candidacy of any other candidate for the same office, hereafter referred to as contestee, by filing a written petition with the secretary of the election board with whom said candidate filed his declaration of candidacy. In the event only one candidate files for an office, a petition contesting his candidacy may be filed by any registered voter who is eligible to vote for the candidate.

Laws 1974, c. 153, § 5-118, operative Jan. 1, 1975. Laws 1990, c. 306, § 4, emerg. eff. May 30, 1990.

## Historical and Statutory Notes

The 1990 amendment, at the end of the second sentence, added "who is eligible to vote for the candidate".

Laws 1943, p. 91, § 1.  
 Laws 1947, p. 237, § 1.  
 Laws 1967, p. 32, § 6.  
 26 O.S.1971, § 165a.

## Source:

Laws 1937, p. 137, § 4.

## Law Review Commentaries

Extraordinary remedies available to review decisions of election boards. 4 *Okl.L.Rev.* 492 (November 1951).

The primary filing fee: Reasonable regulation or equal protection violation? (1968) 9 *Santa Clara L.* 169.

## Library References

Elections ¶148 et seq.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 120 et seq.

## WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## Notes of Decisions

Construction and application	1
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Injunction	6
Limitation of contest	5
Mandamus	7
Persons entitled to file protest	2
Sufficiency of petition	3

**1. Construction and application**

This section authorizing challenge for qualifications of a candidate for public office was the exclusive method for a candidate to contest the candidacy of any other candidate, and a petition for irregularities could not be used as an alternative remedy. *Coleman v. Sequoyah County Election Bd.*, Okl., 762 P.2d 935 (1988).

By enacting former § 165a of this title (repealed; now this section) which governed challenges to legality or regularity of notification and declaration of candidate, Legislature intended that eligibility of a candidate be first considered by election board with which candidate filed notification and declaration and not by courts, that an objection or protest to such notification and declaration be filed in all instances and a hearing thereon be held at an early date and before an election was held. *Wickersham v. State Election Bd.*, Okl., 357 P.2d 421 (1961).

**2. Persons entitled to file protest**

A protest against filing of a candidate for office on ground that the filing was "contrary to law" could be made by any person, and it was not necessary that protestant be a member of the political party in which filing had been made, in order to confer jurisdiction upon county election board to pass upon the protest. *Darst v. Election Board of Craig County*, 194 Okl. 469, 152 P.2d 912 (1944).

**3. Sufficiency of petition**

Counter petition filed by candidate whose candidacy had been challenged, which did not disclose county precinct in which signer was registered voter, could not be counted in determining sufficiency of petition. *State ex rel. Rogers v. State Election Board*, 168 Okl. 441, 33 P.2d 806 (1934).

When filing of candidate for party nomination was challenged by petition, challenged candidate was required to present timely counter petition or make statutory deposit, and failure to do so required election board to strike filing of challenged candidate. *Id.*

**4. Hearing and determination of contest**

It is duty of county election board with whom any notification and declaration is filed to hear and determine all objections which may arise concerning same, regardless of whether protest has been made as contemplated by statute. *Martin v. County Election Bd. of McClain County*, 206 Okl. 597, 245 P.2d 714 (1952).

The function of the county election board to hear and determine all questions and objections that may arise concerning the candidacy of any person seeking a public office, is quasi judicial in character and the district court and the Supreme Court has the power and duty to prohibit such a board from exercising unwarranted judicial force. *Meyer v. Jones*, 203 Okl. 160, 219 P.2d 620 (1950).

Where former § 165a of this title (repealed; now this section) and 11 Okl.St. Ann. §§ 26, 27, 41a and 48 (repealed; see, now, §§ 16-108, 16-109 of title 11) provided that it was duty of election board with whom any notification and declaration was filed to hear and determine all questions concerning same, that law governing primary elections for state should govern in all primaries in cities and towns except as otherwise provided, and that law governing contests for county officer was applicable to municipal elections, there was statutory authority for challenging qualifications of candidate for municipal office. *Hallman v. County Election Bd. of Oklahoma County*, Okl., 509 P.2d 459 (1973).

**5. Limitation of contest**

Where defeated candidate had failed to challenge to the legality or regularity of notification and declaration in accordance with former § 165a of this title (repealed; now this section) which specified that no objection or challenge to candidacy shall be filed after five days

## Note 5

from close of filing period, action of board in placing applicant's name on ballot was a semi-judicial act resulting in a judgment which could not be collaterally attacked, and since eligibility was not questioned in manner provided by statute persons were thereafter barred by laches from questioning the same. *Wickersham v. State Election Bd.*, Okl., 357 P.2d 421 (1961).

Any person may question eligibility of a proposed candidate but, not having done so, he cannot thereafter, question the final action of county election board in placing applicant's name on the ballot. *Murphy v. Darnell*, Okl., 268 P.2d 860 (1954).

Any objections to any irregularity in the filing for candidacy for a municipal election are waived and barred if not made within the statutory time and the expenses of that election are the responsibility of the city involved. *Op. Atty. Gen. No. 71-253* (May 27, 1971).

**6. Injunction**

Where only relator and plaintiff filed as candidate for office of county superintendent on Democratic ticket subject to primary election, plaintiff's right to certificate of nomination without submission of question at primary was a "political right", and court of equity had no jurisdiction to enjoin county election board from placing relator's name upon ballot for primary election because of relator's alleged lack of statutory qualifications. *Stat ex rel. Robinett v. Jarrett*, 200 Okl. 387, 196 P.2d 849 (1948).

**7. Mandamus**

Supreme Court would assumed original jurisdiction over mandamus action

to compel county election board to accept protest to declaration of candidacy of candidate for city councilman. *Hallman v. County Election Bd. of Oklahoma County, Okl.*, 509 P.2d 459 (1973).

Elector who properly filed with county election board a protest of declaration of candidacy of candidate for municipal office was entitled to writ of mandamus to compel county board to consider such protest. *Id.*

Elector who properly filed with county election board a protest of declaration of candidacy of candidate for municipal office was entitled to writ of mandamus to compel county board to consider such protest. *Id.*

Where candidate for nomination for office of justice of Supreme Court files counter petition for allowance of filing and disallowance of challenge, which counter petition election board determined to be sufficient, party challenging candidacy is not entitled to writ of mandamus compelling election board to strike candidate's name from ballot, where motion challenging sufficiency of counter petition is supported only by affidavits and certificates. *State ex rel. Fulton v. State Election Board*, 168 Okl. 446, 33 P.2d 800 (1934).

As former § 165a of this title (repealed; now this section) imposed duty on state election board to hear any challenge to the candidacy of any person did not provide for review by appeal, Supreme Court had the power to issue a writ of mandamus which has effect of reversing arbitrary decision of the Board. *Box v. State Election Bd. of Oklahoma, Okl.*, 526 P.2d 936 (1974).

**§ 5-119. Time for filing contest**

Said petition must be filed no later than 5:00 p.m. on the second day following the close of the filing period.

Laws 1974, c. 153, § 5-119, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1937, p. 137, § 4.  
Laws 1943, p. 91, § 1.

Laws 1947, p. 237, § 1.  
Laws 1967, p. 32, § 6.  
26 O.S.1971, § 165a.

## Library References

Elections ⇨151.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 123, 142.

## WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## Notes of Decisions

## Construction and application 1

## 1. Construction and application

A challenge to the qualifications of a candidate for public office which was filed three days after the primary election contesting the candidacy of another candidate for the same office was untimely. *Coleman v. Sequoyah County Election Bd.*, Okl., 762 P.2d 935 (1988).

Unsuccessful candidate was barred from contesting opponent's candidacy

on ground of alleged fraud in sworn statement of residency where objection was not filed within statutory period of two days following close of filings. *Rogers v. State Election Bd. of Oklahoma*, Okl., 533 P.2d 621 (1974).

Any objections to any irregularity in the filing for candidacy for a municipal election are waived and barred if not made within the statutory time and the expenses of that election are the responsibility of the city involved. *Op. Atty. Gen. No. 71-253* (May 27, 1971).

## § 5-120. Grounds for contest

Said petition must allege that the contestee was not qualified by law to become a candidate for the office for which he filed a declaration of candidacy and must contain the reasons therefor. Reasons not appearing on the face of the petition shall be considered waived and shall not be grounds for a contest.

Laws 1974, c. 153, § 5-120, operative Jan. 1, 1975.

## Historical and Statutory Notes

## Source:

Laws 1937, p. 137, § 4.  
 Laws 1943, p. 91, § 1.

Laws 1947, p. 237, § 1.  
 Laws 1967, p. 32, § 6.  
 26 O.S.1971, § 165a.

## Library References

Elections ⇨149.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 120 et seq.

## § 5-121. Deposit required for contest

Said petition, if filed with the Secretary of the State Election Board, must be accompanied by a cashier's check or certified check in the amount of Two Hundred Fifty Dollars (\$250.00). Said petition, if filed with the secretary of the county election board, must be accompanied by a cashier's check or certified check in the amount of One Hundred Fifty Dollars (\$150.00).

Laws 1974, c. 153, § 5-121, operative Jan. 1, 1975. Laws 1976, c. 90, § 3, emerg. eff. May 6, 1976.

**Historical and Statutory Notes**

The 1976 amendment, in the second sentence, substituted "One Hundred Fifty Dollars (\$150.00)" for "Fifty Dollars (\$50.00)".

Laws 1943, p. 91, § 1.  
Laws 1947, p. 237, § 1.  
Laws 1967, p. 32, § 6.  
26 O.S.1971, § 165a.

**Source:**

Laws 1937, p. 137, § 4.

**Library References**

Elections ⇐150.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 120, 143.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions****Construction and application 1**

Election Bd., 197 Okl. 153, 169 P.2d 285 (1946).

**1. Construction and application**

Petitioner who had filed for candidate as governor was not entitled to mandamus requiring state election board to place his name on the ballot because the board erroneously requested petitioner to make additional deposits for costs for each petition of protest where petitioner acquiesced in action of board by absentsing himself from further proceedings connected with protests by demand for return of his deposit. *Turner v. State*

Former § 165a of this title (repealed; now this section) contemplated that there may be one or more protests to notification and declaration of candidacy, and that a deposit for costs should be made by each person filing a petition of protests, and that upon hearing thereon various grounds contained in protest petitions filed shall be heard and determined, at which time candidate must make his deposit of \$250 to defend his candidacy against protestants, but the statute did not contemplate a separate deposit to be made by candidate for each protest petition filed against him. *Id.*

**§ 5-122. Date for hearing contest**

When such a petition is properly filed, the secretary of the appropriate election board shall set the matter down for a hearing, said hearing to be not fewer than three (3) days from the date of filing of said petition.

Laws 1974, c. 153, § 5-122, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1937, p. 137, § 4.  
Laws 1943, p. 91, § 1.

Laws 1947, p. 237, § 1.  
Laws 1967, p. 32, § 6.  
26 O.S.1971, § 165a.

**Library References**

Elections ⇐153.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 120, 147.

**§ 5-123. Service of notice**

It shall be the duty of the petitioner to cause a true copy of the petition and notice of the date and place of the hearing to be served on the contestee.

Laws 1974, c. 153, § 5-123, operative Jan. 1, 1975.

**Historical and Statutory Notes**

<b>Source:</b>	Laws 1947, p. 237, § 1.
Laws 1937, p. 137, § 4.	Laws 1967, p. 32, § 6.
Laws 1943, p. 91, § 1.	26 O.S.1971, § 165a.

**Library References**

Elections ⇨151.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 123, 142.

**§ 5-124. Time for service of notice**

Said service shall be made in person, where possible, within twenty-four (24) hours after the date and place of the hearing has been set by the election board secretary.

Laws 1974, c. 153, § 5-124, operative Jan. 1, 1975.

**Historical and Statutory Notes**

<b>Source:</b>	Laws 1947, p. 237, § 1.
Laws 1937, p. 137, § 4.	Laws 1967, p. 32, § 6.
Laws 1943, p. 91, § 1.	26 O.S.1971, § 165a.

**Library References**

Elections ⇨151.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 123, 142.

**§ 5-125. Sheriff to serve notice—Secretary of election board made agent for constructive service**

Service shall be made by the sheriff of the county of residence of the contestee as to all offices, except that of sheriff, in which case the same shall be served by the county clerk of the appropriate county, and the certificate of returns of such sheriff or county clerk, showing the inability to make such service within the aforementioned time, shall be deemed sufficient proof of the absence of the contestee, or the inability to serve such petition and notice upon him, and to justify the constructive service herein provided. When personal service is impossible, within said time, it is hereby made the duty of said petitioner to serve said true copies upon the secretary of the appropriate election board. Provided that for the purpose of such constructive service, the Secretary of the State

Election Board and the secretaries of the county election boards are hereby made and constituted the service agents for all candidates who file declarations of candidacy with them. By filing his declaration of candidacy, each candidate shall thereby be conclusively presumed to have accepted the terms and provisions hereof and specifically the aforesaid constructive service. When constructive service becomes necessary, said constructive service shall be made at the date, time and place of said hearing, after proof of inability to personally serve the contestee has been returned to the petitioner. Laws 1974, c. 153, § 5-125, operative Jan. 1, 1975. Laws 1983, c. 171, § 8, emerg. eff. June 6, 1983.

#### Historical and Statutory Notes

The 1983 amendment, in the last sentence, substituted "at the date, time and place of said hearing," for "within twenty-four (24) hours".

Laws 1943, p. 91, § 1.  
Laws 1947, p. 237, § 1.  
Laws 1967, p. 32, § 6.  
26 O.S.1971, § 165a.

#### Source:

Laws 1937, p. 137, § 4.

#### Library References

Elections ⇨151.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 123, 142.

### § 5-126. Hearing of contest

The petition may be heard without formal pleadings being filed in answer or reply thereto. The election board with whom the petition is filed shall have the authority to issue subpoenas and compel the attendance of witnesses and the production of evidence. Such election board shall have the authority to receive the testimony of witnesses under oath, said oath to be administered by the secretary of the board. At the conclusion of the hearing, the board shall render its decision and the vote of the individual members in writing. The decision of such board shall in all cases be final. Laws 1974, c. 153, § 5-126, operative Jan. 1, 1975.

#### Historical and Statutory Notes

#### Source:

Laws 1937, p. 137, § 4.  
Laws 1943, p. 91, § 1.

Laws 1947, p. 237, § 1.  
Laws 1967, p. 32, § 6.  
26 O.S.1971, § 165a.

#### Cross References

Administrative procedures, see title 75, § 250.3 et seq.

**Library References**

Elections ⇐153.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 120, 147.

**§ 5-127. Candidacy may be stricken**

If the election board determines that the contestee was not qualified to become a candidate for the office for which he filed a declaration of candidacy, it may order that his candidacy be stricken and that his name not be placed on the ballot.

Laws 1974, c. 153, § 5-127, operative Jan. 1, 1975.

**Historical and Statutory Notes**

<b>Source:</b>	Laws 1947, p. 237, § 1.
Laws 1937, p. 137, § 4.	Laws 1967, p. 32, § 6.
Laws 1943, p. 91, § 1.	26 O.S.1971, § 165a.

**Library References**

Elections ⇐153.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 120, 147.

**§ 5-128. Declaration may be amended**

If said contestee's declaration of candidacy may be amended or corrected to conform to law, the election board may order the same to be done, if the board determines such amendment or correction to be proper at the time of its order or decision.

Laws 1974, c. 153, § 5-128, operative Jan. 1, 1975.

**Historical and Statutory Notes**

<b>Source:</b>	Laws 1947, p. 237, § 1.
Laws 1937, p. 137, § 4.	Laws 1967, p. 32, § 6.
Laws 1943, p. 91, § 1.	26 O.S.1971, § 165a.

**Notes of Decisions**

**Construction and application 1**

**1. Construction and application**

Candidate for elective office of town board of trustees had sought amendment to declaration of candidacy to reflect correct ward of residence within reasonable time and should not have been pro-

hibited from having his name appear on ballot; chief clerk of that board had expressed uncertainty as to which ward was correct and candidate had relied in good faith on that clerk's advice that he would check on correct ward and would contact him if he had not filed correctly and had requested amendment shortly after filing period had closed. *James v. Rogers*, Okl., 734 P.2d 1298 (1987).

**§ 5-129. Answer to contest—Deposit required**

Should the contestee desire to appear in answer to said contest, said contestee shall be required, at the time of filing his answer, or,



if no answer is filed, at the time of his appearance, to deposit with the secretary of the election board a cashier's check or certified check in the same amount as that filed by the petitioner.

Laws 1974, c. 153, § 5-129, operative Jan. 1, 1975.

#### Historical and Statutory Notes

<b>Source:</b>	Laws 1947, p. 237, § 1.
Laws 1937, p. 137, § 4.	Laws 1967, p. 32, § 6.
Laws 1943, p. 91, § 1.	26 O.S.1971, § 165a.

#### Library References

Elections ⇐150.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 120, 143.

### § 5-130. Burden of proof on petitioner

The burden of proof shall be upon the petitioner to sustain the allegations in his petition. However, failure of the contestee to appear or answer thereto shall be deemed to place him in default, and shall constitute an admission of the allegations of the petition, in which event, if the board determines that the factual allegations of the petition constitute appropriate grounds for disqualification, such contestee's candidacy shall be stricken.

Laws 1974, c. 153, § 5-130, operative Jan. 1, 1975.

#### Historical and Statutory Notes

<b>Source:</b>	Laws 1947, p. 237, § 1.
Laws 1937, p. 137, § 4.	Laws 1967, p. 32, § 6.
Laws 1943, p. 91, § 1.	26 O.S.1971, § 165a.

#### Library References

Elections ⇐148.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 120 et seq.

### § 5-131. Disposition of deposits

In the event the petitioner is successful at said hearing, his deposit shall be returned to him, and all costs of such hearing shall be deducted from the deposit of the contestee, and the balance, if any, shall be returned to said contestee. If the contestee does not file an answer or make an appearance, or if the petitioner is unsuccessful, all costs incurred shall be paid from the deposit made by the petitioner, and the balance, if any, shall be returned to said petitioner.

Laws 1974, c. 153, § 5-131, operative Jan. 1, 1975.

**Historical and Statutory Notes**

<b>Source:</b>	Laws 1947, p. 237, § 1.
Laws 1937, p. 137, § 4.	Laws 1967, c. 32, § 6.
Laws 1943, p. 91, § 1.	26 O.S.1971, § 165a.

**ARTICLE VI. BALLOTS****§ 6-101. Appearance of candidate's name**

The name of any candidate for any office shall be printed on the official ballot as said candidate signed his declaration of candidacy; provided, however, that no candidate shall have any prefix, suffix or title placed before or after his name.

Laws 1974, c. 153, § 6-101, operative Jan. 1, 1975.

**Historical and Statutory Notes**

<b>Source:</b>	Laws 1937, p. 138, § 6.
	26 O.S.1971; § 224a.

**Cross References**

Prohibited names, see §§ 5-107 to 5-109 of this title.

**Library References**

Elections ¶126(5), 172.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 118, 161 et seq.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**United States Supreme Court**

Positioning of candidates on ballot,  
see *Bradley v. Lunding*, 1976, 96 S.Ct.  
891, 424 U.S. 1309, 47 L.Ed.2d 74.

**Notes of Decisions****Construction and application 1****1: Construction and application**

Candidate was entitled to have term "Mrs." precede husband's initials and surname in having name placed on offi-

cial primary ballot where candidate adopted such name at time of her marriage and thereafter in good faith and for honest purpose transacted business and held herself out under that name. *Huff v. State Election Board*, 168 Okl. 277, 32 P.2d 920 (1934).

**§ 6-102. Unopposed candidates**

Any candidate who is unopposed in any election shall be deemed to have been nominated or elected, as the case may be, and his

name will not appear on the ballot at any election in which he is so unopposed.

Laws 1974, c. 153, § 6-102, operative Jan. 1, 1975.

### Historical and Statutory Notes

#### Source:

Laws 1927, c. 98, § 160, § 2.  
St.1931, § 5764.

Laws 1939, p. 144, §§ 1, 2.  
Laws 1957, p. 185, § 4.  
26 O.S.1971, §§ 166, 167, 364.1.

### Cross References

General municipal elections, unopposed candidates, see title 11, § 16-106.

Municipal primary elections, see title 11, § 16-111.

### Library References

Elections ⇨126(5), 166, 172.  
WESTLAW Topic No. 144.

C.J.S. Elections §§ 118, 156 et seq.,  
161 et seq.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### Notes of Decisions

#### Construction and application 1 Party committees 2

##### 1. Construction and application

Certificate of nomination to municipal office issued by county election board to defendant who ran unopposed on ballot was valid notwithstanding failure of county central committee of political party to certify defendant to election board. *Adair v. Cable*, 207 Okl. 123, 248 P.2d 599 (1952).

Where defendant filed for nomination for office of city marshal, was unopposed on ballot, and was issued certificate of nomination by county election board, certificate of nomination was valid, although defendant was not registered voter of, nor affiliated with, political party on whose ticket he had filed. *Id.*

State election board held not required to place, upon ballots for general election, names of candidates of political party organized after time had expired for filing as candidates for party nominations at primary election even though such candidates were unopposed at the primary election. *Craig v. Bond*, 160 Okl. 34, 15 P.2d 1014 (1932).

Section 2 of Laws 1927, c. 98 (repealed; now this section) which regulated method of nominating party candidates included every class of elective offices within state requiring party primary nominations. *Dancy v. Peebly*, 132 Okl. 84, 270 P. 311 (1928).

The State Election Board, through its Secretary, should treat a withdrawal by filing a second Declaration of Candidacy in the same manner as a withdrawal would be treated under § 5-115 of this title. *Op.Atty.Gen. No. 36-315* (Aug. 23, 1976).

A second filing of a Declaration of Candidacy by a person for the Office of County Commissioner has the effect of withdrawing his prior filing of a Declaration of Candidacy for the Office of State Senator. *Id.*

Since a second filing of a Declaration of Candidacy by a person for the Office of County Commissioner has the effect of withdrawing his prior filing of a Declaration of Candidacy for the Office of State Senator, said candidate should be considered as an unopposed candidate and deemed to have been elected pursuant to this section. *Id.*

##### 2. Party committees

Duties of party central committees under law regulating method of nominat-

ing candidates, held ministerial only as relating to unopposed candidate. *Dancy v. Peebly*, 132 Okl. 84, 270 P. 311 (1928).

**§ 6-103. Ballots printed by State Election Board**

The State Election Board shall cause ballots to be printed for Primary, Runoff Primary and General Elections at such time as to insure delivery of said ballots to the several county election boards for distribution to the several precinct election boards prior to election day. Said board shall cause ballots to be printed for the following offices: Electors for President and Vice President; United States Senators; United States Representatives; state officers; Justices of the Supreme Court; Judges of the Court of Criminal Appeals; Judges of the Court of Appeals; district judges and associate district judges; and shall cause ballots to be printed for state questions.

Laws 1974, c. 153, § 6-103, operative Jan. 1, 1975.

**Historical and Statutory Notes**

<b>Source:</b>	Comp.St.1921, §§ 6158, 6173, 6174, 6175.
Laws 1907-08, pp. 328, 329, 334, 335.	Laws 1931, p. 105, § 11.
Comp.Laws 1909, §§ 3156, 3158, 3181, 3182, 3183.	Laws 1931, p. 107, § 14.
R.L.1910, §§ 3089, 3091, 3106, 3107, 3108.	Laws 1931, p. 108, §§ 15, 16.
	St.1931, §§ 5698, 5699, 5716 to 5718.
	26 O.S.1971, §§ 181, 183, 221, 222, 223.

**Library References**

Elections ⇄126(5), 163.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 118, 155.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

**Prior laws 1**  
**State questions 2**

**1. Prior laws**

It was the duty of the Secretary of State to see to it that the state printer and the state election board performed their duties under Laws 1907-08, pp. 328, 334, 335 (repealed; now this section). *Trapp v. Wells Fargo Express Co.*, 22 Okl. 377, 97 P. 1003.

**2. State questions**

An election for submission of the question of incurring indebtedness for water

works and sewers is not invalid for the reason alone that the squares in which to vote were placed to the left of the questions to be voted on and the words "Yes" and "No" placed under the squares, instead of the squares being placed under the questions to be voted on, and the words "Yes" and "No" being placed to the left of the squares, as required by St.1903, § 2963 (repealed). *State v. Millar*, 21 Okl. 448, 96 P. 747 (1908).

A statement on ballots at an election for submission of the question of incurring indebtedness for waterworks and

## Note 2

sewers as authorized by Const. Art. 10, § 27, of the purpose of the issuance of the bonds to be "for the construction of waterworks in said city, to be owned and

operated by said city," was sufficiently comprehensive to include such work as re-equipping and making extensions on an existing waterworks system. Id.

### § 6-104. Ballots printed by county election board

Each county election board shall cause ballots to be printed for Primary, Runoff Primary and General Elections at such time as to insure distribution of said ballots to the several precinct election boards within each county prior to election day. Said board shall cause ballots to be printed for the following offices, in the following order: State Senators; State Representatives; district attorneys; and county officers, in the order they appear in the statutes. Laws 1974, c. 153, § 6-104, operative Jan. 1, 1975.

#### Historical and Statutory Notes

<b>Source:</b>	Comp.St.1921, §§ 6127, 6173, 6174, 6175.
Laws 1907-08, pp. 329, 334, 335.	Laws 1931, p. 107, § 14.
Comp.Laws 1909, §§ 3157, 3181, 3182, 3183.	Laws 1931, p. 108, §§ 15, 16.
R.L.1910, §§ 3090, 3106, 3107, 3108.	St.1931, §§ 5699, 5716 to 5718.
	26 O.S.1971, §§ 182, 221, 222, 223.

#### Cross References

Special municipal election ballots, see title 11, § 16-113.

#### Library References

Elections ⇐126(5), 163.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 118, 155.

#### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

#### Notes of Decisions

##### Prior laws 1

##### 1. Prior laws

Provisions of Laws 1907-08, pp. 329, 334, 335 (repealed; now this section)

were mandatory as to election officials, provided timely application be made. *Town of Grove v. Haskell*, 24 Okl. 707, 104 P. 56 (1909).

### § 6-105. Separate ballots for general election

At the General Election, separate ballots shall be printed for the following: (1) Electors for President and Vice President; (2) United States Senators and United States Representatives; (3) state officers; (4) Justices of the Supreme Court and Judges of the Court of Criminal Appeals; (5) Judges of the Court of Appeals, district judges

and associate district judges; (6) state questions; and (7) State Senators, State Representatives, district attorneys and county officers.

Laws 1974, c. 153, § 6-105, operative Jan. 1, 1975.

**Historical and Statutory Notes**

<b>Source:</b>	Laws 1970, c. 247, § 15.
Laws 1943, p. 92, § 1.	26 O.S.1971, § 227.1.
Laws 1968, c. 387, § 3.	

**Library References**

Elections ¶166.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 156 et seq.

**§ 6-106. Manner of printing ballots for general election**

The official ballot for the General Election shall be printed so that the nominees of the various political parties and nonpartisan candidates will appear in columns, a column being given to the nominees of each party, and a column being given to nonpartisan candidates. The candidates of the Democratic party shall be printed in the first column, those of the Republican party in the second column and those of other parties as the State Election Board may direct, giving preference to the party which had the largest number of registered voters in the latest January 15 report. Each political party shall have the right to select an emblem to be used in designating its candidates on the ballot; provided, however, that no party shall be allowed to use the coat of arms or seal of Oklahoma or of the United States, or the respective flags thereof. Until changed by resolution of a political party, in state convention, the emblem of the Democratic party shall be a rooster and that of the Republican party an eagle. Change in a party emblem shall be authorized by the Secretary of the State Election Board only after receipt of written notice of said change by said Secretary from the state central committee of a party. At the top of the column shall appear the name of the party; directly below the name of the party the emblem of said party; and directly below said emblem a circle at least one-half (1/2) inch in diameter. Below said circles shall be a line extending across the entire ballot. The name of the office entitled to the first place in the column, preceded by the word "for", shall next appear in bold type, as "For Governor." Immediately after same shall be the name of that party's nominee for such office, preceded by a square one-fourth (1/4) inch in size. The initial or the first letter of the name of a candidate shall have only the space of an "em" between it and this square, and there shall be no line between the name of an office and that of such candidate; but there

shall be a line following the name of a candidate and the name of the next office in order down the column. The list shall be continued down each column, naming the officers in the order in which they are set out by the Constitution and statutes, until all the nominees are given space. No party's list of candidates shall occupy more than one column, and the columns shall be set off with well defined lines. At the top of the column designated for nonpartisan candidates, except in the case of judicial officers, shall appear the word "Independent"; provided further, that no party emblem and no circle shall appear between the word "Independent" and the line below same. Each type of ballot may be printed on a different color of paper, said color to be designated by the Secretary of the State Election Board.

Laws 1974, c. 153, § 6-106, operative Jan. 1, 1975. Laws 1976, c. 90, § 4, emerg. eff. May 6, 1976.

### Historical and Statutory Notes

The 1976 amendment, in the last sentence, substituted "may" for "shall" preceding "be printed on a different color of paper".

#### Source:

Laws 1907-08, pp. 335, 336, 337.  
Comp.Laws 1909, § 3184, 3185, 3186, 3188.

R.L.1910, §§ 3109, 3110, 3111, 3113.  
Comp.St.1921, §§ 6176, 6177, 6178, 6180.

St.1931, §§ 5719 to 5721, 5723.

Laws 1943, p. 92, § 2.

Laws 1943, p. 98, § 3.

Laws 1968, c. 387, § 1.

26 O.S.1971, §§ 224, 225, 226, 228.

### Library References

Elections ⇨ 166 et seq.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 156 et seq.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### United States Supreme Court

Freedom of political association as right to ballot position to candidates, see *Storer v. Brown*, 94 S.Ct. 1274, 415 U.S. 724, 39 L.Ed.2d 714 (1974) rehearing denied 94 S.Ct. 2635, 417 U.S. 926, 41 L.Ed.2d 230; *Lubin v. Panish*, 94 S.Ct.

1315, 415 U.S. 709, 39 L.Ed.2d 702 (1974); *American Party of Texas v. White*, 94 S.Ct. 1296, 415 U.S. 767, 39 L.Ed.2d 744 (1974) rehearing denied 94 S.Ct. 2414, 416 U.S. 1000, 40 L.Ed.2d 777.

### Notes of Decisions

Ballot title 4  
Construction and application 2  
Form of ballot, in general 3  
Prior laws 1

scribed the county election board's duties in the preparation of ballots, was mandatory, and should have been observed by a special election board, charged with the same duties; but, where such board ignored some of the provisions, and prepared ballots different in form from those prescribed, but

#### 1. Prior laws

Laws 1907-08, pp. 335 to 337 (repealed; now this section), which pre-

distributed the same uniformly throughout the county, and they were received by the electors and cast in good faith, they would, in the absence of fraud, be disregarded and the election annulled. *Town of Grove v. Haskell*, 24 Okl. 707, 104 P. 56 (1909).

Variation in form of ballot prescribed by similar section of St.1903, § 2963 (repealed), was not material, in absence of showing of fraud. *State ex rel. Edwards v. Millar*, 21 Okl. 448, 96 P. 747 (1908).

## 2. Construction and application

Constitutional right of qualified elector to vote and have it counted is

basic and fundamental and should not be denied by technical construction of statutory requirements as to form of ballot to be used. *Sparks v. State Election Bd.*, Okl., 392 P.2d 711 (1964).

## 3. Form of ballot, in general

Irregularities in the form of ballot will not invalidate the election where they have been voted in good faith by the electors and no fraud is shown affecting the result. *Town of Grove v. Haskell*, 24 Okl. 707, 104 P. 56 (1909).

## 4. Ballot title

Errors in ballot title need not necessarily invalidate election where such conclusion is justified by overall unimportance of the error. *City of Tulsa v. Williamson*, Okl., 276 P.2d 209 (1955).

## § 6-107. Order of names for absentee ballots for primary

On the Monday following the close of the filing period prescribed by law, the State Election Board shall determine the order in which the name of each candidate for each of the offices shall appear on the absentee ballots printed by said board for the Primary Election. The determination shall be at a drawing conducted in a public meeting in which the names of all candidates for each office of each political party shall be drawn from a receptacle. Immediately after receipt of certification from the State Election Board of the names of candidates who have filed declarations of candidacy for State Senator, State Representative and district attorney, each county election board shall determine the order in which the name of each candidate for each of the offices shall appear on the absentee ballots printed by said election boards for the Primary Election. The determination shall be made in the same manner as provided heretofore for the State Election Board.

Laws 1974, c. 153, § 6-107, operative Jan. 1, 1975.

### Library References

Elections ⇨126(5), 216.1.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 118, 210.

## § 6-108. Order of names for absentee ballots for runoff primary

The candidate receiving the highest number of votes for each office in the Primary Election whose name is required by law to be



placed on the Runoff Primary Election ballot shall have his name placed first on absentee ballots for said Runoff Primary Election. Laws 1974, c. 153, § 6-108, operative Jan. 1, 1975.

#### Library References

Elections ⇨126(5), 216.1.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 118, 210.

### § 6-109. Order of names for primary and runoff primary

On all primary and runoff primary election ballots, except absentee ballots, the names of the candidates for each office shall be rotated in such a manner that all candidates' names appear in each position on said ballots an equal number of times. Provided, however, the names of candidates for city and town offices shall be placed on the ballot according to lot.

Laws 1974, c. 153, § 6-109, operative Jan. 1, 1975.

#### Historical and Statutory Notes

<b>Source:</b>	St.1931, § 5700.
Laws 1913, c. 157, p. 319, § 11.	26 O.S.1971, § 118.
Comp.St.1921, § 6285.	

#### Library References

Elections ⇨126(5).  
WESTLAW Topic No. 144.  
C.J.S. Elections § 118.

### § 6-110. Separate ballots for primary and runoff primary

The names of candidates of the several political parties shall be printed on separate ballots for the Primary and Runoff Primary Elections, and each type of ballot shall be printed on a different color of paper.

Laws 1974, c. 153, § 6-110, operative Jan. 1, 1975.

### § 6-111. Stub for ballots

All ballots for Primary, Runoff Primary and General Elections shall be printed with a stub so perforated that the ballot may be easily detached therefrom. Upon the stub shall be printed the words, "Primary Election Ballot", "Runoff Primary Election Ballot", or "General Election Ballot", as the case may be; in the event of Primary and Runoff Primary Elections, the name of the political party shall be printed above said words. At the upper right hand corner of the stub shall be printed the number of said stub and ballot. The stub shall bear the same number as the ballot. The

portion of the ballot on which said number appears shall be so perforated that it may be easily detached and shall contain instructions to the voter for proper deposit of said ballot in the ballot box. All ballots shall be printed on paper of such thickness as to make it impossible to look at the back of the ballot and determine for whom it is voted.

Laws 1974, c. 153, § 6-111, operative Jan. 1, 1975. Laws 1979, c. 240, § 17, emerg. eff. June 1, 1979.

**Historical and Statutory Notes**

The 1979 amendment, in the fourth sentence, deleted ", and such numbering shall begin with the number '1' in each precinct and continue in consecutive order until each ballot and stub for that precinct is numbered" following "same number as the ballot".

**Source:**

Laws 1907-08, p. 336.  
 Comp.Laws 1909, § 3187.  
 R.L.1910, § 3112.  
 Comp.St.1921, § 6179.  
 St.1931, § 5722.  
 26 O.S.1971, § 227.

**Library References**

Elections ⇨126(5), 166.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 118, 156 et seq.

**§ 6-112. County and precinct name on ballot**

All ballots for Primary, Runoff Primary and General Elections must bear the name of the county and precinct in which said ballots are to be used, or must be designated in such a manner as the Secretary of the State Election Board may prescribe to achieve the same identification of a ballot for a particular precinct.

Laws 1974, c. 153, § 6-112, operative Jan. 1, 1975.

**Library References**

Elections ⇨126(5), 166.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 118, 156 et seq.

**§ 6-113. Ballots for state questions**

Ballots for state questions shall be printed in such a manner as to include the number of the state question, the ballot title, and the following language, "SHALL THE PROPOSED (AMENDMENT OR ACT) BE APPROVED?" followed by the words "YES" and "NO", one above the other, each preceded by a square one-fourth (1/4) inch in size.

Laws 1974, c. 153, § 6-113, operative Jan. 1, 1975.

**Historical and Statutory Notes**

**Source:** St.1931, § 5901.  
 Laws 1913, c. 70, p. 111, § 1. 26 O.S.1971, § 230.  
 Comp.St.1921, § 6662.

**Library References**

Elections ¶175.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 170.

**§ 6-114. Ballots to be bound or otherwise designated**

All ballots for a precinct shall be bound in a book or books, with the precinct identified on the cover of same, or must be designated in such a manner as the Secretary of the State Election Board may prescribe to achieve the same identification of a book for a particular precinct.

Laws 1974, c. 153, § 6-114, operative Jan. 1, 1975. Laws 1983, c. 171, § 9, emerg. eff. June 6, 1983.

**Historical and Statutory Notes**

The 1983 amendment added ", or must be designated in such a manner as the Secretary of the State Election Board may prescribe to achieve the same identification of a book for a particular precinct".

**Source:**  
 Laws 1907-08, pp. 332, 334, 335.

Comp.Laws 1909, §§ 3161, 3167, 3182.  
 R.L.1910, §§ 3094, 3100, 3107.  
 Laws 1910-11, c. 106, p. 230, § 9.  
 Comp.St.1921, §§ 6161, 6167, 6174.  
 Laws 1931, p. 108, § 15.  
 St.1931, §§ 5704, 5717.  
 26 O.S.1971, §§ 186, 222.

**§ 6-115. Number of ballots**

In every Primary, Runoff Primary and General Election, at least one ballot shall be printed for each voter eligible to cast such ballot in each precinct.

Laws 1974, c. 153, § 6-115, operative Jan. 1, 1975.

**Historical and Statutory Notes**

**Source:** Comp.St.1921, § 6174.  
 Laws 1907-08, p. 335. Laws 1931, p. 108, § 15.  
 Comp.Laws 1909, § 3182. St.1931, § 5717.  
 R.L.1910, § 3107. 26 O.S.1971, § 222.

**§ 6-116. Absentee ballots**

As soon as practicable, the State Election Board and each county election board shall cause to be printed a sufficient number of absentee ballots, prepared as nearly as practical in the same manner as provided for other ballots for the Primary, Runoff Primary and General Elections, in time for said ballots to be issued during the time prescribed by law.

Laws 1974, c. 153, § 6-116; operative Jan. 1, 1975.

**Library References**

Elections ⇨126(5), 216:1.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 118, 210.

**§ 6-117. Sample ballots**

Sample ballots for Primary, Runoff Primary and General Elections shall be exact duplicates of the regular ballots for such elections, except that a stub need not be attached, and the words "Sample Ballot" shall be printed in letters at least one-half (1/2) inch high across the face of the ballot. Sample ballots shall be printed in a sufficient number to be used at each precinct polling place and as otherwise provided by law.

Laws 1974, c. 153, § 6-117, operative Jan. 1, 1975.

**Historical and Statutory Notes**

**Source:**

Laws 1907-08, p. 333.	Comp.St.1921, §§ 6100, 6166.
Laws 1909, p. 271.	Laws 1927, c. 203, § 8.
Comp.Laws 1909, §§ 3166, 3274.	Laws 1931, p. 97, § 7.
R.L.1910, §§ 3031, 3099.	St.1931, §§ 5740, 5771.
	Laws 1955, p. 206, § 8.
	26 O.S.1971, §§ 119, 278.

**Library References**

Elections ⇨126(5), 164.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 118, 149.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

**Prior laws 1**  
**Use as official ballots 2**

**1. Prior laws**

Former § 119 of this title (repealed; now this section) which provided that no sample ballot shall be counted if voted did not reflect conscious legislative intentment that qualified voters would be deprived of their right to vote because of shortage of official ballot forms. Sparks v. State Election Bd., Okl., 392 P.2d 711 (1964).

Purpose of former § 119 of this title (repealed; now this section) which prohibited counting of sample ballots if they

are voted is to prevent stuffing of ballot boxes with unauthorized ballots and is not to disfranchise qualified electors. Id.

**2. Use as official ballots**

In absence of fraud, improper motive, or charge thereof or of intention of evil or result thereof, sample ballots which were identified by precinct election officials who numbered them and directed electors to use ballots as official ballot forms after precinct ran out of printed ballots became official ballots and should have been counted. Sparks v. State Election Bd., Okl., 392 P.2d 711 (1964).

**§ 6-118. Gummed labels**

Gummed labels may be printed and affixed to any ballots in order to assure that proper names of candidates and proper questions appear thereon.

Laws 1974, c. 153, § 6-118, operative Jan. 1, 1975.

**Library References**

Elections ⇨182.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 179.

**§ 6-119. Ballots for educational purposes**

It shall be unlawful to print or distribute ballots, or duplicates thereof, except as authorized by law; provided, however, that for educational purposes, the contents of said ballots may be reproduced in sizes of at least twenty percent (20%) smaller than or twenty percent (20%) larger than the official ballots and provided further that such reproductions must bear the words "FOR EDUCATIONAL PURPOSES ONLY".

Laws 1974, c. 153, § 6-119, operative Jan. 1, 1975.

**Library References**

Elections ⇨164.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 149.

**§ 6-120. Advertising for bids**

The State Election Board and each county election board shall cause advertisement for bids for printing of all ballots for Primary, Runoff Primary and General Elections to be made, and shall provide specifications and copy for said ballots. A contract for printing said ballots shall be awarded to the lowest bidder. The successful bidder shall be required to post a bond of double the amount of the bid, said bond taken in the name of the state or county, as the case may be, and conditioned upon the faithful performance of said contract.

Laws 1974, c. 153, § 6-120, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1907-08, pp. 328, 329, 334.  
Comp.Laws 1909, §§ 3156, 3157, 3181.  
R.L.1910, §§ 3089, 3090, 3106.  
Comp.St.1921, §§ 6157, 6173.  
Laws 1931, p. 107, § 14.

St.1931, §§ 5698, 5699, 5716.  
26 O.S.1971, §§ 181, 182, 221.

Laws 1965, c. 38, making an appropriation to the State Election Board, provides in § 4 as follows:

"Where the state is required to advertise for bids on the printing of ballots or election supplies, the Secretary of the State Election Board is hereby authorized to pay the current rate charged by the newspaper of general circulation which he deems necessary to use in order to meet the date set for election."

**Prior Appropriation Laws:**

- Laws 1951, p. 303.
- Laws 1953, p. 466.
- Laws 1955, p. 539.
- Laws 1957, p. 608, § 4.
- Laws 1959, p. 431, § 4.
- Laws 1961, p. 677.
- Laws 1963, p. 208.

**Cross References**

Public competitive bidding act, see title 61, § 101 et seq.

**ARTICLE VII. CONDUCT OF ELECTIONS**

**§ 7-101. Employees to be allowed time to vote—School board and bond elections exempt—Penalties**

Every corporation, firm, association or individual hereinafter referred to as "employer" who, on election day, has a registered voter employed or in his service, shall grant said employee two (2) hours of time during the period when the election is open in which to vote, and if such employee be in the county or at such distance from the voting place that more than two (2) hours are required in which to attend such elections, then he shall be allowed a sufficient time in which to cast his ballot. No such employee shall be entitled to such time to vote unless he notifies orally or in writing an employer's representative of his intention to be absent, on the day preceding the election day. Upon proof of voting, such employee shall not be subject to any loss of compensation or other penalty for such absence. Such employer shall select the hours which such employees are to be allowed in which to attend such elections, and shall notify each of the employees which hours they are to have in which to vote. This section shall not apply to an employee whose work day begins three (3) hours or more subsequent to the time of opening of the polls, or ends three (3) hours or more prior to the time of closing the polls. The employer may change the work hours to allow such three (3) hours before the beginning of work or after the work hours. This act shall not apply to school board or bond elections. Any employer who fails to comply with this section shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than Fifty Dollars (\$50.00) nor more than One Hundred Dollars (\$100.00).

Laws 1974, c. 153, § 7-101, operative Jan. 1, 1975.

**Historical and Statutory Notes**

**Source:**

- Laws 1907-08, p. 348.
- Comp.Laws 1909, § 3210.

- R.L.1910, § 3137.
- Comp.St.1921, § 6208.

St.1931, § 5857.  
 Laws 1973, c. 110, § 1.  
 26 O.S.1973 Supp. § 438.

### Library References

Elections §=319.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 330.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### Notes of Decisions

#### Construction and application 1

##### 1. Construction and application

Neither this section nor any other provision of Oklahoma law guarantees to registered members of political parties, whose regular hours of employment would ordinarily require them to work during the hours of their biennial precinct caucuses for their political party, any right to have time off from work, either with or without pay, for the purpose of attending such political party caucuses. Op.Atty.Gen. No. 84-54 (July 13, 1984).

The provisions of this section imposed upon the employer the duty of selecting the hours in which the employees complying with the provisions hereof are to be allowed in which to attend elections and notifying each of said employees which hours they are to have in which to vote; however, should an employer fail,

neglect or refuse to assign an employee a specific time in which to vote, said statute does not provide an employee with the right arbitrarily to leave his job at a specific time for the purpose of voting. Op.Atty.Gen. No. 78-305 (Dec. 29, 1978).

An employer who fails, refuses or neglects to assign or select the hours in which an employee who has satisfied the requirements as set out in this section may be absent from his duty for the purpose of voting is in violation of the provisions of this section. Id.

The provisions of this section do not specifically require an employee to request from his employer a change in his scheduled work day for the purpose of exercising his voting privilege. Id.

This section requires employers to pay employees for the statutory time they take from work to vote. Op.Atty.Gen. No. 72-243 (Nov. 3, 1972).

### § 7-102. Supplies and ballots provided by State Election Board

Prior to the day of any Primary, Runoff Primary or General Election, it shall be the duty of the State Election Board to provide for each county election board the supplies and ballots required by law to conduct the election.

Laws 1974, c. 153, § 7-102, operative Jan. 1, 1975.

### Historical and Statutory Notes

#### Source:

Laws 1907-08, pp. 331, 334, 339, 361.  
 Comp.Laws 1909, §§ 3159, 3160, 3169,  
 3190, 3275.  
 R.L.1910, §§ 3028, 3093, 3102.

Comp.St.1921, §§ 6097, 6159, 6160,  
 6169, 6182.  
 Laws 1931, p. 107, §§ 12, 13.  
 St.1931, §§ 5702, 5767.  
 Laws 1949, p. 218, § 1.

Laws 1949, p. 219, § 2.  
Laws 1957, p. 185, § 2.  
26 O.S.1971, §§ 117, 184, 184.1.

#### **Library References**

Elections ⇨126(6), 197.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 114, 118, 192, 196.

### **§ 7-102.1. Precinct registry—Duty to provide**

Prior to the day of the election, it shall be the duty of the secretary of the county election board to prepare for each precinct where an election is to be held in the county, a precinct registry which shall contain information on all registered voters in the precinct as prescribed by the Secretary of the State Election Board. The information which is or would be contained in such a registry shall at all times be public information.

Laws 1990, c. 331, § 12, eff. July 1, 1990.

#### **Historical and Statutory Notes**

##### **Source:**

Laws 1981, c. 45, § 10.  
26 O.S.1981, § 4-120.9.

### **§ 7-103. Supplies and ballots distributed to precinct inspectors**

Prior to the day of any Primary, Runoff Primary or General Election, it shall be the duty of each county election board to provide for each precinct election board within its jurisdiction the supplies and ballots required by law to conduct the election. The inspector for each precinct shall sign a form acknowledging receipt of all supplies and ballots for his precinct.

Laws 1974, c. 153, § 7-103, operative Jan. 1, 1975.

#### **Historical and Statutory Notes**

##### **Source:**

Laws 1907-08, pp. 331, 334, 339.  
Comp.Laws 1909, §§ 3159, 3160, 3168,  
3190.  
R.L.1910, §§ 3093, 3101.  
Comp.St.1921, §§ 6159, 6160, 6168,  
6182.

Laws 1931, p. 107, §§ 12, 13.  
St.1931, § 5702.  
Laws 1949, p. 218, § 1.  
Laws 1949, p. 219, § 2.  
26 O.S.1971, §§ 184, 184.1.

#### **Library References**

Elections ⇨126(6), 197.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 114, 118, 192, 196.



**§ 7-103.1. [Blank]****§ 7-103.2. Current list of registered voters**

County election boards shall maintain a current list of all registered voters in each precinct, which will reflect the address and party affiliation of each voter. Said list shall be public information. Laws 1990, c. 331, § 13, eff. July 1, 1990.

**§ 7-104. Hours for voting—Conformity with federal law**

A. At every Primary, Runoff Primary and General Election, each polling place in the state shall open at 7:00 a.m. and shall remain open continuously until 7:00 p.m., and every registered voter of a precinct who presents himself between said hours shall be entitled to vote, as provided by law, provided further, all qualified voters who are in line waiting to vote at 7:00 p.m. shall be allowed to vote.

B. If any provision of federal law specifies hours for voting in federal elections, the Secretary of the State Election Board shall direct the county election boards to allow voting in all elections held on the same day as such federal elections during the hours specified by federal law.

Laws 1974, c. 153, § 7-104, operative Jan. 1, 1975; Laws 1988, c. 101, § 2, emerg. eff. April 1, 1988.

**Historical and Statutory Notes**

The 1988 amendment designated the former section as subsection A and added subsection B.

**Source:**

Laws 1907-08, p. 343.  
Comp.Laws 1909, § 3196.  
R.L.1910, § 3123.  
Comp.St.1921, § 6194.

St.1931, § 5726.  
Laws 1937, p. 135, § 1.  
Laws 1953, p. 115, § 1.  
Laws 1957, p. 185, § 1.  
Laws 1957, p. 193, § 3.  
26 O.S.1961, § 258.  
Laws 1965, c. 4, § 1.  
Laws 1967, c. 11, § 1.  
26 O.S.1971, §§ 251, 260.

**Cross References**

Flag, display in polling places, see title 25, § 154.

**Library References**

Elections ⇨205, 206, 208.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 198.

**§ 7-105. Delivery of supplies and ballots**

No later than 6:45 a.m. on the day of the election, the precinct election board shall assemble at the polling place. The inspector shall deliver supplies and ballots required by law for the election at said time.

Laws 1974, c. 153, § 7-105, operative Jan. 1, 1975.

**Historical and Statutory Notes**

<b>Source:</b>	Laws 1931, p. 107, § 12.
Laws 1907-08, pp. 331, 339.	St.1931, §§ 5702, 5744.
Comp.Laws 1909, §§ 3159, 3190.	Laws 1949, p. 218, § 1.
Comp.St.1921, §§ 6159, 6182.	Laws 1955, p. 206, § 12.
Laws 1927, c. 203, § 12.	Laws 1959, p. 121, § 2.
	26 O.S.1971, §§ 184, 282.

**Law Review Commentaries**

Dimensions of newly emergent, quasi-fundamental right to political candidacy. Dennis W. Arrow. 6 Okl. City U.L.Rev. 1 (1981).

**§ 7-106. Installation of voting booths**

Prior to 7:00 a.m., the inspector shall cause voting booths to be properly installed and other equipment, supplies and ballots to be arranged for the orderly conduct of the election.

Laws 1974, c. 153, § 7-106, operative Jan. 1, 1975.

**Library References**

Elections ⇐197, 217.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 192, 194, 196, 204.

**§ 7-107. Opening ballot box**

When all else is in readiness for the opening of the polls, the inspector shall open each ballot box and, in view of the judge, clerk and any registered voters at the polling place, shall turn said box top down to show that no ballots are contained therein. The inspector shall then lock said box and shall give the key to one lock to the judge, one to the clerk and retain the third himself.

Laws 1974, c. 153, § 7-107, operative Jan. 1, 1975.

**Historical and Statutory Notes**

<b>Source:</b>	Comp.St.1921, §§ 6099, 6195.
Laws 1907-08, pp. 343, 361.	St.1931, §§ 5727, 5770.
Comp.Laws 1909, §§ 3197, 3277.	Laws 1963, c. 109, § 1.
R.L.1910, §§ 3030, 3124.	26 O.S.1971, §§ 120, 252.

**Library References**

Elections ⇐126(6), 217.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 114, 118, 194, 204.

**§ 7-108. Electioneering prohibited**

No person shall be allowed to electioneer within three hundred (300) feet of any ballot box while an election is in progress, nor shall any person or persons, except election officials and other

persons authorized by law, be allowed within fifty (50) feet of any ballot box while an election is in progress. No printed material other than that provided by the election board shall be publicly placed or exposed within three hundred (300) feet of any ballot box, while an election is in progress.

Laws 1974, c. 153, § 7-108, operative Jan. 1, 1975.

#### Library References

Elections ⇨228.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 215.

### § 7-108.1. Exit poll—Notice

Any person desiring to conduct an exit poll within three hundred (300) feet of any ballot box shall notify the secretary of the county election board of his intentions to do so no later than 5 p.m. on the Wednesday preceding the election.

Laws 1987, c. 126, § 1, eff. Nov. 1, 1987.

#### Historical and Statutory Notes

##### Severability clauses, repeal of conflicting laws and effective/operative dates

Section 6 of Laws 1987, c. 126 provides for an effective date.

##### Title of Act:

An Act relating to elections; specifying requirements for the conduct of exit polls; requiring notification and identifi-

cation; specifying distances within which certain activities are allowed; applying prohibition against electioneering; limiting pollster to written materials and specifying voters allowed to be approached by pollster; requiring that participation be voluntary; providing for codification; and providing an effective date. Laws 1987, c. 126.

#### Library References

Elections ⇨228, 233.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 215.

### § 7-108.2. Exit poll pollster—Identification

Any person conducting an exit poll within three hundred (300) feet of any ballot box, hereinafter referred to as "pollster", shall display identification prescribed by the Secretary of the State Election Board at all times he is conducting the poll. The identification shall be provided to the pollster by the secretary of the county election board.

Laws 1987, c. 126, § 2, eff. Nov. 1, 1987.

### § 7-108.3. Pollster restrictions

The prohibition against electioneering contained in Section 7-108 of Title 26 of the Oklahoma Statutes shall apply to any pollster. No

pollster shall be permitted within fifty (50) feet of any ballot box while an election is in progress.

Laws 1987, c. 126, § 3, eff. Nov. 1, 1987.

**§ 7-108.4. Pollsters—Written polling materials—Restrictions on oral interviews and recordings**

A pollster shall be limited to written polling materials. Any oral interviews of voters or recording by electronic means shall be no closer than one hundred fifty (150) feet to any ballot box.

Laws 1987, c. 126, § 4, eff. Nov. 1, 1987.

**§ 7-108.5. Exit polls—Restriction—Voluntariness**

A pollster may approach only voters who have completed their voting concerning participation in the exit poll. Participation by a voter shall be voluntary.

Laws 1987, c. 126, § 5, eff. Nov. 1, 1987.

**§ 7-109. Disclosure of vote—Prohibition—Admissibility as evidence**

No person shall, within the election enclosure, disclose to any other person how he voted; nor shall any person expose his ballot to any other person. Testimony as to how any individual cast his ballot, whether or not said ballot was lawfully cast, shall not be admissible as evidence in any court of law or public hearing in this state.

Laws 1974, c. 153, § 7-109, operative Jan. 1, 1975. Laws 1979, c. 61, § 1.

**Historical and Statutory Notes**

The 1979 amendment added the second sentence.

**Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 2 of Laws 1979, c. 61, provides as follows:

“All laws or parts of laws in conflict herewith are hereby repealed,” and § 3 provides that this act shall become effective October 1, 1979.

**Law Review Commentaries**

Evidence: Voter testimony—Faulty legislative response to Helm v. State Election Board. 33 Okl.L.Rev. 150 (1980).

**Library References**

Elections ⇨228, 309.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 215, 324, 334.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

## Notes of Decisions

## Construction and application 1

## 1. Construction and application

It is highly improper to inquire of voter-witness during judicial proceeding as to person for whom voter cast his ballot,

even though voter-witness is required to secretly mark ballot and deposit same in locked box which remains unopened but, since court did not consider such evidence and indeed left ballot in locked box without examination, judicial action constituted harmless error. *Groves v. Bumgarner*, Okl., 662 P.2d 307 (1983).

## § 7-110. Intoxicating liquor prohibited

No person shall take intoxicating liquors of any kind or quantity to within one-half (1/2) mile of any polling place on an election day. No person shall attend an election or be within three hundred (300) feet of a polling place in an intoxicated condition on an election day.

Laws 1974, c. 153, § 7-110, operative Jan. 1, 1975.

## Library References

Elections ⇐228, 309, 319.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 215, 324, 330, 334.

## § 7-111. Voter must vote ballots issued him

No person shall vote any ballot except such ballot issued to him by the precinct election board, and each ballot cast must be voted without removing same from the polling place.

Laws 1974, c. 153, § 7-111, operative Jan. 1, 1975.

## Historical and Statutory Notes

## Source:

Laws 1957, p. 185, § 1.  
26 O.S.1971, § 259.

## Library References

Elections ⇐216, 219.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 204 et seq.

## § 7-112. Persons allowed in enclosure

At no time during the hours of voting shall any person, other than the election officials and other persons authorized by law, be allowed inside the election enclosure except for one registered voter in each voting booth and one other registered voter for each voting booth.

Laws 1974, c. 153, § 7-112; operative Jan. 1, 1975.

**Historical and Statutory Notes**

<b>Source:</b>	Comp.St.1921, § 6196.
Laws 1907-08, p. 344.	St.1931, § 5728.
Comp.Laws 1909, § 3198.	26 O.S.1971, § 253.
R.L.1910, § 3125.	

**Cross References**

Handicapped voters, see §§ 7-123.1, 7-123.3 of this title.

**Library References**

Elections ⇄211, 219.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 200, 206.

**§ 7-113. Order of entering enclosure**

Registered voters shall be permitted to enter the election enclosure in the order in which they present themselves at the door or entrance.

Laws 1974, c. 153, § 7-113, operative Jan. 1, 1975.

**§ 7-114. Procedure for determining eligibility**

Each person presenting himself to vote shall announce his name to the judge of the precinct, whereupon the judge shall determine whether said person's name is in the precinct registry.

Laws 1974, c. 153, § 7-114, operative Jan. 1, 1975. Laws 1990, c. 331, § 14, eff. July 1, 1990.

**Historical and Statutory Notes**

The 1990 amendment substituted "name" for "original registration form" following "whether said person's".	Laws 1910, p. 242. R.L.1910, § 3120. Laws 1910-11, c. 106, p. 232, § 13.
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<b>Source:</b>	Comp.St.1921, § 6187.
Laws 1907-08, p. 341.	St.1931, § 5644.
Comp.Laws 1909, § 3195.	26 O.S.1961, § 63.

**Library References**

Elections ⇄212.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 197.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**United States Supreme Court**

Equal protection for voting to persons criminally detained, see *O'Brien v. Skinner*, 94 S.Ct. 740, 414 U.S. 524, 38 L.Ed.2d 702 (1974).

**Notes of Decisions****Construction and application 1**

registration, only that the original form can be found in the precinct registry. *Keltch v. Alfalfa County Election Bd.*, Okl., 737 P.2d 908 (1987).

**1. Construction and application**

This section does not require that the name announced identically match the

**§ 7-115. Absentee ballot affidavit**

If a registered voter has requested an absentee ballot, he shall be required by the judge to sign an affidavit swearing or affirming that he has not cast such absentee ballot and is entitled to vote in person.

Laws 1974, c. 153, § 7-115, operative Jan. 1, 1975.

**Cross References**

Absentee voting, see § 14-101 et seq. of this title.

**Library References**

Elections ⇨216.1.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 210.

**§ 7-116. Use of voter identification card—Affidavit required**

If the precinct registry does not contain a voter's name, or if a precinct official should deny the voter the right to vote, said voter shall be allowed to vote only if he presents his voter identification card showing him to be a registered voter of the precinct to the judge and signs an affidavit swearing or affirming that he is currently registered and eligible to vote in said precinct and that he has not cast an absentee ballot for said election.

Laws 1974, c. 153, § 7-116, operative Jan. 1, 1975. Laws 1990, c. 331, § 15, eff. July 1, 1990.

**Historical and Statutory Notes**

The 1990 amendment substituted "name" for "original registration form" following "does not contain a voter's".

**Library References**

Elections ⇨212.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 197.

**§ 7-117. Signing precinct registry**

Persons who have been determined to be eligible to vote shall sign, in the presence of the clerk, the proper precinct registry. Said

clerk shall thereupon issue proper ballots to said person. The voter's signature on said precinct registry shall be the best evidence of said voter's having voted at said election. Said precinct registry shall be retained in the office of the county election board for a period of twenty-two (22) months following the election and shall be subject to public inspection during regular office hours.

Laws 1974, c. 153, § 7-117, operative Jan. 1, 1975. Laws 1983, c. 171, § 10, emerg. eff. June 6, 1983; Laws 1990, c. 331, § 16, eff. July 1, 1990.

**Historical and Statutory Notes**

The 1983 amendment, in the last sentence, substituted "twenty-two (22)" for "six (6)".

The 1990 amendment, in the first sentence, substituted "precinct registry" for "pollbook, to be prescribed by the Secretary of the State Election Board" and, in the second and third sentences, substituted "precinct registry" for "pollbook".

**Source:**

- Laws 1907-08, p. 366.
- Laws 1909, p. 272.
- Comp.Laws 1909, § 3286.
- R.L.1910, § 3036.
- Comp.St.1921, § 6105.
- St.1931, § 5773.
- Laws 1957, p. 176, § 13.
- 26 O.S.1971, §§ 93.13, 124.

**Library References**

- Elections ⇄213.
- WESTLAW Topic No. 144.
- C.J.S. Elections §§ 196, 201.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

**Construction and application 1**

*Keltch v. Alfalfa County Election Bd.*, Okl., 737 P.2d 908 (1987).

**1. Construction and application**

Fact that there were four more ballots issued than signatures in poll book did not invalidate election where there were not more ballots cast than there were supporting signatures in the poll books.

Pursuant to §§ 2-101 and 2-102 of this title, a voter desiring to vote in a school district election must sign his/her name and address in the pollbook before being issued a ballot. Op.Atty.Gen. No. 80-73 (June 4, 1980).

**§ 7-118. Ballots to be marked in voting booth**

The voter shall mark his ballots within a voting booth. At no time shall more than one person occupy a voting booth, unless specifically authorized by law.

Laws 1974, c. 153, § 7-118, operative Jan. 1, 1975.

**Library References**

- Elections ⇄219.
- WESTLAW Topic No. 144.
- C.J.S. Elections § 206.



**§ 7-119. Manner of voting**

The voter shall vote by marking, in ink, an "X" or cross in the appropriate circle or square for the party of his choice or for the candidates of his choice or for the answer he desires to give on each question.

Laws 1974, c. 153, § 7-119, operative Jan. 1, 1975.

**§ 7-120. Ballots to be folded—Stub to be detached**

Before leaving the voting booth, the voter shall fold his ballot so that his votes cannot be seen, but so that the numbered stub is plainly visible. He shall remove said numbered stub in the presence of the inspector. The inspector shall examine said numbered stub to determine that the ballot was the same ballot said voter was issued. The voter then shall deposit his ballot in the ballot box. The voter thereupon shall immediately leave the polling place. Provided however, the failure to remove the numbered stub shall not invalidate the voter's ballot. The Secretary of the State Election Board shall prescribe procedures to provide for removal of such stubs by the appropriate officials so that the ballots shall be counted in the same manner as other ballots.

Laws 1974, c. 153, § 7-120, operative Jan. 1, 1975. Laws 1978, c. 80, § 1, operative July 1, 1978.

**Historical and Statutory Notes**

The 1978 amendment added the last two sentences.

Section 2 of Laws 1978, c. 80, provides for an operative date.

**Severability clauses, repeal of conflicting laws and effective/operative dates.**

**Library References**

Elections § 219, 221.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 206, 207.

**§ 7-121. Time limit**

No voter who is voting without assistance may remain in the voting booth more than five (5) minutes if other voters are waiting, nor more than ten (10) minutes in any event.

Laws 1974, c. 153, § 7-121, operative Jan. 1, 1975.

**Library References**

Elections § 219.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 206.

**§ 7-122. Spoiled ballots**

Should a voter spoil any ballot in his effort to vote the same, he shall fold it and return it and all other ballots which he was issued to the clerk. The clerk shall destroy said ballots in the presence of the voter and shall issue said voter another complete set of ballots in the same manner that the first one was provided. The voter must execute an affidavit prescribed by the Secretary of the State Election Board in which the voter swears or affirms that he spoiled his original ballots, returned said ballots to the clerk, that the clerk destroyed the ballots in his presence and that he was issued a new set of ballots.

Laws 1974, c. 153, § 7-122, operative Jan. 1, 1975.

**Historical and Statutory Notes**

<p><b>Source:</b> Laws 1907-08, p. 344. Comp.Laws 1909, § 3200. R.L.1910, § 3127.</p>	<p>Comp.St.1921, § 6198. St.1931, § 5730. 26 O.S.1971, § 255.</p>
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**Library References**

Elections ¶219.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 206.

**Notes of Decisions**

**Construction and application** 1 shall be provided with another ballot. *Stover v. Alfalfa County Election Bd., Okl., 530 P.2d 1020 (1975).*

**1. Construction and application**  
Whether voter spoils his ballot accidentally or intentionally, he should fold it and return it to election officers, who will then destroy such ballot and elector Ballot mutilated by qualified elector on erroneous advice of election official when prohibited from casting ballot could not be counted. *Jackson v. Orendorff, 139 Okl. 82, 281 P. 147 (1929).*

**§ 7-123. Repealed by Laws 1988, c. 101, § 5, eff. July 1, 1989**

**Historical and Statutory Notes**

See, now, §§ 7-123.1, 7-123.3 of this title..

**§ 7-123.1. Physical inability to enter election enclosure—Oath—Assistance**

When any voter states that he is able to reach the location of the polling place, but because of a physical disability or infirmity other than visual is unable to enter the election enclosure, the inspector shall administer an oath to said voter in which said voter shall swear to or affirm the fact of such disability or infirmity. Should a

voter so qualify himself, it shall be the duty of two members of the precinct election board, of different political parties, to give said voter such assistance as he needs in voting. Such assistance shall afford as much privacy to the voter in marking his ballots as is practical. The precinct election board members assisting in such voting shall make a written record of the circumstances involved. Laws 1981, c. 116, § 1, operative July 1, 1981.

#### Historical and Statutory Notes

Section 3 of Laws 1981, c. 116 directs codification.

**Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 4 of Laws 1981, c. 116 provides for an operative date.

#### Source:

Laws 1907-08, pp. 344, 368.  
Comp.Laws 1909, §§ 3199, 3289.  
R.L.1910, §§ 3039, 3126.  
Comp.St.1921, §§ 6108, 6197.  
St.1931, §§ 5729, 5775.  
Laws 1957, p. 184, § 1.

26 O.S.1971, §§ 125, 254.  
Laws 1974, c. 153, § 7-123.  
26 O.S.1981, § 7-123.

#### Title of Act:

An Act relating to elections; providing procedures for voting at other than regular voting location under certain circumstances; providing voting assistance to certain individuals; directing codification; providing operative date; and declaring an emergency. Laws 1981, c. 116.

#### Library References

Elections ⇐220.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 208.

### § 7-123.2. Repealed by Laws 1988, c. 101, § 5, eff. July 1, 1989

#### Historical and Statutory Notes

The repealed section, added by Laws 1981, c. 116, § 2, related to assistance of illiterate voters.

See § 7-123.3 of this title.

### § 7-123.3. Blind, disabled or voter unable to read—Oath—Assistance

Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union. The Secretary of the State Election Board shall prescribe procedures to be used that require such voters to swear or affirm that such assistance is required and that require the person providing such assistance to swear or affirm that the voter's ballots are being voted in accordance with the voter's wishes.

Laws 1983, c. 171, § 23, emerg. eff. June 6, 1983.

**Historical and Statutory Notes**

<b>Source:</b>	St.1931, §§ 5729, 5775.
Laws 1907-08, pp. 344, 368.	Laws 1957, p. 184, § 1.
Comp.Laws 1909, §§ 3199, 3289.	26 O.S.1971, §§ 125, 254.
R.L.1910, §§ 3039, 3126.	Laws 1974, c. 153, §§ 7-123, 7-124.
Comp.St.1921, §§ 6108, 6197.	26 O.S.1981, §§ 7-123, 7-124.

**Library References**

Elections ⇄220.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 208.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

**Disabled voters 1**

**1. Disabled voters**

Pursuant to former § 7-124 of this title (repealed; see, now, this section), a

state classified employee may lawfully assist a visually disabled voter in marking his ballot. Op.Atty.Gen. No. 81-277 (Oct. 21, 1981).

**§ 7-124. Repealed by Laws 1988, c. 101, § 5, eff. July 1, 1989**

**Historical and Statutory Notes**

The repealed section, relating to the procedure to be followed with voter having a visual disability, was derived from Laws 1974, c. 153, § 7-124.

See § 7-123.3 of this title.

**§ 7-125. Procedure for counting**

When counters are authorized for an election, said counters shall be permitted to begin the count at 10:00 a.m., or at a time designated by the county election board, and after said counters have cast their own ballots. The inspector shall cause the ballot box to be shaken so as to mix the voted ballots, then shall join the judge and clerk in opening said ballot box. The counters shall remove the ballots and shall proceed to count them in a secure, private, adjacent area. The clerk shall record the number of voters who have received ballots at the beginning of the official count. As often as necessary throughout the day, the aforementioned procedure shall be repeated, provided no fewer than twelve voters have received ballots since the last time the ballot box was opened. Provided, however, that in the event no counters are authorized, the precinct election board shall conduct the count. In such case, the count may not begin until after the polls have closed.

Laws 1974, c. 153, § 7-125, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1907-08, pp. 325, 326.  
 Comp.Laws 1909, §§ 3131, 3135.  
 R.L.1910, §§ 3079, 3083.  
 Comp.St.1921, §§ 6146, 6150.

St.1931, § 5799.  
 Laws 1957, p. 185, § 3.  
 Laws 1959, p. 125, § 1.  
 Laws 1969, p. 216, § 2.  
 26 O.S.1971, §§ 361.1, 363.

**Library References**

Elections ¶241 et seq.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 224.

**§ 7-126. Method of counting**

The counting of ballots shall be conducted in accordance with the procedure prescribed by the Secretary of the State Election Board so as to insure accuracy and promptness in determining the result; said procedure shall be uniform in all counties using paper ballots. Provided, however, that the following provisions shall be incorporated into said prescribed procedure:

1. In elections for which counters have been authorized, two counters, of different political parties if possible, shall call from the ballots the names of the candidates voted for, while two other counters, also of different political parties if possible, shall record the votes upon the official tally sheets. Only pencils may be used in recording the vote.

2. If only two counters are authorized for an election, they shall be of different political parties, if possible. Both counters shall examine the ballots at the same time, while calling out the vote and recording said vote upon the tally sheets in the manner prescribed by the Secretary of the State Election Board.

It shall be unlawful for any person to divulge the progress of the count until after all ballots have been counted and the results of said count have been certified.

Laws 1974, c. 153, § 7-126, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1907-08, p. 325.  
 Comp.Laws 1909, §§ 3132, 3134.  
 R.L.1910, §§ 3080, 3082.

Comp.St.1921, §§ 6147, 6149.  
 St.1931, §§ 5800, 5802.  
 Laws 1963, c. 109, § 2.  
 26 O.S.1971, § 364, 366.

**Library References**

Elections ¶241.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 224.

**§ 7-127. Rules governing counting**

The following rules shall govern the counting and recounting of votes:

1. If the name of any person is written on a ballot, said ballot shall not be counted for any office or question thereon;

2. An "X", cross, or two lines that meet, including the so-called "check mark", the intersection or point of meeting of which shall be within or on the line of the proper circle or square, shall be valid. Such marking shall be hereinafter referred to as "valid markings". Such valid markings located otherwise on the ballot shall not be counted. Such valid markings shall include a circle or square which has been blackened in ink, even if the entire circle or square is not filled and even if the blackened portion may extend beyond the boundaries of the circle or square;

3. Marks used to designate the intention of the voter, other than those herein defined as valid markings, shall not be counted;

4. Valid markings shall be counted even though one or both lines thereof shall be duplicated, provided that the lines intersect or meet within or on the line of the proper circle or square;

5. Failure to properly mark a ballot as to one or more candidates or questions shall not of itself invalidate the entire ballot if the same has been properly marked as to other candidates or questions, unless such improper marking shall constitute a distinguishing mark;

6. A valid marking marked in the circle under the emblem of a political party shall be counted as a vote for each of said political party's candidates on that ballot, except that a valid marking marked in the square beside a candidate's name shall take precedence, for that office, over a valid marking in the circle under the emblem of a political party. Provided, further, that if valid markings are marked in the circles under the emblems of more than one political party on a ballot, said ballot shall not be counted for any offices thereon; and

7. Any ballot or part of a ballot on which it is impossible to determine the voter's choice of candidate shall be void as to the candidate or candidates thereby affected.

Laws 1974, c. 153, § 7-127, operative Jan. 1, 1975. Laws 1978, c. 57, § 2, emerg. eff. March 17, 1978; Laws 1983, c. 171, § 11, emerg. eff. June 6, 1983.

**Historical and Statutory Notes**

The 1978 amendment, in paragraph 3 (now 2), added the last sentence.

The 1983 amendment deleted former paragraph 1 which prior thereto read:

"Any ballot bearing any mark as a distinguishing mark shall not be counted for any office or question thereon."

; and redesignated former paragraphs 2 to 8 as paragraphs 1 to 7.

**Source:**

Laws 1907-08, p. 327.  
Comp.Laws 1909, § 3138.  
R.L.1910, § 3086.  
Comp.St.1921, § 6153.  
St.1931, § 5806.  
26 O.S.1971, § 371.

**Law Review Commentaries**

Evidence: Voter testimony—Faulty legislative response to Helm v. State Election Board. 33 Okl.L.Rev. 150 (1980).

**Library References**

Elections ¶239, 241, 244.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 224, 226, 227.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions****Construction and application 2****Distinguishing marks 4****Failure to mark ballot 5****Intent of voter 6****Prior laws 3****Validity 1****Void ballots 7****1. Validity**

Judgment holding Oklahoma election statutes [§§ 1-108, 1-110, 4-112, 7-129 of this title and this section] unconstitutional was not subject to setting aside, although defendants contended their mistaken belief that they had 20 days to respond to motion for summary judgment was a valid basis for relief from judgment, where plaintiffs were prejudiced by defendants' failure to respond to motion, and failure to respond to motion was at best inexcusably negligent. Libertarian Party of Oklahoma v. Oklahoma State Election Bd., D.C.Okl., 593 F.Supp. 118 (1984).

**2. Construction and application**

This section providing that any ballot or part of a ballot on which it is impossible to determine the voter's choice of candidate shall be void as to the candi-

date or candidates thereby affected is clearly directed toward the paper ballot and does not apply to voting machines. Helm v. State Election Bd., Okl., 589 P.2d 224 (1979).

Fact that voting machine was improperly programmed in that the names of candidates for one office were transposed did not require rejection of the canvass of returns as shown by the improperly programmed machine or the invalidation of the 185 votes which were cast on that machine. Id.

**3. Prior laws**

Name of "write-in" candidate for sheriff in blank square of ballot was a "distinguishing mark," within purview of former § 371 of this title (repealed; now this section) which provided that ballots bearing any mark as a distinguishing mark shall not be counted, and such ballot should not have been counted in election for county commissioners. Stover v. Alfalfa County Election Bd., Okl., 530 P.2d 1020 (1975).

Intentional placing on ballot of a mark made by voter enabling such to be readily identifiable will be considered as "distinguishing mark," within purview of former § 371 of this title (repealed; now

this section) which provided that ballots bearing any mark as a distinguishing mark shall not be counted. *Id.*

Marks placed by employees of county election board on certificate-tally sheets, used in voting machines, to make certain corrections on sheets did not constitute a "distinguishing mark" on a ballot with intent of such terms as used in former § 371 of this title (repealed; now this section) which provided that no ballot containing distinguishing marks will be counted. *Porter v. Oklahoma City, Okl., 446 P.2d 384 (1968).*

A ballot marked by a voter, by writing on such ballot names of persons not printed thereon as candidates, with the intention to distinguish it, was "distinguished," within R.L.1910, § 3086. *Moss v. Hunt, 47 Okl. 1, 145 P. 760 (1915).*

Under the election laws of this territory no ballot could be counted which bore any distinguishing mark. Such distinguishing mark had to be one that showed an intention on the part of the voter to distinguish his particular ballot from the others of its class, and not one that was common to, and not distinguishable from, others of a designated class. *McClelland v. Erwin, 16 Okl. 612, 86 P. 283 (1906).*

**4. Distinguishing marks**

When facts and circumstances show that any voter marks or writes on his ballot with intention of distinguishing it, it should not be counted. *Moss v. Hunt, 47 Okl. 1, 145 P. 760 (1915).*

A "distinguished ballot" is one which bears an identification mark made by the voter, or with his connivance, knowledge, or consent, to distinguish it from other ballots cast. *Town of Eufaula v. Gibson, 22 Okl. 507, 98 P. 565 (1909).*

**5. Failure to mark ballot**

Ballot was properly disallowed as improperly marked because of voter's failure to make any kind of a mark within proper square. *Moore v. Hayes, Okl., 744 P.2d 934 (1987).*

**6. Intent of voter**

Ballot for city councilman should not have been discounted, although both electronic counting device and Secretary of Election Board believed that it was "over-voted" reflecting intention to vote for both candidates; primary concern of recount was to truthfully and faithfully as possible find will of voter, and intent of voter to vote for one candidate was discernable from ballot. *Moore v. Hayes, Okl., 744 P.2d 934 (1987).*

Where paper ballots are concerned, the testimony of voters as to how they voted is not competent; if it is impossible to determine the voters intention from the face of the ballot, it is void; if there exists a paper ballot upon which a voter has expressed a clear preference the paper ballot is the best, primary, and controlling evidence, even over a canvass thereof, the voter would still not be a competent witness to testify. *Helm v. State Election Bd., Okl., 589 P.2d 224 (1979).*

Where votes have been cast on an improperly programmed voting machine so that, at least during a portion of the election, persons pulling the lever for one candidate in fact had their vote counted for the other candidate, parol evidence in the form of testimony as to how voters intended to vote could be given by the voters themselves. *Id.*

The intent of a voter should be ascertained from the language of his ballot, interpreted in the light of the circumstances of a public nature surrounding the election, and where such intent is thus made clearly apparent, and the ballot used substantially complies with the form prescribed, it should be made effectual. *North v. McMahan, 26 Okl. 502, 110 P. 1115 (1910).*

**7. Void ballots**

In view of examination revealing that neither contested ballot bore improper marks and revealing that both clearly designated voter's intention to favor contestant, the two ballots were not void and should have been included in announced results of primary election for office of county commissioner. *Boevers v. Election Bd. of Canadian County, Okl., 640 P.2d 1333 (1981).*



**§ 7-128. Reason for failure to count to be noted**

If a ballot or part of a ballot is not counted for any reason, a counter shall write said reason on the back of said ballot, and sign said statement.

Laws 1974, c. 153, § 7-128, operative Jan. 1, 1975.

**Library References**

Elections ⇨241.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 224.

**§ 7-129. Mutilated ballots**

A ballot bearing the name of a person or which is marked in the circles under the emblems for more than one political party, as hereinbefore described, and a ballot which was placed in the ballot box without being voted, shall be considered as a mutilated ballot and shall be retained separately from the ballots which have been counted in whole or in part.

Laws 1974, c. 153, § 7-129, operative Jan. 1, 1975. Laws 1983, c. 171, § 12, emerg. eff. June 6, 1983.

**Historical and Statutory Notes**

The 1983 amendment deleted "distinguishing marks or" following "A ballot bearing".

**Library References**

Elections ⇨239, 244.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 226, 227.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions****Validity 1****1. Validity**

Judgment holding Oklahoma election statutes [§§ 1-108, 1-110, 4-112, 7-127 of this title and this section] unconstitutional was not subject to setting aside, although defendants contended their

mistaken belief that they had 20 days to respond to motion for summary judgment was a valid basis for relief from judgment, where plaintiffs were prejudiced by defendants' failure to respond to motion, and failure to respond to motion was at best inexcusably negligent. *Libertarian Party of Oklahoma v. Oklahoma State Election Bd.*, D.C.Okl., 593 F.Supp. 118 (1984).

**§ 7-129.1. Ballots mutilated by electronic counting equipment to be counted**

In the event ballots are counted electronically by a voting device, writing or other marks on the ballot shall not invalidate a ballot or any portion of the ballot, provided the ballot is properly marked otherwise so that it may be counted by the voting device according to law.

Laws 1984, c. 38, § 1, operative July 1, 1984.

**Historical and Statutory Notes**

**Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 3 of Laws 1984, c. 38 provides for an operative date.

electronic counting equipment; providing for codification; providing an operative date; and declaring an emergency. Laws 1984, c. 38.

**Title of Act:**

An Act relating to elections; providing procedures to count ballots mutilated by

**Library References**

Elections ⇨239, 244.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 226, 227.

**§ 7-129.2. Substitute ballot**

In the event a ballot counted electronically by a voting device is mutilated by the voting device and thus not counted during the counting process, then two members of the precinct election board of different political party affiliations shall be authorized to mark a substitute ballot in identical fashion, insofar as is possible. In the event a ballot is mutilated to such an extent that the two members cannot agree upon how it was marked, it shall be invalidated. Once so marked, the substitute ballot shall be entered for counting into the voting device. A written record of such action shall be made by the two precinct election board members.

Laws 1984, c. 38, § 2, operative July 1, 1984.

**Library References**

Elections ⇨235 et seq.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 221 et seq.

**§ 7-130. Watchers—Appointment—Duties**

Any candidate or any recognized political party shall be entitled to have a watcher present at any place where an official count is being conducted. Said watcher must be commissioned in writing, by the candidate, or by the chairman of the recognized political

party of the county in which the watcher is being authorized. Said commission must be filed with the secretary of the appropriate county election board no later than 5:00 p.m. on Wednesday preceding the election. Watchers must subscribe to an oath to observe all laws and rules prescribed for watchers as hereinafter provided. Said oath must be administered by the inspector of the precinct in which the watcher is authorized. In counties using paper ballots, said watcher shall be limited to observing the official count and shall have no further authority than to make written objections to said count. Said watcher shall be required to remain at the polling place for the same hours as the counters and shall be confined to the area wherein the official count is being conducted. In counties using voting machines, watchers shall be entitled to observe the vote-recording device on the machine both before the polls are opened and after the polls are closed; provided, further, that said watchers need not be present at the polling place at other times. In counties using voting machines, watchers may be commissioned to accompany personnel assigned to repair or maintain machines during the period of the election. In such case, the watchers shall be limited to observing the repair or maintenance work being performed and making a written record of such work.

Laws 1974, c. 153, § 7-130, operative Jan. 1, 1975. Laws 1983, c. 171, § 13, emerg. eff. June 6, 1983; Laws 1990, c. 306, § 5, emerg. eff. May 30, 1990.

#### Historical and Statutory Notes

The 1983 amendment, in the third sentence, substituted "Wednesday" for "Monday" and added the last two sentences.

The 1990 amendment, in the first sentence, deleted "in a Primary or Runoff Primary Election," following "Any candidate" and "in a General Election" following "any recognized political party".

Comp.Laws 1909, § 3136.

R.L.1910, § 3084.

Laws 1910-11, c. 106, p. 227, § 7.

Comp.St.1921, § 6151.

Laws 1927, c. 203, § 17.

St.1931, §§ 5749, 5804.

Laws 1953, p. 113, § 2.

Laws 1955, p. 207, § 17.

26 O.S.1971, §§ 57, 287, 369.

#### Source:

Laws 1907-08, p. 326.

#### Library References

Elections ⇐242.

WESTLAW Topic No. 144.

C.J.S. Elections § 225.

### § 7-131. Repealed by Laws 1979, c. 240, § 30, emerg. eff. June 1, 1979

#### Historical and Statutory Notes

The repealed section, relating to challengers, was derived from:

Laws 1907-08, pp. 341, 345.

Comp.Laws 1909, §§ 3195, 3201.

Laws 1910, p. 242.  
 R.L.1910, §§ 3120, 3128.  
 Laws 1910-11, c. 106, p. 232, § 13.  
 Laws 1913, c. 157, p. 318, § 10.  
 Comp.St.1921, §§ 6187, 6199, 6284.

St.1931, §§ 5645, 5731.  
 26 O.S.1961, § 63.  
 26 O.S.1971, §§ 121, 256.  
 Laws 1974, c. 153, § 7-131.

**§ 7-132. Certificate of vote**

At the conclusion of the official count, the counters shall execute certificates of vote wherein said counters attest to the correctness of the totals. The inspector shall cause one copy of each certificate to be posted on the door or entrance of the polling place and shall cause one copy of each certificate to be transmitted forthwith to the Secretary of the State Election Board.

Laws 1974, c. 153, § 7-132, operative Jan. 1, 1975.

**Historical and Statutory Notes**

**Source:**

Laws 1907-08, pp. 326, 337.  
 Comp.Laws 1909, §§ 3136, 3189.  
 R.L.1910, §§ 3084, 3114.  
 Laws 1910-11, c. 106, p. 227, § 7.  
 Laws 1913, c. 157, p. 324, § 25.

Comp.St.1921, §§ 6151, 6181, 6299.  
 Laws 1927, c. 100, p. 161, § 1.  
 Laws 1931, p. 104, § 10.  
 St.1931, §§ 5724, 5804, 5809.  
 Laws 1935, p. 121, § 1.  
 26 O.S.1971, §§ 231, 368, 369.

**Library References**

Elections ⇐265 et seq.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §. 240.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

**Construction and application 1**  
**Presumptions 3**  
**Prior laws 2**

**1. Construction and application**

Bond election would not be declared invalid because copy of tally sheet from each voting machine bearing certificate of precinct officials and posted outside voting place where the machine was used had not been corrected in the manner that certificate-tally sheets which had been used in machines and which had been returned to county election board were corrected. *Porter v. Oklahoma City, Okl., 446 P.2d 384 (1968).*

Voting devices which cannot generate results at the precinct level are not lawful in Oklahoma in light of the provisions

of this section, and the State Election Board was well within its authority under § 9-102 of this title, to adopt Point No. 15 of the specifications for voting machines adopted October 7, 1977, to the effect that a voting system must be capable of providing multiple copies of the complete results of the election for a precinct prior to the transfer of any materials or equipment from or to the polling place location. *Op.Atty. Gen. No. 77-266, (Dec. 12, 1977).*

**2. Prior laws**

Where the blank certificate printed and bound in each precinct book of ballots declaring the result of the election in any precinct provided for by Laws 1909, c. 31, art. 8, § 2 [Comp.Laws 1909, § 3138 (repealed; now this section)] was not filled out as required therein,

## Note 2

but another certificate, denominated a duplicate, executed with the same formality as was required to be exercised in the preparation of the certificate mentioned, was returned and received by the canvassing board and canvassed as an original, and no fraud is alleged, the same will in an action of mandamus be considered to be the official returns and sufficient to support the canvass and the certificate issued therein. *State ex rel. Montgomery v. State Election Board*, 29 Okl. 31, 116 P. 168 (1911).

## 3. Presumptions

Since an election is so carefully attended by the law, the result, as tabulated and published by election officials, is deemed worthy of verity, and is final, except where a verified statement sets forth facts which, if true, will change the result or facts showing fraud which would bring about the same result. *Otjen v. Kerr*, 191 Okl. 628, 136 P.2d 411 (1943).

Election returns, properly certified by precinct election officers, are prima facie evidence of precinct vote, and prevail, in absence of competent evidence to contrary. *Murray v. McGehee*, 121 Okl. 248, 249 P. 700 (1926).

## 4. Declaration of votes

One became nominee of party for constable in primary election by declaration of county election board on tabulation of precinct returns showing him to have received the highest number of votes. *State v. Lasher*, 116 Okl. 273, 244 P. 809 (1926).

Declaration of county election board on tabulation of precinct returns showing person to have received highest number of votes that such person was nominee of party for constable in primary election entitled such nominee to have his name printed on ballot for general election. *Id.*

### § 7-133. Ballots and materials placed in ballot box—Return to county election board

All ballots and all materials used in conducting the official count shall be placed in the ballot box. Said ballot box shall be locked, and the inspector shall return it, along with all other election materials and a copy of each certificate of vote, forthwith to the county election board.

Laws 1974, c. 153, § 7-133, operative Jan. 1, 1975.

#### Historical and Statutory Notes

## Source:

Laws 1907-08, p. 328.

Comp.Laws 1909, § 3140.

R.L.1910, § 3088.

Laws 1910-11, c. 106, p. 229, § 8.

Laws 1913, c. 157, p. 318, § 8.

Comp.St.1921, §§ 6155, 6282.

Laws 1931, p. 91, § 1.

Laws 1931, p. 94, § 2.

St.1931, § 5808.

Laws 1973, c. 3, § 1.

26 O.S.1973 Supp., § 373.

#### Library References

Elections ⇨255.

WESTLAW Topic No. 144.

C.J.S. Elections § 234.

### § 7-134. Retention of ballot box

The county election board shall not disturb anything in the ballot box, and the box shall be retained by the secretary of the county election board until opened by court order or until it is necessary to

open same for use at the next election, at which time the ballots shall be destroyed; provided, however, that in no case shall the ballots be destroyed until thirty (30) days after the election at which they were cast. Provided, however, if the certificate of vote or pollbook has been locked inside a ballot box inadvertently, said box may be opened in public view in the presence of all members of the county election board by the inspector, who shall remove only said certificate or pollbook and relock the ballot box.

Laws 1974, c. 153, § 7-134, operative Jan. 1, 1975.

**Historical and Statutory Notes**

<b>Source:</b>	Comp.St.1921, § 6155.
Laws 1907-08, p. 328.	Laws 1931, p. 91, § 1.
Comp.Laws 1909, § 3140.	St.1931, § 5808.
R.L.1910, § 3088.	Laws 1973, c. 3, § 1.
Laws 1910-11, c. 106, p. 229, § 8.	26 O.S.1973 Supp., § 373.

**Library References**

Elections ⇐255.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 234.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

**Custody of ballot boxes 2**  
**Discovery 3**  
**Prior laws 1**

**1. Prior laws**

St.1921, § 6155 (repealed; now this section) which prescribed method of preserving ballots held directory only, and substantial compliance therewith authorizes recount in election contest. *Looney v. Election Board of Seminole County*, 146 Okl. 207, 293 P. 1056 (1931).

By reason of former Laws 1911, c. 106, § 8 (repealed; now this section) the county election board was under no duty, and was without authority, to open envelope returned by the election officers containing the voted ballots and tally sheets labeled as by the statute required, in order to search for the certificate of returns which should have been enclosed in a separate envelope, so that the returns may be canvassed. *Moren v. Nichols*, 35 Okl. 283, 129 P. 741 (1913).

**2. Custody of ballot boxes**

Secretary of county election board is custodian of ballot boxes after returns have been canvassed, and he must keep them securely locked as provided by law. *Board of Com'rs of Hughes County v. Sneed*, 171 Okl. 161, 42 P.2d 285 (1935); *Board of Com'rs of Hughes County v. Young*, 171 Okl. 161, 42 P.2d 281 (1935).

Secretary of county election board was not authorized to employ others, at expense of county, to guard ballot boxes. *Id.*

St.1921, § 6130 (repealed; see, now, § 8-117 of this title) regarding compensation of members of county election board in recounting ballots and authorizing board to employ clerical assistance does not alter duty of secretary of board as custodian of ballot boxes after returns have been canvassed. *Id.*

**3. Discovery**

Oklahoma Election Code [26 Okl.Stat. Ann. § 1-101 et seq.] supplies exclusive

## Note 3

procedure for examination of election materials, and Open Records Act [51 Okl.Stat. Ann. § 24A.1 et seq.] does not provide alternative form of discovery procedure whereby any citizen may obtain access to election materials; it is

only business records of Election Board, exclusive of ballots and similar election materials, which public may be entitled to obtain under Open Records Act. *Milton v. Hayes*, Okl., 770 P.2d 14 (1989).

### § 7-135. Retention of keys

Each member of the county election board shall retain one key to each ballot box until the time for contests of elections has expired, or until the boxes are opened pursuant to such a contest.

Laws 1974, c. 153, § 7-135, operative Jan. 1, 1975.

#### Library References

Elections ¶255.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 234.

### § 7-136. Canvassing returns

The county election board shall convene at the county courthouse, or at such other place as the county election board may designate on the day of each election, for the purpose of receiving the official precinct returns and shall remain in session until said precinct returns are all delivered. The board shall cause to be listed the results of such election, as the official precinct returns are received, upon forms prescribed by the Secretary of the State Election Board. The county election board shall use such precinct returns to certify the results of such election for county officers and questions and shall transmit immediately to the State Election Board the completed county returns for all state officers and questions. Such county returns shall be prima facie evidence of the correctness of the result in the several counties. The State Election Board shall use such county returns to certify the results of such election for all state officers and questions.

Laws 1974, c. 153, § 7-136, operative Jan. 1, 1975.

#### Library References

Elections ¶257 et seq.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 235.

#### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

#### Notes of Decisions

Canvassing returns, in general 2  
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1. Prior laws

Election Law 1899 (Laws 1899, c. 13, p. 154), §§ 47, 48 (repealed), prescribing the duties of the election judges, did not require them to attach to the election returns a certificate showing the number of votes cast for the respective candidates; and the county commissioners, when acting as a county canvassing board, were bound, in the absence of fraud, by the tally sheets returned to them from the respective voting precincts; and hence mandamus did not lie to compel the county commissioners to canvass the returns and issue a certificate of election to the one receiving the greater number of votes as indicated by the certificates. *Epley v. Moore*, 11 Okl. 335, 66 P. 337 (1901).

2. Canvassing returns, in general

Under Laws 1911, c. 106, § 8 (repealed; see, now, § 7-134 of this title), county canvassers had no authority to open the envelope returned from a precinct containing the "voted ballots" and "tally sheets," in order to search for the certificate of returns which should have been enclosed in a separate envelope labeled, "Returns," that the vote of the precinct might be canvassed. *Moren v. Nichols*, 35 Okl. 283, 129 P. 741 (1913).

Where precinct election returns were not authenticated by signatures of two of the counters as required by Laws 1911, c. 106, § 7 (repealed), it was the duty of the board of county canvassers to permit their correction or treat the returns as corrected and canvass same. *Id.*

3. Irregular precinct certificates

Where the blank certificate printed and bound in precinct book of ballots declaring the result of election in any precinct provided for by Laws 1907-08, c. 31, art. 2, § 8 [Comp.Laws 1909, § 3138 (repealed; see, now, this section)] was not filled out as required, but another certificate denominated a duplicate executed with the same formality, and was returned and received by the canvassing board and canvassed as an original, and no fraud is alleged, the same will in mandamus be considered

an official return sufficient to support the canvass and the certificate issued thereon. *State v. State Election Board*, 29 Okl. 31, 116 P. 168 (1911).

Canvassing board may canvass precinct returns even though all precinct certificates are not formally filled out. *Id.*

4. Irregular returns

Fact that voting machine was improperly programmed in that the names of candidates for one office were transposed did not require rejection of the canvass of returns as shown by the improperly programmed machine or the invalidation of the 185 votes which were cast on that machine. *Helm v. State Election Bd.*, Okl., 589 P.2d 224 (1979).

Precinct election officials' failure to make returns to county election board within time prescribed by Laws 1929, Ex.Sess., c. 241 (repealed; see, now, this section) not to defeat election in that precinct. *Bozarth v. Election Board of Okmulgee County*, 144 Okl. 206, 291 P. 804 (1930).

That only three official counters were appointed and signed returns from certain precinct held not to defeat primary election in that precinct. *Id.*

Count of ballots by counters of precinct out of view of election officers contrary to R.L.1910, § 3082 (repealed; see, now, § 7-126 of this title) and a verified return not as required by former § 369 of this title was not prima facie evidence of correctness of precinct vote. *Cobb v. Berry*, 67 Okl. 29, 168 P. 46 (1917).

In absence of fraud, value of precinct returns as prima facie evidence is not destroyed by showing that total vote returned is two more than there were ballots used by participating electors, so as to put party claiming benefit from votes to other proof thereof. *Id.*

Where the certificate of election returns had not been executed, as prescribed by R.L. 1910, § 3084 (repealed; see, now, § 7-132 of this title), and there was a reasonable probability that the ballots have been tampered with, parol evidence of the result of the election as declared by the judge of the precinct is admissible. *Moss v. Hunt*, 40 Okl. 20, 135 P. 282 (1913).



## Note 5

**5. Correction of errors**

Precinct election returns not properly authenticated by counters may be corrected under supervision of county canvassing board. *Moren v. Nichols*, 35 Okl. 283, 129 P. 741 (1913).

**6. Evidence**

Where votes have been cast on an improperly programmed voting machine so that, at least during a portion of the election, persons pulling the lever for one candidate in fact had their vote counted for the other candidate, parol evidence in the form of testimony as to how voters intended to vote could be given by the voters themselves. *Helm v. State Election Bd.*, Okl., 589 P.2d 224 (1979).

Where paper ballots are concerned, the testimony of voters as to how they voted is not competent; if it is impossible to determine the voters intention from the face of the ballot, it is void; if there exists a paper ballot upon which a voter has expressed a clear preference, the paper ballot is the best, primary, and controlling evidence, even over a can-

vass thereof, the voter would still not be a competent witness to testify. *Id.*

The duplicate certificate signed by the counters of a precinct, provided for by Comp.Laws 1909, § 3136 (repealed; see, now, § 7-132 of this title), the other two duplicates having been lost, held competent evidence of result of election in such precinct. *Hausam v. Parker*, 31 Okl. 399, 121 P. 1063 (1912).

Tally marks on tally sheets control county commissioners in election of county officers, rather than recitals of certificate of judges of election, since same is not required to recite number of votes cast for each candidate. *Epley v. Moore*, 11 Okl. 335, 66 P. 337 (1901).

**7. Mandamus to board**

Canvassing board may be compelled by mandamus to re-convene and canvass complete returns of election. Board in such case held without authority to determine, upon affidavits, question of legality of election in any precinct. *Election Board v. State*, 43 Okl. 337, 142 P. 984 (1914).

**§ 7-137. Methods of sealing**

The State Election Board shall prescribe methods of sealing all ballots, all certificates of vote and all materials used in recording the count of the ballots in such a manner that any tampering with, or altering of same after said sealing has been accomplished can be detected.

Laws 1974, c. 153, § 7-137, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1907-08, pp. 326, 332.  
Comp.Laws 1909, §§ 3137, 3163.  
R.L.1910, §§ 3085, 3096.

Comp.St.1921, §§ 6152, 6163.  
St.1931, § 5805.  
26 O.S.1971, § 370.

**§ 7-138. Credit for voting**

Following the election, the secretary of the county election board shall cause each voter who cast a ballot to be credited with voting in said election according to procedures specified by the Secretary of the State Election Board.

Laws 1990, c. 331, § 17, eff. July 1, 1990.

**Historical and Statutory Notes**

**Source:** 26 O.S.Supp.1975, § 327.31.  
Laws 1974, c. 201, § 31. 26 O.S.1981, § 14-131.

**ARTICLE VIII. CERTIFICATIONS AND CONTESTS**

**§ 8-101. Certifying nominees**

The county election board shall certify a list of nominees of each political party for county offices following the Primary and Runoff Primary Elections. The State Election Board shall certify a list of nominees of each political party for the offices for which the Board accepts filings of declarations of candidacy following the Primary and Runoff Primary Elections.

Laws 1974, c. 153, § 8-101, operative Jan. 1, 1975.

**Historical and Statutory Notes**

**Source:** Laws 1967, c. 32, § 3.  
Laws 1943, pp. 97, 98, §§ 1, 2. 26 O.S.1971, §§ 168.1, 168.2.

**Library References**

Elections ⇐156.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 135.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

**Prior laws 1**

**1. Prior laws**

Provision in former § 391 of this title (repealed) that certificate of nomination as candidate for public office is not a property right and that civil actions may

not be maintained to contest primary elections are rightful subjects of legislation and hence not contrary to constitutional provision that courts shall be open to every person and speedy and certain remedy afforded for every wrong and injury to person, property or reputation. *Wagoner County Election Bd. v. Plunkett, Okl.*, 305 P.2d 525 (1957).

**§ 8-102. Certificates of nomination not required**

Neither the State Election Board nor the county election board shall be required to provide certificates of nomination to candidates.

Laws 1974, c. 153, § 8-102, operative Jan. 1, 1975.

**Library References**

Elections ⇐156.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 135.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions****Construction and application 1****1. Construction and application**

One's status as nominee of party for constable at primary election did not depend on issuance of certificate of nomination by county election board. *State v. Lasher*, 116 Okl. 273, 244 P. 809 (1926).

Provisions of R.L.1910, § 3037 (repealed) for issuing certificate of nomination by county election board were directory; issuance depending on filing by candidate of expense report required by law. *Id.*

Certificate of nomination at primary election, when delivered in due form, is prima facie evidence of candidate's nomination by his party. *Id.*

**§ 8-103. Certificates of election**

The county election board shall certify a list of successful candidates for county offices and shall provide certificates of election to the same following the General Election. The State Election Board shall certify a list of successful candidates for offices for which the Board accepts filings of declarations of candidacy and shall provide Certificates of Election to the same following the General Election. Laws 1974, c. 153, § 8-103, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1907-08, p. 340.  
Comp.Laws 1909, § 3192.  
R.L.1910, § 3117.

Comp.St.1921, § 6184.  
St.1931, § 5811.  
26 O.S.1971, § 234.

**Library References**

Elections ⇨265.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 240.

**Notes of Decisions**

**In general 1**  
**Certificates of election 2**  
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*Coffey v. Board of Com'rs of McCurtain County*, 205 Okl. 238, 237 P.2d 139 (1951).

County election board has no authority to determine qualifications of voters or how any voter voted at election. *Borzarth v. Election Board of Okmulgee County*, 144 Okl. 206, 291 P. 804 (1930).

**1. In general**

Provisions of an election statute which affect receiving and recording of the ballots and the canvassing of the votes are generally regarded as directory only.

**2. Certificates of election**

Fact that a contestant proves that illegal ballots have been cast and that the

number of illegal ballots is sufficient to change results of election does not necessarily mean that the election should be declared void; rather, if competent evidence can be introduced establishing that, in spite of the illegal ballots cast, it may be determined with mathematical certainty which candidate received majority of legal votes cast, state election board should issue its certificate of election. *Baggett v. State Election Bd., Okl., 501 P.2d 817 (1972).*

State election board was not able to determine who received majority of votes cast in legislative election, and could refuse to issue certificate of election to candidate who received qualified certification of county election board, where it appeared that there had been malfunction in voting machine, that 94 of 131 voters who used machine did not record their votes for particular office, and candidate had margin of but 80 votes. *Williamson v. State Election Bd., Okl., 431 P.2d 352 (1967).*

Certificate of election is integral part of election laws whether election involves legislative officer or other state officer, notwithstanding Const. Art. 5, § 30 providing that each house should be judge of election returns and qualification of its own members. *Id.*

Person elected to office at general election is entitled to certificate of election from proper election board. *State ex rel. Cameron v. Jones, 165 Okl. 193, 25 P.2d 648 (1933).*

Holder of due and proper certificate of election to office is prima facie entitled

to qualify and assume duties. *O'Brien v. Gassoway, 125 Okl. 97, 256 P. 929 (1927).*

Certificate of election issued by proper officers, valid on its face, and standing unimpeached by any admitted fact, is conclusive in mandamus as to right to possession of office. *Ross v. Hunter, 53 Okl. 423, 157 P. 85 (1916).*

A certificate of election issued by the proper authorities to relator, regular on its face, is conclusive evidence that the holder thereof is entitled to the office named therein and to the record books and papers appertaining to the same. *State v. Smith, 43 Okl. 231, 142 P. 408 (1914).*

**3. Mandamus to board**

State election board acted as a quasi-judicial body, not subject to a mandamus, in determining whether returns and findings of county election board after recount were sufficient to justify issuance of certificate of election, where county board's certification was qualified in that it disclosed that, due to malfunction of voting machine, there may have been sufficient number of unrecorded or unaccounted for votes to change result of election. *Williamson v. State Election Bd., Okl., 431 P.2d 352 (1967).*

**4. Judicial powers**

If candidate is entitled to certificate of election, and state election board refuses certificate, Supreme Court has constitutional power and authority to enforce election laws under proper proceedings. *Williamson v. State Election Bd., Okl., 431 P.2d 352 (1967).*

**§ 8-104. Lists and certificates to be prescribed by Secretary of State Election Board**

The lists and certificates prescribed in Section 8-103 of this act shall be prescribed by the Secretary of the State Election Board. Laws 1974, c. 153, § 8-104, operative Jan. 1, 1975.

**Historical and Statutory Notes**

**Source:**

Laws 1907-08, p. 340.  
Comp.Laws 1909, § 3192.  
R.L.1910, § 3117.

Comp.St.1921, § 6184.  
St.1931, § 5811.  
26 O.S.1971, § 234.

**§ 8-105. Tie votes**

A. When a tie vote occurs in the nomination or election of any candidate in any Runoff Primary or General Election or any Primary Election for which no Runoff Primary will be held, the election board which is authorized by law to issue the certified list or certificate of election shall, at a public meeting of the board and in the presence of the candidates involved, if they or any of them desire to be present, select the nominee or electee by lot.

B. When a nominee or electee is to be selected by lot pursuant to the provisions of this section, the following procedures shall be observed:

1. The secretary of the appropriate election board shall on or before the seventh day following the election notify each of the candidates for which the vote was tied. Such notice shall include the time, date and location, shall be made in writing by registered or certified mail and shall be postmarked not fewer than five (5) days prior to the meeting;

2. A candidate may designate one person as a witness to attend such meeting on the candidate's behalf. The designation shall be made in writing, signed by the candidate and presented to the secretary of the appropriate election board;

3. The secretary of the appropriate election board shall, in full view of those present at the meeting, clearly write or print the name of each tied candidate on separate pieces of paper measuring approximately equal size. The names of the candidates shall be written or printed on the same color and type of paper. The papers shall be folded in half one time so that the written names are not visible and shall be placed into a container selected by the secretary of the appropriate election board;

4. The secretary shall draw, or may designate a person other than the candidates, witnesses or other person directly interested in the election to draw, one paper, and the name of the nominee or electee appearing on the first drawn paper shall be declared the winner. The secretary shall then expose the other name or names not drawn to all witnesses present; and

5. The meeting shall be held on a weekday, holidays excepted, between the hours of 7:00 a.m. and 7:00 p.m.

C. When a tie vote occurs for the nomination of a candidate at a Primary Election for which a Runoff Primary will be held, both names shall be placed on the Runoff Primary ballot.

Laws 1974, c. 153, § 8-105, operative Jan. 1, 1975. Laws 1988, c. 72, § 1, eff. Jan. 1, 1989.

**Historical and Statutory Notes**

The 1988 amendment rewrote the section which prior thereto read:

"When a tie vote occurs in the nomination or election of any candidate in any Primary or General Election, the election board which is authorized by law to issue the certified list or Certificate of Election shall, at a public meeting of the board and in the presence of the candidates involved, if they or any of them desire to be present, select the nominee or electee by lot and in such manner as the Board may select. When a tie vote occurs for the nomination of a candidate at a Primary Election, both names shall be placed on the Runoff Primary ballot."

**Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 2 of Laws 1988, c. 72, provides for an effective date.

**Source:**

- Laws 1907-08, p. 359.
- Comp.Laws 1909, § 3267.
- Comp.St.1921, § 6094.
- St.1931, § 5758.
- Laws 1959, p. 119, § 1.
- Laws 1961, p. 247, § 1.
- Laws 1967, c. 32, § 1.
- 26 O.S.1971, § 113.

**Library References**

- Elections ⇐238.
- WESTLAW Topic No. 144.
- C.J.S. Elections § 244.

**§ 8-106. Time for issuing lists or certificates**

No such lists or certificates shall be issued either by the county election board or State Election Board before 5:00 p.m. Friday next following a Primary, Runoff Primary or General Election.

Laws 1974, c. 153, § 8-106, operative Jan. 1, 1975.

**§ 8-107. Right to certificate**

Right to a certificate of election shall not be considered a property right to any extent whatsoever, unless and until such right to such certificate shall be determined, and such certificate issued as hereinafter provided.

Laws 1974, c. 153, § 8-107, operative Jan. 1, 1975.

**Library References**

- Elections ⇐265.
- WESTLAW Topic No. 144.
- C.J.S. Elections § 240.

**§ 8-108. Lists and certificates to be issued**

If no contest shall be filed by 5:00 p.m. Friday next following an election, the county election boards and State Election Board shall declare the result of such election and shall issue the appropriate lists or certificates to the successful party as provided by law. Provided, however, that no such lists or certificates shall be issued until the total of all returns has been verified, and a complete tabulation thereof made.

Laws 1974, c. 153, § 8-108, operative Jan. 1, 1975.

**Historical and Statutory Notes**

<b>Source:</b>	Comp.St.1921, § 6184.
Laws 1907-08, p. 340.	St.1931, § 5811.
Comp.Laws 1909, § 3192.	26 O.S.1971, § 234.
R.L.1910, § 3117.	

**§ 8-109. Time for filing contest—Contests alleging irregularities or fraud**

Any candidate whose name appeared on a Primary, Runoff Primary or General Election ballot, or any individual authorized to request a recount pursuant to Section 8-111 of this title may, at any time before 5:00 p.m. Friday next following an election, contest the correctness of the announced results of said election by filing a written petition with the appropriate election board. Contests alleging irregularities or fraud shall not be permitted in any election except those in which candidates are seeking office. Nothing in this section shall be construed to prohibit any proceedings in district court, which are otherwise authorized by law, alleging irregularities or fraud in an election.

Laws 1974, c. 153, § 8-109, operative Jan. 1, 1975. Laws 1989, c. 289, § 1, emerg. eff. May 24, 1989.

**Historical and Statutory Notes**

The 1989 amendment, in the first sentence, inserted ", or any individual authorized to request a recount to Section 8-111 of this title", in the third sentence inserted "alleging irregularities or fraud", and added the last sentence.

**Law Review Commentaries**

Survey of Oklahoma administrative law; hearing, evidence and compelling attendance of witnesses. Maurice H. Merrill. 4 Okl.L.Rev. 286, 296 (August 1951).

**Library References**

Elections ¶278.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 258.

**§ 8-110. Sheriff to provide security for ballot boxes**

It shall be the duty of the sheriff in each county to provide security for the ballot boxes from the time said ballot boxes are stored by the county election board following an election until 5:00 p.m. Friday next following the election or, in the event a recount contest is filed, until such time as said ballot boxes are delivered to the district courtroom.

Laws 1974, c. 153, § 8-110, operative Jan. 1, 1975.

## Library References

Elections § 255.

WESTLAW Topic No. 144.

C.J.S. Elections § 234.

**§ 8-111. Petition for recount—Deposit required—Service of notice—Recounts of issue or question elections**

A. In the event a candidate requests a recount of the ballots cast in an election, he must set forth in his petition the precincts and absentee ballots which he desires to be recounted. Said petition must be accompanied by either a cashier's check or certified check in the amount of Six Hundred Dollars (\$600.00) for each county affected by the petition. When such petition is properly filed, it shall be the duty of the secretary of the appropriate election board to order said recount to begin not less than three (3) nor more than ten (10) days from the date of filing of said petition. It shall be the duty of such contestant to cause to be served upon the candidate or candidates opposing him, and directly affected by said contest, a true copy of said petition and a true copy of said order. Said service shall be made in person where possible, within twenty-four (24) hours after the filing of said original petition of contest. Service shall be made by the sheriff of the county as to all offices, except that of sheriff, in which case the same shall be served by the county clerk and the certificate of returns of such sheriff or county clerk, showing the inability to make such service within the above-mentioned time, shall be deemed sufficient proof of the absence of such candidate, or candidates, or the inability to serve such notice upon him, and to justify the constructive service hereafter provided. Where personal service is impossible, within said time, it is hereby made the duty of said contestant to serve said true copies upon the secretary of the appropriate election board. Provided that for the purpose of such constructive service, the secretaries of the county election boards are hereby made and constituted the service agents for all contests of elections filed in accordance herewith. By filing his declaration of candidacy for election, a candidate shall thereby be conclusively presumed to have accepted the terms and provisions hereof and specifically the aforesaid constructive service. When constructive service becomes necessary, said constructive service shall be made at the date, time and place of said hearing.

B. For elections on issues or questions when no candidate is involved, recounts shall be authorized only when:

1. the margin of votes between those for and those against the issue is one hundred fifty (150) or less when fifteen thousand (15,000) or more total votes are counted for or against the issue or question; or



2. the margin of votes between those for and those against the issue is one percent (1%) or less of the total number of votes cast on the issue when fourteen thousand nine hundred ninety-nine (14,999) or fewer total votes are cast for or against the issue or question. Provided, furthermore, that a recount is authorized only after an individual, who is a registered voter and who participated in the election, presents to the appropriate county election board a petition signed by one hundred fifty (150) registered voters who participated in the election when fifteen thousand (15,000) or more total votes are counted for and against the question, or if fourteen thousand nine hundred ninety-nine (14,999) or fewer votes are cast for and against the issue, by a number of registered voters who participated in the election equal to one percent (1%) or more of the total votes cast for and against the issue. Said petition must be accompanied by either a cashier's check or certified check in the amount of Six Hundred Dollars (\$600.00) for each county affected by the petition. When such petition is properly filed, it shall be the duty of the secretary of the appropriate election board to order said recount to begin not less than three (3) days nor more than ten (10) days from the date of filing of said petition. Recounts of issue or question elections shall not be permitted of any statewide election. Laws 1974, c. 153, § 8-111, operative Jan. 1, 1975. Laws 1983, c. 171, § 14, emerg. eff. June 6, 1983; Laws 1989, c. 289, § 2, emerg. eff. May 24, 1989.

### Historical and Statutory Notes

The 1983 amendment, in the second sentence (now subsection A, second sentence), substituted "Six Hundred Dollars (\$600.00)" for "Five Hundred Dollars (\$500.00)", in the antepenultimate (eighth) sentence (now subsection A, eighth sentence) substituted "secretaries" for "Secretaries" preceding "of the county election boards" and deleted "and

State Election Board" following "of the county election boards", and in the last sentence (now last sentence of subsection A), substituted "at the date, time and place of said hearing" for "within twenty-four (24) hours".

The 1989 amendment designated the former section as subsection A and added subsection B.

### Library References

Elections ¶260, 261, 269 et seq., 308.  
WESTLAW Topic No. 144.

C.J.S. Elections §§ 237, 245 et seq.,  
321.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### Notes of Decisions

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**Time for filing petition for recount 7**

**1. Prior laws**

Former § 391 of this title (repealed; see, now, this section) which provided for recount of ballots cast in primary elections applied alike to state, district and county offices. *Brickell v. State Election Bd.*, 203 Okl. 361, 221 P.2d 783 (1950); *Shell v. Election Bd. of Sequoyah County*, 203 Okl. 355, 221 P.2d 780 (1950); *Harrell v. County Election Bd. of Sequoyah County*, 203 Okl. 360, 221 P.2d 778 (1950); *Coe v. State Election Bd.*, 203 Okl. 356, 221 P.2d 774 (1950).

The provision that any candidate for party nomination may file with secretary of election board, at any time before noon on Thursday next following primary election, application for recount of ballots cast, does not confine recount to first primary but former § 391 of this title (repealed; see, now, this section) applied also to run-off primary, though not specifically mentioned therein. *Id.*

The provisions of former § 345.11 of this title (repealed) that candidate receiving most votes for nomination for office, no candidate for which has filed petition under this former § 391 of this title (repealed; see, now, this section) for recount of ballots cast, shall be given certificate of nomination, and that election board shall have hearing on such a petition, filed within time provided by the statute, as provided in the prior statute, were sufficient to make provisions thereof applicable to run-off primary. *Id.*

The primary run-off election recount hearing provided for by former § 391 of this title (repealed; see, now, this section) before county election board was exclusive of all other remedies in such elections, especially in view of § 1531 of title 12 forbidding civil actions to contest primary elections. *Wagoner County Election Bd. v. Plunkett*, Okl., 305 P.2d 525 (1957).

"Ballots questioned" in Laws 1929, c. 241, § 6 (repealed) which related to election contest meant ballots from each precinct questioned in verified petition. *Bozarth v. Election Board of Okmulgee County*, 144 Okl. 206, 291 P. 804 (1930).

"Ballots questioned" in Laws 1929, c. 241, § 6 which related to election con-

test meant ballots from each precinct questioned in verified petition. *Looney v. Election Board of Seminole County*, 145 Okl. 25, 291 P. 554 (1930).

Laws 1927, c. 63, p. 82 (repealed) was a revised and substituted act covering the entire field of election contests for both primary and general elections, and repealed all former statutes on the subject including Comp.St.1921, § 6107 (repealed). *Brown v. Branson*, 139 Okl. 271, 270 P. 63 (1928).

Comp.St.1921, § 6107 (repealed), which was amended by Laws 1927, c. 63 (repealed), repealed provision for primary recount found in R.L.1910, § 3038 (repealed). *Id.*

By virtue of a provision of R.L.1910, § 3035 (repealed), R.L.1910, § 3038 (repealed), which related to primary elections, and providing for a recount, was not repealed by Laws 1910-11, c. 106, p. 229, § 8 (repealed; see, now, §§ 7-133, 7-134 of this title), governing general elections. *Shelton v. McMillan*, 43 Okl. 486, 143 P. 196 (1914).

R.L.1910, § 3038 (repealed), which provided for a recount of the votes cast at a primary election, being complete within itself, authorized the county election board, on the filing of the required affidavit, to recount the votes without any order of court. *Id.*

R.L.1910, § 3038 (repealed) which provided for a recount of the votes cast at a primary election on the filing of a proper affidavit, was not void for indefiniteness or failure to provide for notice. *Id.*

**2. Recounts, in general**

Recount is creature of statutory law and is provided only for candidates for elective office. *Wood v. Lydick*, Okl., 523 P.2d 1082 (1974).

Statutory method for contesting primary election is exclusive. *Brown v. Branson*, 139 Okl. 271, 270 P. 63 (1928).

**3. Right to recount—In general**

The right, granted by legislature, to recount of ballots cast at election, can be exercised only on compliance with conditions prescribed by statute, and such conditions may vary as between general primaries to determine political parties' nominees and general elections. *Bric-*

## Note 3

kell v. State Election Bd., 203 Okl. 361, 221 P.2d 783 (1950); Coe v. State Election Bd., 203 Okl. 356, 221 P.2d 774 (1950).

When statutory condition for recount of votes cast in primary election that challenge of correctness of results announced be filed in form of written application for recount of ballots in one or more precincts together with deposit of \$250 for each county or portion thereof, within time prescribed, was met, mandatory duty was imposed on election board to order recount and proceed therewith as provided in former § 391 of this title (repealed; see, now, this section). *Id.*

Failure of election board to set primary election contest for hearing within time required by former § 391 of this title (repealed; see, now, this section) did not deprive contestant, complying with law, of right to recount of ballots cast. *Id.*

To be entitled to recount in primary, it was necessary that there be showing by evidence that ballots were preserved in manner and by officers prescribed in Laws 1929, c. 241 (repealed) without having been exposed to tampering. *Bozarth v. Election Board of Okmulgee County*, 144 Okl. 206, 291 P. 804 (1930); *Looney v. Election Board of Seminole County*, 145 Okl. 25, 291 P. 554 (1930).

Contestant had right to recount of ballots in any precinct on filing verified petition complying with requirements of Laws 1929, c. 241 (repealed). *Id.*

Absent statutory authority, recount of votes cast in municipal bond election will be required only when equity demands it in order to relieve from proven mistake, misconduct or fraud. *State ex rel. Lydick v. Brown*, Okl., 516 P.2d 239 (1973).

There is no statutory authority for recounts in municipal bond elections. *Id.*

Right to recount of elections is purely statutory. *Id.*

#### 4. — Common law, right to recount

The right to recount of ballots cast at election did not exist at common law, but grant of such right lies within discretion of legislature, whose grant thereof on conditions prescribed by it is exclusive. *Brickell v. State Election Bd.*, 203 Okl. 361, 221 P.2d 783 (1950); *Coe v.*

*State Election Bd.*, 203 Okl. 356, 221 P.2d 774 (1950).

No right to recount exists at common law. *Wood v. Lydick*, Okl., 523 P.2d 1082 (1974).

At common law, no right existed to contest title to political party's nomination for public office in courts, and no such right now exists, unless specially provided for by statute. *Brickell v. State Election Bd.*, 203 Okl. 362, 221 P.2d 785 (1950).

Candidate for nomination for political office has no common-law right of contest. *Brown v. Branson*, 139 Okl. 271, 270 P. 63 (1928).

At common law, there existed no right to contest in the courts the title to the nomination of a political party for public office, and none now exists unless especially provided for by statute. *Dabney v. Hooker*, 121 Okl. 193, 249 P. 381 (1926).

#### 5. Grounds for recount

An allegation of fraud, misconduct or mistake may be grounds for a recount. *Wood v. Lydick*, Okl., 523 P.2d 1082 (1974).

Petitioner was not entitled to a recount of ballots cast in municipal franchise election, in the absence of allegation and proof of fraud, misconduct or mistake and allegation that such acts would change result of election. *Id.*

Absent allegation of fraud, misconduct or mistake in fact in connection with municipal bond election, voter was not entitled to recount of votes cast in the election. *State ex rel. Lydick v. Brown*, Okl., 516 P.2d 239 (1973).

#### 6. Petition for recount

Primary candidate's contest petition which did not allege fraud but which was filed within time prescribed by former § 391 of this title (repealed; see, now, this section) which governed primary election contests, contained specific allegations of election irregularities and, although not specifically containing the word "recount," requested a recount of legal ballots case by qualified electors was sufficient to invoke jurisdiction of state election board. *Baggett v. State Election Bd.*, Okl., 501 P.2d 817 (1972).

An application by unsuccessful candidate for nomination for office of sheriff at run-off primary election, stating that applicant was not satisfied with results

of count of ballots cast in all precincts of county and desired that all ballots be recounted by county election board before district judge, met requirements of former § 391 of this title (repealed; see, now, this section) and conditions and entitled applicant to recount. *Harrell v. Election Bd. of Sequoyah County*, 203 Okl. 360, 221 P.2d 778 (1950).

Where petition for recount of votes cast at primary election to nominate party candidate for county office is not served on contestee within statutory time, county election board must treat contest as abandoned and issue nomination certificate as provided by law, though election resulted in tie vote. *Ellison v. Patman*, 199 Okl. 500, 187 P.2d 988 (1948).

Contestant's petition alleging that all returns and tally sheets and announced results were erroneous, that all counting was incorrect, that persons voted who were not qualified, that illegal ballots were counted, that officials conspired to treat certain ballots for contestant as mutilated ballots, etc., was properly dismissed for noncompliance with former § 392 of this title (repealed; see, now, this section), since petition was indefinite. *Otjen v. Kerr*, 191 Okl. 628, 136 P.2d 411 (1943).

Former § 392 of this title (repealed; see, now, this section) required an actual statement of facts and not statements of conclusions of law or fact, and the facts must be stated with sufficient certainty to advise the election board as to the fact contentions on which the contestant desires to be heard, and sufficient to advise the adversary party as to the particular facts on which he is required to respond on the hearing. *Id.*

**7. Time for filing petition for recount**

Provisions of former § 391 of this title (repealed; see, now, this section) that persons desiring to contest election should do so within specified period of time were generally mandatory and could not be waived, and courts were without jurisdiction to hear contest not filed within time prescribed. *Duggan v. Bailey*, Okl., 317 P.2d 200 (1957).

Under provision of former § 391 of this title (repealed; see, now this section) that a candidate for party nomination to county office may, at any time

before noon Thursday next following primary election, challenge the correctness of announced results of election by filing written application requesting recount, where election was held on Tuesday, July 3, application for recount filed by contestant at 1:38 P.M. on Thursday, July 5, was not timely and was properly rejected by county election board. *Id.*

To entitle candidate to recount of primary election ballots, he had to make demand, in accordance with Comp.St. 1921, § 6107 (repealed) which must be filed with county election board before it becomes *functus officio* as to such election. *Ruggles v. Montgomery*, 107 Okl. 89, 230 P. 236 (1924).

The common good and justice to the claimants require that election contests be settled speedily, since person who is successful in such contest is entitled to emoluments of the office. *Pinson v. Robertson*, 197 Okl. 419, 172 P.2d 625 (1946).

Former § 391 of this title (repealed; see, now, this section) authorized recount on contestee's request, of any ballots not recounted on contestant's application, after court's determination of proper preservation, etc., of such ballots. *Brickell v. State Election Bd.*, 203 Okl. 362, 221 P.2d 785 (1950).

Challenge to correctness of announced result of county election required to be "filed" with county election board within ten days after election was not properly instituted by presentation of purported challenge to member of board on evening of tenth day, where not presented to secretary of board for filing until morning of eleventh day after election. *Pardoe v. Dean*, 172 Okl. 101, 44 P.2d 84 (1935).

**8. Federal offices**

In view of fact that former § 392 of this title (repealed; see, now, this section) was an integral part of election laws and that an election was not over or final until a proper application for recount timely filed was disposed of, court may order recount of ballots in general election for office of United States Representative, even though Congress under U.S.C.A.Const. Art. 1, § 5,

## Note 8

was given a right to be the judge of the elections, returns and qualifications of its own members. *Wickersham v. State Election Bd.*, Okl., 357 P.2d 421 (1961).

## 9. Laches

Right to contest an election may be lost by laches or inexcusable delay. *Wickersham v. State Election Bd.*, Okl. 357 P.2d 421 (1961).

### § 8-111.1. Recounts—Request for manual or electronic recount—Costs

If a candidate or individual authorized to request a recount pursuant to Section 8-111 of this title, requests a recount of the ballots cast in an election which were counted by electronic voting devices, the candidate or individual may indicate in the petition requesting the recount that the candidate or individual desires to have the ballots recounted manually. Failure by the candidate or individual to so state in the petition shall result in a recount by electronic voting devices. If the candidate or individual requests that the ballots be recounted manually, the petition must be accompanied by a cashier's check or certified check in the amount of Six Hundred Dollars (\$600.00) for the first twelve thousand (12,000) ballots to be recounted and Five Hundred Dollars (\$500.00) for each additional twelve thousand (12,000) ballots, or fraction thereof, to be recounted, for each county affected. If the candidate or individual requests that the ballots be recounted by using electronic voting devices, the petition must be accompanied by a cashier's check or certified check in the amount of Six Hundred Dollars (\$600.00) for each county affected.

Laws 1987, c. 29, § 1, eff. Nov. 1, 1987. Laws 1989, c. 289, § 3, emerg. eff. May 24, 1989.

#### Historical and Statutory Notes

The 1989 amendment, in the first sentence, inserted "or individual authorized to request a recount pursuant to Section 8-111 of this title" and inserted "or individual" following "candidate" throughout the section.

**Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 3 of Laws 1987, c. 29 provides for an effective date.

#### Library References

Elections ¶260, 261, 269 et seq., 308.  
WESTLAW Topic No. 144.

C.J.S. Elections §§ 237, 245 et seq.,  
321.

### § 8-112. Conduct of recount—Duties of presiding judge

Once service has been accomplished, the recount shall commence pursuant to the order executed by the secretary of the appropriate election board. In the event of a recount for an office under the jurisdiction of the State Election Board, the actual recount of ballots shall be conducted by the county election board or boards as

assigned by the Secretary of the State Election Board. The recount shall be conducted in the courtroom of the district court in the county or counties for which the recount is requested, and it shall be the duty of a judge of said court in and for said county to attend and, in conjunction with said county election board, conduct such recount. It shall be the exclusive and sole duty of said judge to hear evidence as to whether the ballots have been preserved in the manner and by the officers prescribed by law, and as to whether they are the identical ballots cast by the voters, and that they have not been exposed to the reach of unauthorized persons, as to afford a reasonable opportunity of their having been changed or tampered with. The judgment of said court upon such questions shall be final and conclusive. If the court cannot determine that the ballots have been properly preserved, then no recount shall be conducted. If the judgment of the court is that the ballots have been properly preserved, then the recount of the ballots shall be conducted immediately thereafter under the exclusive supervision of the county election board.

Laws 1974, c. 153, § 8-112, operative Jan. 1, 1975.

**Library References**

- Elections ¶260, 261, 299.
- WESTLAW Topic No. 144.
- C.J.S. Elections §§ 237, 293, 294.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

- Mandamus 4**
- Powers of county election board 3**
- Preservation of ballots 2**
- Recounts, in general 1**

**1. Recount of ballots, in general**

County election board in making recount is unauthorized to determine if ballots were cast by unauthorized persons or how such persons voted. *Bozarth v. Election Board of Okmulgee County*, 144 Okl. 206, 291 P. 804 (1930).

County election board's action in recounting ballots after proper showing is ministerial and will not be controlled by Supreme Court. *Id.*

County election board has only such authority in election contests or recount petitions as is authorized by statute. *Bo-*

*zarth v. Election Board of Okmulgee County*, 144 Okl. 206, 291 P. 804 (1930).

Under R.L.1910, § 3038 (repealed) the ballots could not be opened and recounted except in case of a judicial recount. *Shelton v. McMillan*, 43 Okl. 486, 143 P. 196 (1914).

District judge had no jurisdiction, where no judicial proceeding was pending to order a recount of the votes at a primary election. *Shelton v. McMillan*, 43 Okl. 486, 143 P. 196 (1914).

**2. Preservation of ballots**

Prima facie case made by precinct election officers' return could not be defeated by county election board's recount without determination that ballots were preserved as prescribed in Laws 1929, c. 241 (repealed). *Bozarth v. Election Board of Okmulgee County*, 144

Okl. 206, 291 P. 804 (1930); *Looney v. Election Board of Seminole County*, 145 Okl. 25, 291 P. 554 (1930).

This section governing hearings on recount creates no procedure whereby, if it is impossible to determine who shall be certified as party's nominee or who shall be issued certificate of election, or who shall appear on runoff ballot, then judge is to notify election board secretary, who in turn has mandatory duty to notify Governor, and, if such impossibility is due to fact that ballots have not been properly preserved, there simply is no recount conducted, and original results as certified are controlling. *Andrews v. State ex rel. Eskew*, Okl., 618 P.2d 398 (1980).

Conclusion of district court that integrity of ballot boxes for general election was not preserved in statutory manner, precluding recount by contestant, was supported by competent evidence. *Turlington v. Summers*, 162 Okl. 13, 18 P.2d 865 (1933).

Where officers given custody of ballot boxes have been so remiss in discharge of duties as to suggest reasonable probability of tampering, or to create reasonable doubt of integrity of ballot boxes, recount cannot overcome official returns. *Id.*

To entitle general election contestant to recount, it must appear that ballot boxes were preserved in statutory manner and not exposed to tampering. *Id.*

Laws 1929, c. 241, § 6 (repealed) which prescribed method of preserving ballots was directory only, and substantial compliance therewith authorized recount in election contest. *Looney v. Election Board of Seminole County*, 146 Okl. 207, 293 P. 1056 (1931).

Finding that challenged ballots had not been tampered with held not to comply with prohibition writ specifying manner of preservation of ballots as condition to recount. *Looney v. Election Board of Seminole County*, 145 Okl. 136, 292 P. 44 (1930).

On showing that ballots have been preserved in same condition as when received by election officers, and that they had been incorrectly counted, they may be received in evidence to contradict returns of precinct officers. *Gay v. Johnston*, 121 Okl. 298, 249 P. 943 (1926).

Laws 1905, ch. 17, p. 238, art. 1, § 8 (repealed), which provided that, after elections, the ballot packages shall be preserved by the county clerks in some secure and safe place, was not mandatory, and where the ballots were preserved so that their identity was assured, they could be counted upon a contest. *Newhouse v. Alexander*, 27 Okl. 46, 110 P. 1121 (1910).

### 3. Powers of county election board

County election board's determination without hearing whether ballots were preserved as prescribed by Laws 1929, c. 241 (repealed) for recount was in excess of authority. *Bozarth v. Election Board of Okmulgee County*, 144 Okl. 206, 291 P. 804 (1930); *Looney v. Election Board of Seminole County*, 145 Okl. 25, 291 P. 554 (1930).

County election board in making recount is unauthorized to determine if ballots were cast by unauthorized persons or how such persons voted. *Id.*

County election board's action in recounting ballots after proper showing is ministerial and will not be controlled by Supreme Court. *Id.*

County election board may conduct investigation concerning alleged malfunction of voting machines, and, in recount, may make findings based on some theory of machine malfunction, where malfunction is brought to attention of election officials during hours election is conducted and malfunction of machine is in issue in recount. *Williamson v. State Election Bd.*, Okl., 431 P.2d 352 (1967).

County election board has only such authority in election contests or recount petitions as is authorized by statute. *Looney v. Election Board of Seminole County*, 145 Okl. 25, 291 P. 554 (1930).

County election board has no authority to determine qualifications of voters or how any voter voted. *Id.*

County election board in making recount is unauthorized to determine if ballots were cast by unauthorized persons or how such persons voted. *Id.*

Duties of the county election board in recounting ballots cast at a primary election under R.L.1910, § 3038 (repealed), were ministerial, and the board had no judicial power. *Whitaker v. State*, 58 Okl. 672, 160 P. 890 (1916).

The returns by precinct officials to the county election board, till impeached, are prima facie evidence of votes cast and the result of a primary election, which will be overcome when a different result appears on recount. *Id.*

**4. Mandamus**

Where trier of fact in election recount hearing held that ballots in one precinct

had not been properly preserved, recount could not be held, and official returns as certified prevailed, there was no duty imposed on secretary of election board to request new election from Governor, and, therefore, mandamus did not lie. *Andrews v. State ex rel. Eskew*, Okl., 618 P.2d 398 (1980).

**§ 8-113. Agents for candidates**

The candidate or individual authorized to request a recount pursuant to Section 8-111 of this title shall be authorized to commission in writing no more than one agent in each county wherein the recount is being conducted to act in his behalf. Said commission shall be filed with the secretary of the appropriate county election board. The same authority shall be granted to any contestee. Such agent, or agents, shall have full authority to act on behalf of the contestant he is commissioned to represent in the absence of said contestant.

Laws 1974, c. 153, § 8-113, operative Jan. 1, 1975. Laws 1989, c. 289, § 4, emerg. eff. May 24, 1989.

**Historical and Statutory Notes**

The 1989 amendment, in the first sentence, substituted "candidate or individual authorized to request a recount pursuant to Section 8-111 of this title" for

"contestant" and in the last sentence substituted "contestant" for "candidate" in two places.

**Library References**

Elections § 260, 299(4).  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 237, 292.

**§ 8-114. Procedure for counting ballots—Watchers**

In conducting the recount of ballots, the county election board shall open each ballot box individually and shall assign said ballots to a group of counters appointed by the secretary of the county election board. Said counters shall then conduct the recount in the same manner as provided by law for counting ballots in Primary, Runoff Primary and General Elections. The county election board shall supervise such counting and its decision shall be final in all cases. Each candidate affected by or individual petitioning for the recount is entitled to have a watcher present at each place where a count is being made. Said watcher shall be limited to a challenge, in writing, of any decision made by the counters with regard to counting of a ballot. Such challenge shall be made immediately to the county election board, whose decision on said challenge shall be



final. Each group of counters shall have representation of at least two political parties, where possible. Said counters shall be appointed from among the registered voters of the county and shall meet such qualifications as may be imposed for a precinct inspector, judge or clerk. Counters shall be paid on the same basis as they are paid for Primary, Runoff Primary or General Elections. Laws 1974, c. 153, § 8-114, operative Jan. 1, 1975. Laws 1989, c. 289, § 5, emerg. eff. May 24, 1989.

#### Historical and Statutory Notes

The 1989 amendment, in the fourth sentence, inserted "or individual petitioning for" following "Each candidate affected by".

#### Source:

Laws 1907-08, p. 327.

Comp.Laws 1909, §§ 3138, 3139.

R.L.1910, §§ 3086, 3087.

Compt.St.1921, §§ 6153, 6154.

St.1931, §§ 5806, 5807.

26 O.S.1971, §§ 371, 372.

#### Library References

Elections ⇨260, 299(4).

WESTLAW Topic No. 144.

C.J.S. Elections §§ 237, 292.

#### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

#### Notes of Decisions

#### Challenges 1

##### 1. Challenges

Language of this section that "The county election board shall supervise each counting and its decision shall be

final in all cases" merely indicates that there is no remedy by appeal from the board's decision, and results of election recount were not impervious to challenge on pure and unmixed question of law. *Boevers v. Election Bd. of Canadian County, Okl.*, 640 P.2d 1333 (1981).

#### § 8-114.1. Testing of electronic voting devices upon recount— Law applicable to manual recount

A. If a recount is to be conducted using electronic voting devices, the devices used shall be tested for accuracy by the county election board, giving all the candidates affected by the recount, or their agents, an opportunity to view the testing procedure.

B. If a recount is to be conducted manually, after the original election in which ballots were counted by electronic voting devices, the law governing the counting of ballots by voting devices shall apply to the recounting of ballots manually.

Laws 1987, c. 29, § 2, eff. Nov. 1, 1987.

#### § 8-115. Certification of results

When all the ballots have been counted, the county election board shall tabulate the votes and shall certify the results. In the case of

county office, said certification shall be used to issue appropriate lists and certificates. In the case of state or district office, copies of said certification shall be transmitted immediately to the State Election Board, whose duty it shall be to retabulate all pertinent county returns and issue appropriate lists and certificates.

Laws 1974, c. 153, § 8-115, operative Jan. 1, 1975.

**Library References**

Elections ⇨265, 299(4).  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 240, 292.

**Notes of Decisions**

**Certification of results 2**  
**Recounts 1**

**1. Recounts**

Section 8-112 of this title governing hearings on recount creates no procedure whereby, if it is impossible to determine who shall be certified as party's nominee or who shall be issued certificate of election, or who shall appear on runoff ballot, then judge is to notify election board secretary, who in turn has mandatory duty to notify Governor, and, if such impossibility is due to fact that ballots have not been properly preserved, there simply is no recount conducted, and original results as certified are controlling. *Andrews v. State ex rel. Eskew, Okl., 618 P.2d 398 (1980).*

**2. Certification of results**

County election board certificate of results of primary election after hearing of petition for recount and recount was conclusive. *Bozarth v. Election Board of Okmulgee County, 144 Okl. 206, 291 P. 804 (1931); Looney v. Election Board of Seminole County, 145 Okl. 25, 291 P. 554 (1930).*

State election board acted as a quasi-judicial body, not subject to a mandamus, in determining whether returns and findings of county election board after recount were sufficient to justify issuance of certificate of election, where county board's certification was quali-

fied in that it disclosed that, due to malfunction of voting machine, there may have been sufficient number of unrecorded or unaccounted for votes to change result of election. *Williamson v. State Election Bd., Okl., 431 P.2d 352 (1967).*

County election board certificate of results of primary election after hearing of petition for recount and recount is conclusive. *Looney v. Election Board of Seminole County, 145 Okl. 25, 291 P. 554 (1930).*

County election board becomes functus officio, so as to lose jurisdiction to thereafter receive and proceed under demand for a recount of state primary election ballots when, having done all things required of it by law as condition precedent thereto, it has certified result thereof to state election board. *Ruggles v. Montgomery, 107 Okl. 89, 230 P. 236 (1924).*

County election board became functus officio so as to lose jurisdiction to thereafter receive and proceed under demand for recount of ballots in county primary election, under Comp.St.1921, § 6107 (repealed) when it had done all things required of it by law for determination and certification of nominees for all such offices appearing on ballot who were entitled to have their names as such nominees appear on general election ballot. *Id.*

**§ 8-116. Recount may cease—Rights of contestee**

Should the contestant at any time during the proceeding desire that the recount be terminated, he may announce the same to the

county election board. In such event, the recount shall end at that point, and any changes be made a part of the certificate of vote. Provided further, however, that should any contestee desire that the recount continue, he may petition in writing at the time of said announcement for the remainder of the ballots in that county to be recounted. Said petition must be filed immediately with the county election board conducting said recount, and petition must be accompanied by either a cashier's check or certified check in an amount equal to the deposit made by the contestant to conduct the recount. If said recount was ordered by the Secretary of the State Election Board, said check shall be transmitted forthwith to the State Election Board. In the event contestee files such petition, the recount shall continue until such time as all the ballots in said county have been recounted, and the recount is complete. Recounts of issue or question elections shall not cease until all precincts and absentee ballots in the designated county or counties have been recounted.

Laws 1974, c. 153, § 8-116, operative Jan. 1, 1975. Laws 1987, c. 86, § 1, eff. Nov. 1, 1987; Laws 1989, c. 289, § 6, emerg. eff. May 24, 1989.

#### Historical and Statutory Notes

The 1987 amendment, in the fourth sentence, substituted "an amount equal to the deposit made by the contestant to conduct the recount" for "the amount of Five Hundred Dollars (\$500.00)".

The 1989 amendment added the last sentence.

**Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 5 of Laws 1987, c. 86 provides for severability and § 6 provides for an effective date.

#### Library References

Elections ⇄260, 299(2).  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 237, 290.

### § 8-116.1. Counting of all ballots in precinct upon recount— Application of section

When a recount is initiated, all ballots in the precinct involved must be counted, and neither party to the recount shall be allowed to terminate the recount process until all such ballots have been recounted. This provision shall apply to all elections.

Laws 1987, c. 86, § 2, eff. Nov. 1, 1987.

### § 8-117. Expenses of recount

Deposits accompanying petitions shall be used by the appropriate election board to defray the actual expenses of said recount. Expenses shall include mileage and salaries of the county election board members, which shall be made on a per diem basis at the

same rate as for normal compensation; salaries for counters deemed necessary by the secretary of said board to conduct an expedient and accurate recount; the expense of service of process; court reporter fees and transcript expense; travel reimbursement for the court reporter and the presiding judge; mileage and per diem of witnesses; and for all other actual and necessary expenses. The balance, if any, shall be returned to said contestant. In the event said contestant is successful in said recount, said deposit shall be returned to said contestant, and the expense of said recount shall be borne by the county or state, as the case may be.

Laws 1974, c. 153, § 8-117, operative Jan. 1, 1975.

**Library References**

Elections ¶307.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 319 et seq.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

**Prior laws 1**

Board of Com'rs of Hughes County v. Young, 171 Okl. 161, 42 P.2d 281 (1935).

**1. Prior laws**

Laws 1929, c. 241, § 6 (repealed), regarding compensation of members of county election board in recounting ballots and authorizing board to employ clerical assistance does not increase compensation of members of board while engaged in such hearing over that fixed by statute for their other duties.

Laws 1929, c. 241, § 6 (repealed), regarding compensation of members of county election board in recounting ballots and authorizing board to employ clerical assistance did not alter duty of secretary of board as custodian of ballot boxes after returns have been canvassed. Board of Com'rs of Hughes County v. Young, 171 Okl. 161, 42 P.2d 281 (1935).

**§ 8-118. Petition for fraud or Irregularities**

In the event a candidate contests the correctness of the announced results of an election by alleging either fraud or any other irregularities, the secretary of the election board receiving the petition shall set a hearing in the same manner as provided for recounts. Provisions for service of notice shall be the same as for recounts.

Laws 1974, c. 153, § 8-118, operative Jan. 1, 1975. Laws 1983, c. 171, § 15, emerg. eff. June 6, 1983.

**Historical and Statutory Notes**

The 1983 amendment inserted "either" preceding "fraud or any other irregularities".

## Library References

Elections ¶269 et seq.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 245 et seq.

## WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## Notes of Decisions

**Construction and application 1**  
**Fraud 2**

**1. Construction and application**

Language of § 8-114 of this title that "The county election board shall supervise each counting and its decision shall be final in all cases" merely indicates that there is no remedy by appeal from the board's decision, and results of election recount were not impervious to challenge on pure and unmixed question of law. *Boevers v. Election Bd. of Canadian County, Okl.*, 640 P.2d 1333 (1981).

**2. Fraud**

Fraud charges in contestant's challenge should be dismissed, when he disclaims any fraud by precinct election officials, and offers no evidence supporting charge against county election

board. *Brown v. Branson*, 139 Okl. 271, 270 P. 63 (1928).

In election contest where recount of ballots of precinct shows that part of genuine ballots have been removed from box and spurious ballots substituted, recount should be entirely rejected, and not merely count of the spurious ballots. *Cobb v. Berry*, 67 Okl. 29, 168 P. 46 (1917).

Where election frauds in a certain precinct are such that the correct votes cannot be determined, the return of the precinct will be rejected. *Allen v. Wildman*, 38 Okl. 652, 134 P. 1102 (1913).

Where in an election contest it is possible for the fraudulent returns from a precinct to be rejected, and the true vote ascertained independently thereof, this should be done; but, where in such case the true vote cannot be ascertained, the vote of the precinct should be rejected. *Id.*

**§ 8-119. Petition alleging fraud—Procedure**

When a petition alleging fraud is filed, said petition must be accompanied by a cash bond of Five Thousand Dollars (\$5,000.00) for each county in which fraud is alleged to have occurred, running in favor of the contestee and conditioned upon payment of any and all liabilities or judgments arising from the contest so filed. In said petition, contestant must allege that fraud occurred in certain precincts or in the casting of absentee ballots. He must further allege the name of the precincts wherein such fraud occurred, the specific act constituting such alleged fraud and the names of the alleged perpetrators of such fraud. If such petition is filed in the manner herein provided, the district judge of the county in which the alleged fraud occurred, or such other judge as may be assigned by the Supreme Court, shall hear and determine said issue without delay or continuance of more than one (1) day. On the day of such hearing, the contestee may file answer to such petition or may file cross petition, setting forth in detail, as required of a petitioner

herein, such claim of fraud. An original petition or cross petition must be under oath and under penalty of perjury. The judge shall try and determine the issues formed by such pleadings and render such judgment as he may deem just and proper, according to the evidence submitted. The decision of said district judge shall be final as to any changes in the total votes, and a copy of such judgment and decision shall be furnished the appropriate election board. In any case where fraud is proved on the part of a candidate, he shall be declared ineligible for the office for which he was a candidate. In all cases where a petition is filed which alleges fraud, but after hearing said allegations are not reasonably sustained by competent evidence, the contestant shall be civilly liable in damages to the contestee for all damages sustained, including a reasonable attorney fee and all reasonable and proper costs of conducting such contests; and in the event it be alleged and found that such petition was frivolous in nature, the contestee may also be allowed punitive damages to be paid by said petitioner.

Laws 1974, c. 153, § 8-119, operative Jan. 1, 1975.

**Law Review Commentaries**

- |   |  |
|---|--|
| Annual Survey of Oklahoma Law:  | ance Company. 4 Okl. City U.L. Rev. 256 (1979).  |
| Insurance—Retroactive application of attorney fee statutes: Analysis of Cox v. American Fidelity Assur- | Legal profession—Determining statutory attorney's fees. 6 Okl. City U.L.Rev. 238 (1981). |

**Library References**

- Elections ¶269 et seq., 308.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 245 et seq., 321.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

**Disqualification of Judge 2**  
**Validity 1**

**1. Validity**

Construction by Supreme Court of applicable statutes, in original proceeding for common-law writ of certiorari to review decision in statutory election contest in which district judge invalidated results of primary election for nominee of party to office of state representative, and in which Supreme Court held that 41 of 63 elector/witnesses were properly found to be unqualified as voters, and

one-day restriction on continuances imposed by this section was unconstitutional, constituted an impermissible burden upon right of suffrage within meaning of Const. Art. 3, § 1; overruling Clark v. State Election Board, 653 P.2d 529. Helm v. Slater, Okl., 664 P.2d 377 (1982).

One-day restriction on continuances imposed by this section governing procedure upon petitions alleging fraud in election contests is violative of due process and therefore unconstitutional. Clark v. State Election Bd., Okl., 653 P.2d 529 (1982).

## Note 2

**2. Disqualification of judge**

Where judge regularly assigned to judicial service in county in which election contest petition was filed was asked by party to disqualify himself without cause, the judge was required to do so,

and it was then incumbent upon counsel in the case to request the chief judge in the county that the chief justice assign a nonresident judge to hear the contest. *Boevers v. Election Bd. of Canadian County, Okl.*, 640 P.2d 1333 (1981).

**§ 8-120. Petition alleging irregularities—Procedure**

When a petition alleging irregularities other than fraud is filed, said petition must allege a sufficient number of irregularities and of such nature as to:

1. Prove that the contestant is lawfully entitled to be certified the party's nominee or to be issued a certificate of election, or to have his name appear on the Runoff Primary Election ballot; or
2. Prove that it is impossible to determine with mathematical certainty which candidate is entitled to be certified as the party's nominee or to be issued a certificate of election, or to have his name appear on the Runoff Primary Election ballot.

Additional irregularities may be presented at the hearing if not known to the contestant at the time the petition is filed. If such allegations are not made, the petition shall be deemed frivolous by the presiding judge and shall be dismissed. Said petition must be accompanied by either a cashier's check or certified check in the amount of Two Hundred Fifty Dollars (\$250.00) for each county affected by the petition. Said petition must set forth specific allegations of irregularities in certain precincts or in the casting of absentee ballots. If said petition is filed in the manner herein provided, the district judge of the county or such other judge as may be assigned by the Supreme Court shall hear and determine said issue in the same manner as provided for a petition alleging fraud. On the day of the hearing, the contestee may file an answer to the petition or may file a cross petition setting forth in detail, as required of petitioner herein, such claim of irregularities. A cross petition must be accompanied by either a cashier's check or certified check in the amount of Two Hundred Fifty Dollars (\$250.00) for each county affected by the cross petition. Deposits shall be used to defray actual costs as provided for recounts.

Laws 1974, c. 153, § 8-120, operative Jan. 1, 1975. Laws 1983, c. 171, § 16, emerg. eff. June 6, 1983; Laws 1990, c. 306, § 6, emerg. eff. May 30, 1990.

**Historical and Statutory Notes**

The 1983 amendment added the sentence which reads: "Additional irregularities may be presented at the hearing if not known to the contestant at the time the petition is filed."

The 1990 amendment inserted the antepenultimate and penultimate sentences.

**Law Review Commentaries**

Evidence: Voter testimony—Faulty legislative response to Helm v. State Election Board. 33 Okl.L.Rev. 150 (1980).

**Library References**

Elections ¶269 et seq.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 245 et seq.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

- Construction and application 1**
- Disqualification of judge 7**
- Evidence 6**
- Expert witnesses 5**
- Irregularities, in general 2**
- Persons entitled to challenge irregularities 3**
- Presumptions and burden of proof 4**

**2. Irregularities, in general**

An election irregularity in one election might be sufficient to void an election for one particular office but not sufficient to void election for another office. Edmondson v. State ex rel. Phelps, Okl., 533 P.2d 604 (1974).

Assuming that failure to place United States Senate race in upper left-hand panel of voting machine constituted election irregularity, where number of voters who cast votes in upper left-hand panel, which contained race for governor, did not outnumber number of people who cast votes in race for United States Senator by such a margin that would have affected Senate election results, such irregularity did not vitiate or invalidate the election. Id.

Fact that voting machines did not permit voting as required by former § 274 of this title (repealed; see, now, § 9-104 of this title) and that voting machine instructions were clearly erroneous did not constitute such irregularities that would void election for United States Senator or make it impossible to determine with mathematical certainty which candidate received greater number of votes and was entitled to certificate of election. Id.

Though voting machines did not permit straight party voting as required by former § 274 of this title (repealed; see, now, § 9-104 of this title) instructions on voting procedures were clearly erroneous, and, assuming arguendo, that names of candidates for office of United States Senator were not programmed in proper column on voting machine ballot as required by former § 274, such irregularities did not render votes which

**1. Construction and application**

Where there was no intimation of vitiating defects in city officials' want of compliance with enumerated preelection formalities, such want of compliance could form no basis for invalidating the contest. Hembree v. City of Stilwell, Okl., 597 P.2d 1218 (1979).

Mathematical probabilities is not the test to be applied in election contest as this section demands mathematical certainty; mere probability alone, no matter how great, is insufficient to declare either party the winner of a contested election. Helm v. State Election Bd., Okl., 589 P.2d 224 (1979).

The term "mathematical certainty" as used in this section is ascertainable only by mathematical computation; if, by use of simple arithmetic, person "A" receives more votes than person "B," it is mathematically certain that person "A" won the election; if, however, the number of so-called disputed votes exceeds the numerical margin by which one candidate is shown to have won over the other candidate, exclusive of the disputed votes, then "mathematical uncertainty" is shown to exist. Id.



were cast by use of voting machines illegal or void. *Id.*

Election will not be set aside for technical irregularities, where proposition was fully understood in absence of fraud. *Moore v. Oklahoma City*, 122 Okl. 234, 254 P. 47 (1927).

### 3. Persons entitled to challenge Irregularities

Any person could question eligibility of a proposed candidate under former § 165a of this title (repealed; see, now, § 5-118 et seq. of this title) but, not having done so, he could not thereafter, question the final action of county election board in placing applicant's name on the ballot. *Murphy v. Darnell*, Okl., 268 P.2d 860 (1954).

### 4. Presumptions and burden of proof

In proceeding to challenge validity of election authorizing issuance of bonds, citizens failed to meet their burden to prove that ballot title, which referred to term of city's lease of utility systems to public trust as being more fully set out in ordinance, was defective, where evidence showed that complete ballot was published in the local paper which informed voters where copy of the lease could be obtained and examined, and where no evidence was presented that any citizens were defrauded or misled. *Arthur v. City of Stillwater*, Okl., 611 P.2d 637 (1980).

In the absence of evidence to the contrary, presumption arises in favor of the regularity and validity of election. *Id.*

Burden is on persons contesting election to prove failure to comply with constitutional and statutory requirements. *Id.*

On petition for issuance of prerogative writ invalidating election or declaring that winning candidate could not be determined with mathematical certainty, there was no presumption that no illegal vote challenged by candidate at polls could be considered as having been cast for such candidate. *Hembree v. City of Stilwell*, Okl., 597 P.2d 1218 (1979).

On petition for issuance of prerogative writ invalidating election or declaring that winning candidate could not be determined with mathematical certainty, candidate, who produced five persons who admittedly were not legal voters in

ward for seat in which election was being held, sustained his burden of establishing that winner could not be determined with mathematical certainty, where his opponent's winning margin was three votes. *Id.*

Right of the voter to voluntarily testify as to how he cast his vote is subject to limitations; if marked ballots exist, those ballots are the best evidence as to how the voter cast his ballot and voter testimony is impermissible; if voter intent is incapable of ascertainment, the ballot should be void and not counted; if the ballot has been mutilated or destroyed, the canvass of returns would constitute prima facie evidence of a true determination of election results and, while that presumption of correctness may be impeached by extrinsic evidence, the right of a contestant in a postelection contest to adduce parol evidence does not extend to that contestant the right to have a voter testify as to how he voted. *Helm v. State Election Bd.*, Okl., 589 P.2d 224 (1979).

### 5. Expert witnesses

Under the mathematical certainty rule it is improper to use an expert witness for the purpose of voicing an opinion as to who received the greater number of votes in an election when the expert's opinion is predicated upon a core-relation between the questioned machine or ballot box and the actual known results on other machines or in other ballot boxes; expert witness should also not be permitted to testify as to his opinion based upon any method of "sampling" or to voice any opinion as to the outcome of any election based upon "election behavior." *Helm v. State Election Bd.*, Okl., 589 P.2d 224 (1979).

### 6. Evidence

Testimony of a person who has voted on a voting machine is relevant to ascertain his intent where he has cast his ballot on improperly programmed voting machine. *Helm v. State Election Bd.*, Okl., 589 P.2d 224 (1979).

Definition of "relevant evidence" is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence does not in any way change or modify the

mathematical certainty rule which controls an election contest. *Id.*

Where paper ballots are concerned, the testimony of voters as to how they voted is not competent; if it is impossible to determine the voters intention from the face of the ballot, it is void; if there exists a paper ballot upon which a voter has expressed a clear preference, the paper ballot is the best, primary, and controlling evidence, even over a canvass thereof, the voter would still not be a competent witness to testify. *Id.*

Where votes have been cast on an improperly programmed voting machine so that, at least during a portion of the election, persons pulling the lever for one candidate in fact had their vote

counted for the other candidate, parol evidence in the form of testimony as to how voters intended to vote could be given by the voters themselves. *Id.*

**7. Disqualification of judge**

Where judge regularly assigned to judicial service in county in which election contest petition was filed was asked by party to disqualify himself without cause, the judge was required to do so, and it was then incumbent upon counsel in the case to request the chief judge in the county that the chief justice assign a nonresident judge to hear the contest. *Boevers v. Election Bd. of Canadian County, Okl., 640 P.2d 1333 (1981).*

**§ 8-121. Disqualification mandatory**

It shall be mandatory, whenever a petition to disqualify is filed by either party, for the district judge to disqualify himself.

Laws 1974, c. 153, § 8-121, operative Jan. 1, 1975.

**Library References**

- Judges ¶39.
- WESTLAW Topic No. 227.
- C.J.S. Judges §§ 62, 98 to 107.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

**In general 1**

**1. In general**

Where judge regularly assigned to judicial service in county in which election contest petition was filed was asked by

party to disqualify himself without cause, the judge was required to do so, and it was then incumbent upon counsel in the case to request the chief judge in the county that the chief justice assign a nonresident judge to hear the contest. *Boevers v. Election Bd. of Canadian County, Okl., 640 P.2d 1333 (1981).*

**§ 8-122. Determination of successful party impossible—Procedure—Governor to call special election**

In the event, after a hearing is conducted, it is deemed impossible to determine who should be certified as the party's nominee or to whom a certificate of election shall be issued, or which candidates are entitled to have their names appear on the Runoff Primary Election ballot, the judge shall notify the appropriate election board secretary of same. It shall then be the duty of the election board secretary to notify the Governor of said decision. The Governor

shall then order a new election to be conducted as soon as is practicable in the same manner as the contested election, with the identical candidates, provided that any candidate upon whom fraud has been proved shall not be a candidate in the new election. Provided further, the above shall not apply to elections resulting in tie votes, which elections shall be determined as provided by law. Laws 1974, c. 153, § 8-122, operative Jan. 1, 1975.

### Library References

Elections ⇐298(1).  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 247, 289.

## ARTICLE IX. VOTING MACHINES

### § 9-101. Authority to use

At all elections conducted by any county election board, hereafter held in any county in Oklahoma, ballots or votes may be cast, registered, recorded and counted by means of voting machines as hereinafter provided.

Laws 1974, c. 153, § 9-101, operative Jan. 1, 1975.

### Historical and Statutory Notes

#### Source:

Laws 1927, c. 203, § 1.  
St.1931, § 5733.  
Laws 1955, p. 204, § 1.  
Laws 1961, p. 251, § 1.  
26 O.S.1971, § 271.  
Laws 1955, p. 209, § 22, repealed "26 O.S.1951, Sections 271 to 291" and all

other conflicting laws. Sections 1 to 21 of the 1951 act enacted new provisions on the same subject, set out herein under the same section numbers as those repealed. The specifically repealed sections were derived from Laws 1927, c. 203, §§ 1 to 21.

### Library References

Elections ⇐126(6), 222.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 114, 118, 203.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### Notes of Decisions

#### Validity of prior laws 1

##### 1. Validity of prior laws

Former §§ 271 et seq. of this title (repealed; see, now, § 9-101 et seq. of this title) which authorized use of voting machines were not violative of but in harmony with Const. Art. 3, § 6 (repealed;

see, now, Const. Art. 3, § 4), to effect that in all elections votes shall be by ballot and that legislature shall provide for the kind of ballot to be used and make all other regulations necessary to preserve purity of ballot. *Porter v. Oklahoma City, Okl.*, 446 P.2d 384 (1968).

Because question of constitutionality of former §§ 271 et seq. of this title

(repealed; see, now, § 9-101 et seq. of this title) which authorized use of voting machines was of state-wide concern and time was of essence, Supreme Court as-

sumed jurisdiction for purpose of deciding questions of law presented by original application to enjoin issuance of municipal bonds. *Id.*

**§ 9-102. Order to be approved**

The county election board, with and after approval of the State Election Board, may order the use of voting machines in any one or more voting precincts within said county.

Laws 1974, c. 153, § 9-102, operative Jan. 1, 1975.

**Historical and Statutory Notes**

**Source:**

Laws 1927, c. 203, § 2.  
St.1931, § 5734.

Laws 1955, p. 204, § 2.  
26 O.S.1971, § 272.

**Library References**

Elections ¶126(6), 222.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 114, 118, 203.

**Notes of Decisions**

**In general 1**

**1. In general**

Voting devices which cannot generate results at the precinct level are not lawful in Oklahoma in light of the provisions of § 7-132 of this title and the State Election Board was well within its

authority under this section, to adopt Point No. 15 of the specifications for voting machines adopted October 7, 1977, to the effect that a voting system must be capable of providing multiple copies of the complete results of the election for a precinct prior to the transfer of any materials or equipment from or to the polling place location. *Op. Atty. Gen. No. 77-266, (Dec. 12, 1977).*

**§ 9-103. Purchase or rental**

Following the order for the use of voting machines, the county election board may purchase the same, at the expense of the county, in such manner as now provided by law for the purchase of other equipment and supplies; or the county election board may rent the same and pay the rental charges for usage thereon during any fiscal period, or portion thereof, out of appropriations made and approved for such purposes from county funds, for or during such fiscal year. But any such rental contract shall be void unless it contains provisions for renewal at the option of the board under the conditions hereinafter set forth. Each such rental contract shall state the purchase price of the equipment so rented and shall provide that in the event the rental contract shall be renewed in subsequent fiscal years so as to result in the payment of rentals thereunder to an aggregate amount equal to such stated purchase price, together with interest at a rate not to exceed that limited by

law, the lessor shall deliver full title to said equipment to the county and any rental contract then in effect shall terminate forthwith. The payment of rentals under any such rental contract shall be made only from annual or supplemental appropriations designated specifically for that purpose, and no appropriations for the purpose of paying such rentals shall be diverted to any other purpose. Nothing herein shall authorize the incurring of any obligation in excess of income and revenue of any county for the fiscal year in which such rental contract shall be operative, nor shall it authorize any obligation to renew any rental contract in any manner to operate to obligate the income and revenue of any county in any succeeding fiscal year.

Laws 1974, c. 153, § 9-103, operative Jan. 1, 1975.

#### Historical and Statutory Notes

##### Source:

Laws 1927, c. 203, § 3.  
Laws 1955, p. 204, § 3.

St.1931, § 5735.  
26 O.S.1971, § 273.

#### Library References

Elections ⇨126(6), 222.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 114, 118, 203.

### § 9-103.1. Elections in which used—Cost and maintenance

In counties authorized to use voting machines or devices, such machines or devices shall be used for all elections conducted by the county election board, unless the secretary of the county election board orders otherwise. Municipalities, school districts, area vocational-technical school districts and other governmental subdivisions for which elections are conducted shall be required to pay, in addition to all other expenses incurred in the conduct of their elections, an additional amount equal to the cost of Seventy-eight Dollars (\$78.00) for each voting machine or device used in said elections. Such additional amount shall be used to defray the cost and maintenance of the voting machines or devices.

Laws 1983, c. 225, § 7, operative July 1, 1983.

#### Library References

Elections ⇨126(6), 222.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 114, 118, 203.

### § 9-104. Specifications

A voting machine to be used must be so constructed as to provide facilities for voting for candidates at both Primary and General

Elections or at a nonpartisan election and also at a combination of a nonpartisan and partisan Primary or General Election. It must permit a voter to vote for any person whose name is entitled to appear on the ballot, for any office whether or not nominated as a candidate by any party or organization. It must insure voting in absolute secrecy. It must permit a voter to vote for any candidate or on any special measure for whom or on which he is lawfully entitled to vote, but none other. It must permit a voter to vote for the proper number of candidates for an office, but no more. It must prevent the voter from voting for the same person twice. It must be provided with a lock or locks by which immediately after the polls are closed any movement of the voting or registering mechanism, if any, or the removal of the contents of any ballot receptacle therein, can be absolutely prevented. It may be provided with a device for printing or photographing the candidate counters before the polls open and after the polls close, making the opening of the counter compartment by the election officials unnecessary. Laws 1974, c. 153, § 9-104, operative Jan. 1, 1975.

**Historical and Statutory Notes**

<b>Source:</b>	Laws 1955, p. 206, § 9.
Laws 1927, c. 203, §§ 4, 9.	Laws 1959, p. 121, § 1.
St.1931, §§ 5736, 5741.	Laws 1971, c. 145, § 1.
Laws 1955, p. 204, § 4.	26 O.S.1971, §§ 274, 279.

**Library References**

Elections ⇐126(6), 222.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 114, 118, 203.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

**Construction of machine 1**  
**Irregularities 2**

**1. Construction of machine**

Elector using voting machine is entitled to presume that it is constructed according to law and will function properly, and a malfunction, although voter follows instructions, is not such a malfunction of the voter as may be disregarded in counting votes. *Williamson v. State Election Bd., Okl., 431 P.2d 352 (1967).*

**2. Irregularities**

Assuming that failure to place United States Senate race in upper left-hand panel of voting machine constituted election irregularity, where number of voters who cast votes in upper left-hand panel, which contained race for governor, did not outnumber number of people who cast votes in race for United States Senator by such a margin that would have affected Senate election results, such irregularity did not vitiate or invalidate the election. *Edmondson v. State ex rel. Phelps, Okl., 533 P.2d 604 (1974).*

**§ 9-105. Storage and repair**

The county election board adopting voting machines shall, as soon as practicable thereafter, provide for each polling place in which machines are to be used one or more voting machines in complete working order, and shall thereafter keep them in repair, at the expense of the county, and the secretary of the county election board shall have custody of the machines and of the furniture and equipment of the polling place when not in use at the election. When requested by the county election board to do so the board of education of any school district and the proper city or town authorities in the county may provide a room or rooms for the storage of voting machines when not in use. If it shall be impracticable to supply each and every election precinct with a voting machine, or voting machines, at any election following such adoption, as many may be supplied as it is practicable to procure, and the same may be used in such election precincts within the county as the secretary of the county election board may direct. Laws 1974, c. 153, § 9-105, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1927, c. 203, § 5.  
St.1931, § 5737.

Laws 1955, p. 205, § 5.  
Laws 1957, p. 201, § 2.  
26 O.S.1971, § 275.

**Library References**

Elections ⇨126(6), 222.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 114, 118, 203.

**§ 9-106. Number of voters per machine**

At any election in which voting machines are used the secretary of the county election board shall provide to each precinct using machines one machine for each seven hundred fifty voters eligible to vote at said election.

Laws 1974, c. 153, § 9-106, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1927, c. 203, §§ 6, 7.  
St.1931, §§ 5738, 5739.

Laws 1955, p. 205, §§ 6, 7.  
26 O.S.1971, §§ 276, 277.

**Library References**

Elections ⇨126(6), 222.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 114, 118, 203.

**§ 9-107. Ballot labels**

All candidates' names and ballot labels shall appear on the voting machine in black ink on clear, white material of such size as will fit the ballot frame, and in as plain, clear type as the space will reasonably permit. The party name of each political party represented on the machine shall be prefixed to the list of candidates for each party. The order of the list of candidates of the several parties shall be arranged in horizontal rows or vertical columns. Said voting machines must be programmed so as to permit straight party voting as well as split or mixed tickets, unless existing machines are so constructed as to make straight party voting impossible without substantial modification of the machines.

Laws 1974, c. 153, § 9-107, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1927, c. 203, §§ 7, 9.  
St.1931, §§ 5739, 5741.

Laws 1955, p. 205, §§ 6, 7.

Laws 1955, p. 206, § 9.

26 O.S.1971, §§ 276, 277, 279.

**Library References**

Elections ¶126(6), 222.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 114, 118, 203.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions****Construction and application 1**

showing thereon is a "ballot." Helm v. State Election Bd., Okl., 589 P.2d 224 (1979).

**1. Construction and application**

The face of the voting machine with ballot labels bearing candidate names

**§ 9-108. Order of names**

The order of candidates' names shall be determined in the same manner as provided for paper ballots.

Laws 1974, c. 153, § 9-108, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1927, c. 203, § 9.  
St.1931, § 5741.

Laws 1955, p. 206, § 9.

26 O.S.1971, § 279.



**Library References**

Elections ⇐222.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 203.

**§ 9-109. Separate ballots**

Separate portions of the panel on each voting machine shall be allocated as separate ballots.

Laws 1974, c. 153, § 9-109, operative Jan. 1, 1975.

**Library References**

Elections ⇐222.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 203.

**§ 9-110. Conduct of election—Procedure—Certification of results**

The Secretary of the State Election Board shall prescribe procedures to be used in counties having voting machines to conform as nearly as practicable with the general laws for conduct of elections and certification of results in conformity with the voting system being used.

Laws 1974, c. 153, § 9-110, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1927, c. 203, § 15.  
 St.1931, § 5747.  
 Laws 1955, p. 207, § 15.

Laws 1959, p. 122, § 5.  
 Laws 1963, c. 95, § 1.  
 26 O.S.1971, §§ 285, 292.

**Library References**

Elections ⇐220, 222, 265.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 203, 208, 240.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions****Construction and application 1****I. Construction and application**

Fact that voting machine was improperly programmed in that the names of candidates for one office were transposed did not require rejection of the canvass of returns as shown by the improperly programmed machine or the

invalidation of the 185 votes which were cast on that machine. *Helm v. State Election Bd.*, Okl., 589 P.2d 224 (1979).

Section 7-127 of this title providing that any ballot or part of a ballot on which it is impossible to determine the voter's choice of candidate shall be void as to the candidate or candidates thereby affected is clearly directed toward the

paper ballot and does not apply to voting machines. *Id.*

### **§ 9-111. Machines to be secure**

Voting machines shall be locked, following an election, until such time as it is necessary to unlock said machines in preparation for another election, or until a court of competent jurisdiction orders said machines to be unlocked. In no event shall a machine be unlocked until the time for contest of the election has expired. Laws 1974, c. 153, § 9-111, operative Jan. 1, 1975.

#### **Historical and Statutory Notes**

**Source:**

Laws 1927, c. 203, §§ 17, 18.  
St.1931, §§ 5749, 5750.

Laws 1955, p. 207, § 17.

Laws 1955, p. 208, § 18.

26 O.S.1971, §§ 287, 288.

#### **Library References**

Elections ⇨222, 255.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 203, 234.

### **§ 9-112. Contests**

If a contest is filed the court shall appoint a referee or referees who shall reread counters for candidates contested in the precincts set forth in the contest petition and under oath make a report of said reading to the clerk of said court. The court shall then release the machines.

Laws 1974, c. 153, § 9-112, operative Jan. 1, 1975.

#### **Library References**

Elections ⇨299(3).  
WESTLAW Topic No. 144.  
C.J.S. Elections § 291.

#### **WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

#### **Notes of Decisions**

**Evidence 2**

**Machine malfunction 1**

**1. Machine malfunction**

County election board may conduct investigation concerning alleged malfunction of voting machines, and, in recount, may make findings based on some theory of machine malfunction,

where malfunction is brought to attention of election officials during hours election is conducted and malfunction of machine is in issue in recount. *Williamson v. State Election Bd.*, Okl., 431 P.2d 352 (1967).

State election board acted as a quasi-judicial body, not subject to a mandamus, in determining whether returns and findings of county election board

## Note 1

after recount were sufficient to justify issuance of certificate of election, where county board's certification was qualified in that it disclosed that, due to malfunction of voting machine, there may have been sufficient number of unrecorded or unaccounted for votes to change result of election. *Id.*

## 2. Evidence

Testimony of a person who has voted on a voting machine is relevant to ascertain his intent where he has cast his ballot on improperly programmed voting machine. *Helm v. State Election Bd.*, Okl., 589 P.2d 224 (1979).

Where votes have been cast on an improperly programmed voting machine so that, at least during a portion of the election, persons pulling the lever for one candidate in fact had their vote counted for the other candidate, parol evidence in the form of testimony as to how voters intended to vote could be given by the voters themselves. *Id.*

Where the canvass of returns has been impeached so that they are no longer valid, as where one voting machine is shown to have been improperly programmed, and where there exists no ballot from which voter intent may be ascertained because voting machines were used, evidence in parol is admissible to show the intent of the voters. *Id.*

## § 9-113. Experimental use of voting machines

The officials authorized by law to purchase voting machines may provide for the experimental use of one or more machines which they might lawfully purchase, to be used in one or more election precincts, without a formal adoption thereof, and its use at such election shall be as valid for all purposes as if it had been purchased.

Laws 1974, c. 153, § 9-113, operative Jan. 1, 1975.

## Historical and Statutory Notes

## Source:

Laws 1927, c. 203, § 19.  
St.1931, § 5751.

Laws 1955, p. 208, § 19.  
26 O.S.1971, § 289.

## Library References

Elections ⇐222.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 203.

## § 9-114. Additional personnel

In addition to the inspector, judge and clerk, the secretary of the county election board must appoint one additional precinct official in each precinct for each additional voting machine. Said precinct official shall be paid from county funds. Insofar as possible no more than one-half (1/2) of the precinct election officials shall be members of the same political party.

Laws 1974, c. 153, § 9-114, operative Jan. 1, 1975.

## Library References

Elections ⇐209.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 192, 200.

**§ 9-115. Notice of preparation of voting machines**

Not less than ten (10) days prior to the preparation of the machines for any election, the secretary of the county election board shall mail a notice to the county chairman of each political party stating the time and place the machines will be prepared for the election and stating a time at which one representative of each political party shall be afforded an opportunity to see that the machines are in proper condition for use in the election. The representatives may observe the programming of the voting machines but shall not interfere with the employees or assume any of their duties.

Laws 1974, c. 153, § 9-115, operative Jan. 1, 1975.

**Library References**

Elections ⇐222.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 203.

**§ 9-116. Locking of machine**

When a voting machine has been prepared for an election, it shall be locked against voting. Any key with which the vote count can be altered shall be retained by the county election board. If it becomes necessary to use such a key to repair or maintain the machine during the period of the election, the county election board shall make a written record of such use, including the name of the person making the repairs, the exact nature of the repairs and the time elapsed. The keys which are used by the precinct election board shall be placed in an envelope on which shall be written the number and the precinct location of the voting machine, the number of the seal on the voting mechanism and the number registered on the protective counter. The envelope shall be sealed and shall be retained by the county election board until turned over for delivery to the precinct election official for election day.

Representatives of the political parties shall be afforded opportunity to observe all the procedures outlined in this section.

Laws 1974, c. 153, § 9-116, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1927, c. 203, § 13.  
St.1931, § 5745.

Laws 1955, p. 206, § 13.  
Laws 1959, p. 122, § 3.  
26 O.S.1971, § 283.

**Library References**

Elections ⇐222.

WESTLAW Topic No. 144.  
C.J.S. Elections § 203.

**§ 9-117. Possession of key**

Any person, or persons, in a county where voting machines are used, except those persons authorized by the county election board, who has in his possession a key with which the vote count can be altered after the machines have been prepared and sealed and before the end of the third day after an election shall be guilty of a felony.

Laws 1974, c. 153, § 9-117, operative Jan. 1, 1975.

**Library References**

Elections ⇨222.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 203.

**§ 9-118. Unlawful acts relating to voting machines**

Any person who defaces a voting machine or the ballot thereon, breaks, tampers with, impairs, impedes or otherwise interferes with the maintenance, adjustment, delivery, use or operation of any voting machine or part thereof shall be guilty of a felony.

Laws 1974, c. 153, § 9-118, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1927, c. 203, § 16.  
St.1931, §§ 5748, 5750.  
Laws 1955, p. 207, § 16.

Laws 1955, p. 208, § 18.  
Laws 1969, c. 333, § 1.  
26 O.S.1971, §§ 286, 288, 294.

**Library References**

Elections ⇨309, 314, 318.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 324 to 334.

**§ 9-119. Voting devices—Approval**

Any county election board, with and after the approval of the State Election Board, may provide for the use of voting devices which do not otherwise conform to the requirements of this article except by virtue of this section. Such devices and the procedure for the use of such devices shall provide essentially the same protection for the purity of the ballot and against election fraud as do voting devices which meet the requirements of this article. Prior to the use of any such device or devices in an election, the State Election Board shall adopt and promulgate suitable rules and regulations governing such use. Provided, no such rules shall be adopted unless opportunity for a public hearing in the county seat of the affected county is provided pursuant to Section 303 of Title 75 of the Oklahoma Statutes; provided further that in the event rules

governing such use in one county previously have been adopted, the purpose of said hearing in other counties shall be to explain such rules and it shall not be necessary for further action to be taken on said rules.

Laws 1976, c. 105, § 1, emerg. eff. May 12, 1976. Laws 1979, c. 240, § 18, emerg. eff. June 1, 1979.

### Historical and Statutory Notes

The 1979 amendment, in the last sentence, added “; provided further that in the event rules governing such use in one county previously have been adopted, the purpose of said hearing in other counties shall be to explain such rules and it shall not be necessary for further action to be taken on said rules.”

Section 2 of Laws 1976, c. 105, provided for codification.

### Title of Act:

An Act relating to elections; providing for use of certain voting devices; providing for the promulgation of rules and regulations by the state election board; directing codification; and declaring an emergency. Laws 1976, c. 105.

### Library References

Elections ⇐222.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 203.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### Notes of Decisions

#### In general 1

#### 1. In general

Voting devices which cannot generate results at the precinct level are not lawful in Oklahoma in light of the provisions of § 7-132 of this title, and the State Election Board was well within its

authority under § 9-102 of this title, to adopt Point No. 15 of the specifications for voting machines adopted October 7, 1977, to the effect that a voting system must be capable of providing multiple copies of the complete results of the election for a precinct prior to the transfer of any materials or equipment from or to the polling place location. Op.Atty. Gen. No. 77-266, (Dec. 12, 1977).

## § 9-120. Cost of printing and supplies—Payment

The costs of all printing and supplies incident to the use of voting machines or voting devices shall be paid from county funds for state and county elections.

Laws 1978, c. 57, § 3, emerg. eff. March 17, 1978.

### Historical and Statutory Notes

Section 4 of Laws 1978, c. 57, provides for codification.

## Library References

Counties ⇐134.  
 WESTLAW Topic No. 104.  
 C.J.S. Counties § 174.

## ARTICLE X. PRESIDENTIAL ELECTORS

**§ 10-101. Nomination of Presidential Electors—Certification**

The nominees for Presidential Electors of any recognized political party shall be selected at a statewide convention of said party in a manner to be determined by said party. The nominees for Presidential Electors shall be certified by said party's chairman to the Secretary of the State Election Board no fewer than ninety (90) days nor more than one hundred eighty (180) days from the date of the General Election at which candidates for Presidential Electors shall appear on the ballot. Failure of a political party to properly certify the names of its nominees for Presidential Electors within the time specified shall bar such party from placing any candidates for Presidential Electors on the ballot at said election. Candidates for Presidential Electors seeking to appear on the ballot as uncommitted shall be entitled to have their names placed upon the ballot at a General Election by observing the following procedure:

1. No later than July 15 of a presidential election year, petitions seeking ballot access for said uncommitted candidates for Presidential Electors, in a form to be prescribed by the Secretary of the State Election Board, shall be filed with said Secretary, bearing the signatures of registered voters equal to at least three percent (3%) of the total votes cast in the last General Election for President. Each page of said petitions must contain the names of registered voters from a single county.

2. Within thirty (30) days after receipt of said petitions, the State Election Board shall determine the sufficiency of said petitions. If said Board determines there are a sufficient number of valid signatures of registered voters, the nominees for Presidential Electors are entitled to appear on the ballot at the next following General Election at which candidates for Presidential Electors shall appear on the ballot.

Laws 1974, c. 153, § 10-101, operative Jan. 1, 1975. Laws 1977, c. 136, § 1.

**Historical and Statutory Notes**

The 1977 amendment, in the introductory paragraph (former section), added the last sentence and added paragraphs 1 and 2.

**Source:**

Laws 1961, p. 258, § 1.  
 26 O.S.1971, § 522.

## Law Review Commentaries

Annual Survey of Oklahoma Law: Recognition of political parties and certification of presidential electors. 3 Okl. City U.L.Rev. 117 (1978).

## Library References

United States ⇐25.  
WESTLAW Topic No. 393.  
C.J.S. United States § 28.

## WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## Notes of Decisions

Fillings 2  
Independents 3  
Mandamus 4  
Review 5  
Validity 1

## 1. Validity

This section establishing procedure for nomination and certification of presidential electors, as enacted in 1975, is proper exercise of power granted by United States Constitution to state legislature, is not restrictive but is definitive and reasonable regulation of method of selection of electors of recognized political party and is not in conflict with Oklahoma Constitution; legislature has duty to direct manner of choosing presidential electors. *McClendon v. Slater*, 554 P.2d 774 (1976) certiorari denied 97 S.Ct. 1112, 429 U.S. 1096, 51 L.Ed.2d 543.

While power of states, under Federal Constitution, to pass laws regulating selection of presidential and vice-presidential electors is extensive, it cannot be exercised in such way as to violate express constitutional commands that specifically bar states from passing certain kinds of laws. *Id.*

Recently enacted election code is neither invidiously discriminatory nor unduly burdensome in its exercise of power of state to regulate selection of presidential electors. *Id.*

Legislative power to regulate manner of choosing presidential electors is subject to limitation that it may not be exercised in way that violates other specific provisions of Constitution. *Id.*

## 2. Fillings

Refusal of secretary of Oklahoma State Board of Elections to accept plaintiff's filing for office of President of the United States was not denial of equal protection in violation of Fourteenth Amendment though Oklahoma Supreme Court had granted writ of mandamus to require such secretary to accept filings of eight persons seeking to become candidates for presidential elector as independents sworn to support an independent, other than plaintiff, for the office of President. *Clegg v. Slater*, D.C.Okl., 420 F.Supp. 910 (1976).

## 3. Independents

Independent candidate cannot be required to be a member of a recognized political party to have access to the ballot. *McCarthy v. Slater*, Okl., 553 P.2d 489 (1976).

Candidate for presidential elector who had sworn support of an independent candidate for president and had tendered filing fee was entitled to access to the general election ballot. *Id.*

## 4. Mandamus

Where state election board advised county election board not to accept voter registrations in particular political party until Secretary of State's approval could be subjected to appeal, but, because of limitations on time for voter registration, county boards' following such advice would prevent qualified electors wishing to vote for candidates of such party from doing so, and it was not established that such registration would jeopardize, or prejudice, rights of anyone, writ of mandamus would issue directing state board to rescind its letter.



## 26 § 10-101

### Note 4

American Party v. State Election Bd., Okl., 442 P.2d 291 (1968).

#### 5. Review

Mere allegation of error in decision of chairman of county convention as to

which of two contesting delegations was entitled to be seated at convention was insufficient to give United States district court jurisdiction to review correctness of the decision. *Witten v. Sasser*, C.A. Okl., 411 F.2d 1016 (1969).

## ELECTIONS

### § 10-101.1. Candidates pledged to Independent candidate for President

The names of a slate of candidates for the office of Presidential Elector pledged to an Independent candidate for President of the United States shall be printed on the ballot only by observing the following procedure:

1. No later than July 15 of a presidential election year, petitions signed by a number of registered voters supporting the candidacy of said candidate for President of the United States equal to at least three percent (3%) of the total votes cast in the last General Election for President shall be filed with the Secretary of the State Election Board. The form of said petitions shall be prescribed by the Secretary. Each page of said petitions must contain the names of registered voters from a single county.

2. Within thirty (30) days after receipt of said petitions, the State Election Board shall determine the sufficiency of said petitions.

3. If the petitions are found to be sufficient, the Independent candidate for President of the United States shall, no later than September 1, certify to the Secretary of the State Election Board the names of the nominees for Presidential Elector pledged to him and the name of his Vice Presidential running mate. Each candidate for Presidential Elector so nominated shall subscribe to an oath stating that, if elected, he will cast his ballot for the candidate who nominated him and for said candidate's Vice Presidential running mate. Said oath shall be filed with the Secretary of the State Election Board no later than September 15.

Laws 1977, c. 136, § 4.

#### Historical and Statutory Notes

Section 5 of Laws 1977, c. 136, directs codification.

#### Law Review Commentaries

Annual Survey of Oklahoma Law: Recognition of political parties and certification of presidential electors. 3 Okl. City U.L.Rev. 117 (1978).

#### Library References

United States ⇐25.

WESTLAW Topic No. 393.  
C.J.S. United States § 28.

**§ 10-101.2. Printing names of Presidential Electors pledged to nominee of unrecognized political party—  
Procedure**

The names of a slate of candidates for the office of Presidential Elector pledged to the nominee of a political party not recognized under the laws of the State of Oklahoma for President of the United States shall be printed on the ballot only by observing the following procedure:

1. No later than July 15 of a presidential election year, petitions signed by a number of registered voters supporting the candidacy of said nominee for President of the United States equal to at least three percent (3%) of the total votes cast in the last General Election for President shall be filed with the Secretary of the State Election Board. Notice of intention to circulate petitions shall be filed with the Secretary of the State Election Board before such petitions may be circulated. The form of said petitions shall be prescribed by the Secretary. Each page of said petitions must contain the names of registered voters from a single county.

2. Within thirty (30) days after receipt of said petitions, the State Election Board shall determine the sufficiency of said petitions.

3. If the petitions are found to be sufficient, the nominee for President of the United States shall, no later than September 1, certify to the Secretary of the State Election Board the names of the nominees for Presidential Elector pledged to him and the name of his Vice Presidential running mate. Each candidate for Presidential Elector so nominated shall subscribe to an oath stating that, if elected, he will cast his ballot for the candidate who nominated him and for said candidate's Vice Presidential running mate. Said oath shall be filed with the Secretary of the State Election Board no later than September 15.

Laws 1985, c. 269, § 2.

**Library References**

United States ¶25.  
WESTLAW Topic No. 393.  
C.J.S. United States § 28.

**§ 10-102. Oath for Presidential Electors**

Every party nominee for Presidential Elector shall subscribe to an oath, stating that said nominee, if elected, will cast his ballot for the persons nominated for the offices of President and Vice President by the national convention of his party. Said oath shall be notarized by a notary public and filed with the Secretary of the State

Election Board no fewer than ninety (90) days prior to the General Election. Failure of any party nominee to take and file said oath by said date shall automatically vacate his nomination and a substitute nominee shall be selected by the state central committee of the appropriate political party. It shall be the duty of the Secretary of the State Election Board to notify the chairman of the state central committee of the failure of any nominee to file said oath.

Laws 1974, c. 153, § 10-102, operative Jan. 1, 1975. Laws 1977, c. 136, § 2.

#### Historical and Statutory Notes

The 1977 amendment, in the first sentence, inserted "party" preceding "nominee".

Source:  
Laws 1961, p. 259, §§ 1, 2.  
26 O.S.1971, §§ 519, 520.

#### Library References

United States ⇐25.  
WESTLAW Topic No. 393.  
C.J.S. United States § 28.

### § 10-103. Election of Presidential Electors

On the first Tuesday after the first Monday in November in each year next preceding the expiration of the term of office of each President of the United States, the registered voters of this state shall elect a number of electors for President and Vice President equal to the number of United States Senators and United States Representatives which the state is entitled to elect. Said electors shall be elected in the same manner as is provided for state officers.

Laws 1974, c. 153, § 10-103, operative Jan. 1, 1975.

#### Historical and Statutory Notes

Source:

Laws 1907-08, p. 376.  
Comp.Laws 1909, § 3306.  
R.L.1910, § 3178.

Comp.St.1921, § 6270.  
St.1931, § 5814.  
26 O.S.1971, § 511.

#### Library References

United States ⇐25.  
WESTLAW Topic No. 393.  
C.J.S. United States § 28.

### § 10-104. Qualifications

The electors for President and Vice President, hereinafter referred to as Presidential Electors, shall be registered voters of Oklahoma; provided, however, that no United States Senator or United States Representative or person holding an office of trust or profit under the United States shall be a Presidential Elector.

Laws 1974, c. 153, § 10-104, operative Jan. 1, 1975.

## Library References

United States ⇐25.  
 WESTLAW Topic No. 393.  
 C.J.S. United States § 28.

## § 10-105. Ballots

At any General Election in which Presidential Electors are to be elected, the State Election Board shall provide ballots on which the names of the Presidential Electors of each political party shall be bracketed adjacent to the names of said party's candidates for President and Vice President. The names of the Independent nominees for Presidential Electors shall be bracketed adjacent to the names of the candidates for President and Vice President for whom they have subscribed an oath to cast their ballots or bracketed adjacent to the word "Uncommitted" in the event said nominees are uncommitted. Said ballots shall, in all other respects, have the appearance of ballots used for state officers.

Laws 1974, c. 153, § 10-105, operative Jan. 1, 1975. Laws 1977, c. 136, § 3.

## Historical and Statutory Notes

The 1977 amendment inserted the second sentence.

Laws 1931, p. 110, § 1.

St.1931, §§ 5815, 5816.

26 O.S.1971, §§ 512, 513.

## Source:

Laws 1927, c. 100, p. 162, § 2.

## Library References

United States ⇐25.  
 WESTLAW Topic No. 393.  
 C.J.S. United States § 28.

## WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## Notes of Decisions

## In general 1

## 1. In general

Candidate for presidential elector who had sworn support of an independent

candidate for president and had tendered filing fee was entitled to access to the general election ballot. *McCarthy v. Slater*, Okl., 553 P.2d 489 (1976).

## § 10-106. Certificates of election

Certificates of election issued by the State Election Board to Presidential Electors shall be transmitted to such electors by the Governor.

Laws 1974, c. 153, § 10-106, operative Jan. 1, 1975.

**Historical and Statutory Notes**

<b>Source:</b>	Comp.St.1921, §§ 6271, 6272.
Laws 1907-08, p. 377.	St.1931, §§ 5817, 5818.
Comp.Laws 1909, §§ 3307, 3308.	Laws 1937, p. 143, § 2.
R.L.1910, §§ 3179, 3180.	26 O.S.1971, § 518.

**Library References**

United States ⇐25.  
 WESTLAW Topic No. 393.  
 C.J.S. United States § 28.

**§ 10-107. Electors to meet—Duties**

Persons chosen as Presidential Electors shall meet at 10:00 a.m. in the Governor's office at the time appointed by the laws of the United States and cast their votes in the manner therein provided and perform such duties as may be required by law. Each such Elector shall receive mileage reimbursement at the rate as provided for state employees, said reimbursement to be paid from funds appropriated to the Office of the Governor.

Laws 1974, c. 153, § 10-107, operative Jan. 1, 1975. Laws 1983, c. 171, § 17, emerg. eff. June 6, 1983.

**Historical and Statutory Notes**

The 1983 amendment, in the second sentence, deleted "in the State Treasury not otherwise" preceding "appropriated" and added "to the Office of the Governor" following "appropriated".

**Source:**

Laws 1907-08, p. 377.

Comp.Laws 1909, § 3309.  
 R.L.1910, § 3181.  
 Comp.St.1921, § 6273.  
 St.1931, § 5819.  
 Laws 1941, p. 103, § 1.  
 26 O.S.1971, § 516.

**Library References**

United States ⇐25.  
 WESTLAW Topic No. 393.  
 C.J.S. United States § 28.

**United States Code Annotated**

Meeting and vote of presidential electors, see 3 U.S.C.A. § 7.

**§ 10-108. Vacancies**

In the event any Presidential Elector fails to meet at the Governor's office at the prescribed time, it shall be the duty of such Electors present at the time and place aforesaid to appoint a person to fill such vacancy.

Laws 1974, c. 153, § 10-108, operative Jan. 1, 1975.

**Historical and Statutory Notes**

**Source:**

Laws 1907-08, p. 377.  
 Comp.Laws 1909, § 3310.  
 R.L.1910, § 3182.

Comp.St.1921, § 6274.  
 St.1931, § 5820.  
 Laws 1961, p. 259, § 1.  
 26 O.S.1971, §§ 517, 519.

**Library References**

United States ⇐25.  
 WESTLAW Topic No. 393.  
 C.J.S. United States § 28.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

**In general 1**

**1. In general**

It is public policy of state that office of United States Senator and Justice of

State Supreme Court and many other public offices shall be filled by the people under election laws, and that some of them may be filled by appointment only when an unexpected vacancy occurs. *Riley v. Cordell*, 200 Okl. 390, 194 P.2d 857 (1948).

**§ 10-109. Penalty**

Any Presidential Elector who violates his oath as a Presidential Elector shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00).

Laws 1974, c. 153, § 10-109, operative Jan. 1, 1975.

**Historical and Statutory Notes**

**Source:**

Laws 1961, p. 259, § 3.  
 26 O.S.1971, § 521.

**Library References**

United States ⇐25.  
 WESTLAW Topic No. 393.  
 C.J.S. United States § 28.

**ARTICLE XI. JUDICIAL OFFICERS**

**§ 11-101. Declaration of candidacy—Expiration of term**

A Justice of the Supreme Court or a Judge of the Court of Criminal Appeals whose term of office expires the second Monday in January following a General Election and who seeks retention in office must file with the Secretary of State not less than sixty (60) days before the date of such General Election a declaration of candidacy to succeed himself.

Laws 1974, c. 153, § 11-101, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1968, c. 387, §§ 4, 10.  
26 O.S.1971, §§ 162e, 162k.

**Library References**

Judges ⇨3.  
WESTLAW Topic No. 227.  
C.J.S. Judges §§ 12 to 14.

**§ 11-102. Declaration of candidacy after appointment**

A Justice of the Supreme Court or Judge of the Court of Criminal Appeals who has been appointed and who will have served twelve (12) months in office before the next General Election and who seeks to be retained in office must file a declaration of candidacy to be retained in office with the Secretary of State not less than sixty (60) days before the date of such election. If such judicial officer has not served twelve (12) months on or before the next General Election following his appointment, he shall continue in office, and he shall file a declaration of candidacy to be retained in office with the Secretary of State not less than sixty (60) days before the date of the second General Election following his appointment.

Laws 1974, c. 153, § 11-102, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1968, c. 387, §§ 4, 10.  
26 O.S.1971, §§ 162e, 162k.

**Library References**

Judges ⇨3.  
WESTLAW Topic No. 227.  
C.J.S. Judges §§ 12 to 14.

**§ 11-103. Terms of office**

If the term of the office to which the judicial officer was appointed expires on the second Monday in January following the election, the election shall be for a term of six (6) years beginning on the second Monday in January following the election. If the term for such office does not expire on the second Monday in January following the election, the election shall be for the unexpired term of the office to which he was appointed. If the term of office to which the judicial officer was appointed expires before such officer must file a declaration of candidacy to be retained in office, the election shall be for the remainder of the six-year term which follows the term during which he was appointed.

Laws 1974, c. 153, § 11-103, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1968, c. 387, §§ 4, 16.  
26 O.S.1971, §§ 162e, 162p.

**Library References**

Judges ⇐7.  
WESTLAW Topic No. 227.  
C.J.S. Judges §§ 21 to 29.

**§ 11-104. No filing fee**

No fee shall be charged by the Secretary of State for the filing of a declaration of candidacy. If such a declaration is filed by one of the above judicial officers, the Secretary of State shall immediately notify the Secretary of the State Election Board of the name and office of the officer who filed the declaration, and the State Election Board shall cause the necessary ballots to be prepared.

Laws 1974, c. 153, § 11-104, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1968, c. 387, § 4.  
26 O.S.1971, § 162e.

**Library References**

Judges ⇐3.  
WESTLAW Topic No. 227.  
C.J.S. Judges §§ 12 to 14.

**§ 11-105. No declaration filed—Procedure**

If no declaration of candidacy is filed by such judicial officer, the Secretary of State shall immediately notify the Governor and the Chairman of the Judicial Nominating Commission that no declaration of candidacy was filed by the judicial officer, stating his name and office, and that a vacancy has occurred or is certain to occur, as is appropriate.

Laws 1974, c. 153, § 11-105, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1968, c. 387, § 4.  
26 O.S.1971, § 162e.

**Library References**

Judges ⇐3.  
WESTLAW Topic No. 227.  
C.J.S. Judges §§ 12 to 14.



**§ 11-106. Certification**

If a declaration of candidacy is filed, an election held, and no contest thereto is filed, the State Election Board shall certify the result to the Secretary of State by 5:00 p.m. Friday next following the General Election. If a contest is filed, the result shall be certified to the Secretary of State either when the contest is determined or when it has been abandoned. If a decision by a majority of those voting thereon is that the officer shall not be retained in office, the Secretary of State shall immediately notify the Governor and the Chairman of the Judicial Nominating Commission of the decision, stating the name and office of the officer, and that a vacancy has occurred or is certain to occur, as is appropriate. Laws 1974, c. 153, § 11-106, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1968, c. 387, § 4.  
26 O.S.1971, § 162e.

**Library References**

Judges ¶3.  
WESTLAW Topic No. 227.  
C.J.S. Judges §§ 12 to 14.

**§ 11-107. Vacancy—Expiration of term**

If a judicial officer who was elected to a six-year term that expires the second Monday in January following the election or who was appointed to fill a vacancy that expires the second Monday in January following the election and who was retained in office by the voters at a prior General Election fails to file a declaration of candidacy to be retained in office to succeed himself, or files such a declaration but is not retained in office at the election, the vacancy in office occurs on the second Monday in January following the election. If a judicial officer who was appointed to fill a vacancy but who has not yet been retained in office by the voters fails to file a declaration of candidacy, the vacancy in office occurs when the time to file such declaration has expired. If such judicial officer files a declaration of candidacy but is not retained in office by the voters, the vacancy in office occurs when the result of the election is certified to the Secretary of State. In any of the above cases, the judicial officer may continue in office after the vacancy occurs until his successor has been appointed and has qualified for office. Laws 1974, c. 153, § 11-107, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1968, c. 387, § 4.  
26 O.S.1971, § 162e.

**Library References**

Judges ⇐3, 7, 8.  
WESTLAW Topic No. 227.  
C.J.S. Judges §§ 12 to 34.

**Notes of Decisions****In general 1**

State Supreme Court and many other public offices shall be filled by the people under election laws, and that some of them may be filled by appointment only when an unexpected vacancy occurs. *Riley v. Cordell*, 200 Okl. 390, 194 P.2d 857 (1948).

**1. In general**

It is public policy of state that office of United States Senator and Justice of

**§ 11-108. Judicial ballots without party designation**

The ballots for retention of Justices of the Supreme Court and Judges of the Court of Criminal Appeals, and the ballots for Judges of the Court of Appeals, district judges and associate district judges shall be without party designation.

Laws 1974, c. 153, § 11-108, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1968, c. 387, §§ 2, 5, 6.  
26 O.S.1971, §§ 162d, 162f, 162g.

**Law Review Commentaries**

Oklahoma's new judicial system.  
George B. Fraser. 21 Okl.L.Rev. 373,  
391 (Nov. 1968).

**Library References**

Judges ⇐3.  
WESTLAW Topic No. 227.  
C.J.S. Judges §§ 12 to 14.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

## Notes of Decisions

## In general 1

the court of criminal appeals for use on future ballots. Op.Atty.Gen. No. 68-313 (Sept. 11, 1968).

## 1. In general

State election board has authority to assign numbers to the judicial offices of

## § 11-109. Retention ballots

Ballots for retention of Justices of the Supreme Court and Judges of the Court of Criminal Appeals and the Court of Appeals shall be printed in the same manner as other ballots for the General Election, except as hereinafter provided. Near the top of the ballot shall be printed the following words: "NOTICE TO VOTER: Vote separately on each justice or judge; they are not running against each other." Below said words shall appear the office number, as reflected by the numbers of the districts from which said Justices or Judges were appointed, and this question: "Shall (Here insert name of Justice or Judge) of (Here insert the title of the court) be retained in Office?" Said question shall be followed by the words "YES" and "NO", one above the other, each preceded by a square one-fourth (1/4) inch in size.

Laws 1974, c. 153, § 11-109, operative Jan. 1, 1975. Laws 1987, c. 33, § 7, emerg. eff. April 20, 1987.

## Historical and Statutory Notes

The 1987 amendment, in the first sentence, inserted "and the Court of Appeals".

## Source:

Laws 1968, c. 387, § 5.  
26 O.S.1971, § 162f.

## § 11-110. Two persons filing

If two persons file for the same judicial office, their names shall appear on the ballot only at the time of the General Election.

Laws 1974, c. 153, § 11-110, operative Jan. 1, 1975.

## Historical and Statutory Notes

## Source:

Laws 1968, c. 387, § 11.

Laws 1970, c. 116, § 1.

26 O.S.1971; § 162f.

## Library References

Elections ⇐183.

Judges ⇐3.

WESTLAW Topic Nos. 144, 227.

C.J.S. Elections §§ 174, 177.

C.J.S. Judges §§ 12 to 14.

**§ 11-111. More than two persons filing**

If, at the time of the Primary Election, more than two persons have filed for the same judicial office, their names shall appear on the ballot at the time of the Primary Election.

Laws 1974, c. 153, § 11-111, operative Jan. 1, 1975.

**Historical and Statutory Notes**

**Source:**

Laws 1968, c. 387, § 11.

Laws 1970, c. 116, § 1.

26 O.S. 1971, § 162f.

**Library References**

Judges ⇐3.

WESTLAW Topic No. 227.

C.J.S. Judges §§ 12 to 14.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

**Withdrawal 1**

**1. Withdrawal**

In a nonpartisan election for district judge where three candidates were in the first primary, the candidate receiving the second highest number of votes can ef-

fectively withdraw within five days after said primary, and such withdrawal results in election of the candidate receiving the highest number of votes in the primary and it is not necessary to place his name upon the ballot for the general election in November. Op.Atty.Gen. No. 70-285 (Sept. 18, 1970).

**§ 11-112. No candidate receives majority—Procedure**

If no candidate for the office of an associate district judge receives a majority of the votes cast for that office at the Primary Election, the two candidates who receive the highest number of votes will have their names placed on the ballot for the General Election. In the case of district judges, if the nominating district is not coextensive with the whole judicial district, the two candidates who receive the highest number of votes at the Primary Election will have their names placed on the ballot for the General Election, whether or not one receives a majority of votes cast for that office at the Primary Election.

Laws 1974, c. 153, § 11-112, operative Jan. 1, 1975.

**Library References**

Judges ⇐3.

WESTLAW Topic No. 227.

C.J.S. Judges §§ 12 to 14.

T.26 to 28 O.S.A.—8

**§ 11-113. Candidate receives majority—Procedure**

If one candidate for the office of an associate district judge receives a majority of all votes cast for that office at the Primary Election and, in the case of district judges, if the nominating district is coextensive with the whole judicial district, the candidate who received the majority of all votes cast at the Primary Election shall be deemed to have been elected to that office, and that office shall not be listed on the ballot for the General Election.

Laws 1974, c. 153, § 11-113, operative Jan. 1, 1975.

**§§ 11-114, 11-115. Repealed by Laws 1980, c. 272, § 29, eff. July 1, 1980****Historical and Statutory Notes**

Repealed § 11-114, relating to judicial districts and nominating districts existing on January 1, 1973, was derived from Laws 1974, c. 153, § 11-114.

Repealed § 11-115, relating to nominating districts of district judges who

were elected as superior court judges prior to January 13, 1969, was derived from Laws 1974, c. 153, § 11-115.

**ARTICLE XII. SPECIAL ELECTIONS****§ 12-101. Vacancies in Congress**

Whenever a vacancy shall occur in the office of a member of the United States Senate or United States House of Representatives from Oklahoma, such vacancy shall be filled at a Special Election to be called by the Governor within thirty (30) days after such vacancy occurs. Provided, no special election shall be called if the vacancy occurs after March 1 of any even-numbered year if the term of said office expires the following year. In such case, the candidate elected to said office at the regular General Election shall be appointed by the Governor to fill the unexpired term.

Laws 1974, c. 153, § 12-101, operative Jan. 1, 1975. Laws 1979, c. 240, § 19, emerg. eff. June 1, 1979.

**Historical and Statutory Notes**

The 1979 amendment added the second and third sentences.

**Source:**

Laws 1915, c. 49, § 1.  
C.S.1921, § 146.  
St.1931, § 3375.

Laws 1941, p. 103, § 1.  
Laws 1945, p. 102, § 2.  
Laws 1963, c. 86, §§ 2, 3.  
State question 420, referendum petition 17, Nov. 3, 1964.  
Laws 1965, c. 116, §§ 2, 3.  
26 O.S.1971, §§ 163a, 548.

**Library References**

Elections ⇄32, 38.

United States ⇄11.

WESTLAW Topic Nos. 144, 393.  
 C.J.S. Elections §§ 66, 76, 77.  
 C.J.S. United States §§ 11, 13 to 15.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### Notes of Decisions

#### In general 1

State Supreme Court and many other public offices shall be filled by the people under election laws, and that some of them may be filled by appointment only when an unexpected vacancy occurs. *Riley v. Cordell*, 200 Okl. 390, 194 P.2d 857 (1948).

#### 1. In general

It is public policy of state that office of United States Senator and Justice of

## § 12-102. Proclamation required

In calling such an election, the Governor shall issue a proclamation, a copy of which must be filed with the Secretary of the State Election Board.

Laws 1974, c. 153, § 12-102, operative Jan. 1, 1975.

### Historical and Statutory Notes

#### Source:

Laws 1941, p. 103, § 1.  
 Laws 1945, p. 102, § 2.

Laws 1963, c. 86, §§ 2, 3.  
 Laws 1965, c. 116, §§ 2, 3.  
 26 O.S.1971, §§ 163a, 548.

### Library References

Elections ⇐32, 38.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 66, 76, 77.

## § 12-103. Dates for filing period—Elections

Said proclamation shall contain the following facts:

1. A filing period of three (3) days, on a Monday, Tuesday and Wednesday not less than ten (10) days from the date of said proclamation;
2. The date of the Special Primary Election, not less than twenty (20) days after the close of the filing period;
3. The date of the Special Runoff Primary Election, not less than twenty (20) days after the date of the Primary Election; and
4. The date of the Special General Election, not less than twenty (20) days after the date of the Runoff Primary Election.

Should such a vacancy occur between March 1 and July 1 of an even-numbered year, when a special election is required, the proclamation must contain dates that are the same as are required by law

for the regular filing period, Primary Election, Runoff Primary Election and General Election.

Laws 1974, c. 153, § 12-103, operative Jan. 1, 1975. Laws 1979, c. 240, § 20, emerg. eff. June 1, 1979.

#### Historical and Statutory Notes

The 1979 amendment, in the last paragraph, inserted "when a special election is required," and deleted ", unless the term of said office expires the following year, in which case the candidate elected to said office at the regular General Election shall be appointed by the Governor to fill the unexpired term" from the end.

#### Source:

Laws 1941, p. 103, § 1.  
Laws 1945, p. 102, § 2.  
Laws 1963, c. 86, §§ 2, 3.  
Laws 1965, c. 116, §§ 2, 3.  
26 O.S.1971, §§ 163a, 548.

#### Library References

Elections ⇨32, 38.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 66, 76, 77.

### § 12-104. General laws apply

Said elections shall be conducted under the laws applicable to regular Primary, Runoff Primary and General Elections.

Laws 1974, c. 153, § 12-104, operative Jan. 1, 1975.

#### Historical and Statutory Notes

#### Source:

Laws 1945, p. 102, § 2.  
Laws 1963, c. 86, § 3.

Laws 1965, c. 116, § 3.  
26 O.S.1971, § 163a.

#### Library References

Elections ⇨38.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 76, 77.

### § 12-105. Term

The successful candidate shall serve the remainder of the unexpired term.

Laws 1974, c. 153, § 12-105, operative Jan. 1, 1975.

### § 12-106. Vacancies in the Legislature

Whenever a vacancy shall occur in the office of a member of the State Senate or the State House of Representatives, such vacancy shall be filled at a Special Election to be called by the Governor within thirty (30) days after such vacancy occurs. Provided, no special election shall be called if the vacancy occurs after March 1

of any even-numbered year if the term of said office expires the same year.

Laws 1974, c. 153, § 12-106, operative Jan. 1, 1975. Laws 1979, c. 240, § 21, emerg. eff. June 1, 1979.

#### Historical and Statutory Notes

**Source:** St.1931, § 3396.  
Laws 1913, c. 96, p. 159, § 1. 26 O.S.1971, § 541.  
Comp.St.1921, § 7389.

#### Library References

States ⇐28(1).  
WESTLAW Topic No. 360.  
C.J.S. States §§ 42, 43.

#### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

#### Notes of Decisions

**In general** 1  
**Assumption of duties** 3  
**Date of election** 2

in the office of state senator or state representative where said vacancy occurs on July 2 of an even-numbered year. Op.Atty.Gen. No. 76-262 (June 29, 1976).

##### 1. In general

Where federal district court declared legislative offices of Oklahoma legislature vacant because of unconstitutional apportionment of seats, it became governor's duty under this section to call special elections. Reynolds v. State Election Bd., D.C.Okl., 233 F.Supp. 323 (1965).

##### 2. Date of election

The governor may, in his discretion, schedule the special elections on the same date as the regular primary, runoff primary and general elections, although such scheduling is not mandatory, when calling a special election to fill a vacancy

If the governor, in his discretion set the dates for the various aspects of the special election to coincide with the dates for the regular primary, runoff primary and general elections, it is necessary that a runoff primary be held in connection with the special election. Id.

##### 3. Assumption of duties

Where only one individual files a declaration of candidacy for legislative office, that person is entitled to assume the duties of the new office at 5:01 p.m. on the Friday next following the date of the special election scheduled by the Governor's proclamation. Op.Atty.Gen. No. 81-201 (July 16, 1981).

### § 12-107. Proclamation

In calling such an election, the Governor shall issue a proclamation, a copy of which must be filed with the Secretary of the State Election Board.

Laws 1974, c. 153, § 12-107, operative Jan. 1, 1975.

#### Historical and Statutory Notes

**Source:** Comp.St.1921, § 7390.  
Laws 1913, c. 96, p. 159, § 2.





curs on July 2 of an even-numbered year. Op.Atty.Gen. No. 76-262 (June 29, 1976).

If the governor, in his discretion, sets the dates for the various aspects of the

special election to coincide with the dates for the regular primary, runoff primary and general elections, it is necessary that a runoff primary be held in connection with the special election. Id.

### § 12-109. General laws apply—Unopposed candidates

Said elections shall be conducted under the laws applicable to regular Primary and General Elections, except that the candidate receiving the highest number of votes in said Primary Election shall be deemed the nominee of his political party, provided that the dates of the elections do not coincide with the dates for the regular Primary, Runoff Primary and General Elections. If the nominee of a political party is unopposed in the Special Election, he shall be issued a certificate of election after the expiration of the contest period following the Primary or Runoff Primary Election, if no contest is filed, and shall immediately assume the duties of said office.

Laws 1974, c. 153, § 12-109, operative Jan. 1, 1975.

#### Historical and Statutory Notes

##### Source:

Laws 1913, c. 96, p. 160, § 4.  
Comp.St.1921, § 7392.

St.1931, § 3399.

Laws 1945, p. 114, § 1.  
26 O.S.1971, § 544.

#### Library References

States ⇐28(1).  
WESTLAW Topic No. 360.  
C.J.S. States §§ 42, 43.

#### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

#### Notes of Decisions

##### In general 1

##### 1. In general

Where only one individual files a declaration of candidacy for legislative of-

fice, that person is entitled to assume the duties of the new office at 5:01 p.m. on the Friday next following the date of the special election scheduled by the Governor's proclamation. Op.Atty.Gen. No. 81-201 (July 16, 1981).

### § 12-110. Term

The successful candidate shall serve the remainder of the unexpired term.

Laws 1974, c. 153, § 12-110, operative Jan. 1, 1975.

### § 12-111. Vacancies in the office of county commissioner

Whenever a vacancy shall occur in the office of a county commissioner, such vacancy shall be filled at a Special Election to be called

by the Governor within thirty (30) days after such vacancy occurs. Provided, no special election shall be called if the vacancy occurs after March 1 of any even-numbered year if the term of said office expires the following year. In such case, the candidate elected to said office at the regular General Election shall be appointed by the Governor to fill the unexpired term.

Laws 1974, c. 153, § 12-111, operative Jan. 1, 1975. Laws 1979, c. 240, § 23, emerg. eff. June 1, 1979.

### Historical and Statutory Notes

The 1979 amendment added the second and third sentences.

Laws 1971, c. 106, § 1.  
19 O.S.1971, § 361.

#### Source:

Laws 1961, p. 431, § 1.

### Library References

Counties ⇐43.

WESTLAW Topic No. 104.

C.J.S. Counties § 66.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### Notes of Decisions

#### In general 1

#### Death of commissioner 2

##### 1. In general

It is the public policy of state that office of United States Senator and Justice of State Supreme Court and many other public offices shall be filled by the people under election laws, and that some of them may be filled by appointment only when an unexpected vacancy occurs. *Riley v. Cordell*, 200 Okl. 390, 194 P.2d 857 (1948).

The Governor appoints the interim successor for a county commissioner who is suspended upon being found guilty of a felony by a state or federal court of competent jurisdiction who serves for the duration of the suspension. *Op.Atty.Gen. No. 83-303* (Feb. 8, 1984).

If a vacancy occurs in the office of county commissioner after March 1 in an even numbered year and the term of said office expires the following year, and the successful runoff primary candidate is unopposed at the general elec-

tion, he or she may not assume the duties of office of county commissioner until he or she is issued a certificate of election following the general election and appointed by the Governor to fill the unexpired term. *Op.Atty.Gen. No. 82-264* (Oct. 26, 1982).

Const. Art. 6, § 13 does not authorize the Governor to fill by appointment a single vacancy in the office of county commissioner where a majority of the board of county commissioners remains in office. *Op.Atty.Gen. No. 81-225* (Aug. 4, 1981).

In the event there are two vacancies on a board of county commissioners, the Governor may, pursuant to Const. Art. 6, § 13, appoint one new commissioner to serve until the successors in office for both vacancies are elected and qualified. *Id.*

In the event there are three vacancies on a board of county commissioners, the Governor may, pursuant to Const. Art. 6, § 13, appoint two commissioners to serve until the successors in office for all three vacancies are elected and qualified. *Id.*

An ousted county commissioner may not legally qualify as a candidate in a special election called to fill the unexpired term of office created by the ouster. Op.Atty.Gen. No. 78-148 (March 24, 1978).

## **2. Death of commissioner**

When a person is elected to the office of county commissioner but dies before his term of office begins, the Governor is required to call a special election pursuant to this section to fill the impending

vacancy defined by 51 O.S.1981, § 3.1. Op.Atty.Gen. No. 86-151 (Dec. 11, 1986).

When an incumbent county commissioner dies after being re-elected but before beginning his new term, the Governor may appoint a successor commissioner to serve the remainder of the term ending the following January pursuant to Okla. Const. Art. VI, § 13, since the legislature has not provided for this type of vacancy in this section (withdrawing in part Op.Atty.Gen. No. 81-225). Op.Atty.Gen. No. 86-151 (Dec. 11, 1986).

## **§ 12-112. Proclamation**

In calling such an election, the Governor shall issue a proclamation, a copy of which must be filed with the Secretary of the State Election Board and the secretary of the county election board in which said vacancy occurs.

Laws 1974, c. 153, § 12-112, operative Jan. 1, 1975.

### **Historical and Statutory Notes**

#### **Source:**

Laws 1961, p. 431, § 2.  
19 O.S.1971, § 362.

### **WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

### **Notes of Decisions**

#### **In general 1**

##### **1. In general**

In the event of a vacancy arising in the office of a county commissioner, the Governor is required by § 12-111 of this title to provide for the filling of such

vacancy by the issuance of a proclamation of special election, pursuant to this section, setting forth the dates for a filing period, a special primary election and a special general election within the time limits specified in § 12-113 of this title. Op.Atty.Gen. No. 81-225 (Aug. 4, 1981).

## **§ 12-113. Dates**

Said proclamation shall contain the following facts:

1. A filing period of three (3) days, on a Monday, Tuesday and Wednesday, not less than ten (10) days from the date of said proclamation;

2. The date of the Special Primary Election, not less than twenty (20) days after the close of the filing period; and

3. The date of the Special General Election, not less than twenty (20) days after the date of the Primary Election.

Should such a vacancy occur between March 1 and July 1 of an even-numbered year, when a special election is required, the proclamation must contain dates that are the same as are required by law for the regular filing period, Primary Election, Runoff Primary Election and General Election.

Laws 1974, c. 153, § 12-113, operative Jan. 1, 1975. Laws 1979, c. 240, § 24, emerg. eff. June 1, 1979.

#### Historical and Statutory Notes

The 1979 amendment, in the last paragraph, inserted "when a special election is required," and deleted " , unless the term of said office expires the following year, in which case the candidate elected to said office at the regular General Elec-

tion shall be appointed by the Governor to fill the unexpired term" from the end.

#### Source:

Laws 1961, p. 431, § 2.  
19 O.S.1971, § 362.

#### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

#### Notes of Decisions

#### In general 1

##### 1. In general

In the event of a vacancy arising in the office of a county commissioner, the Governor is required by § 12-111 of this title to provide for the filling of such

vacancy by the issuance of a proclamation of special election, pursuant to § 12-112 of this title, setting forth the dates for a filing period, a special primary election and a special general election within the time limits specified in this section. Op.Atty.Gen. No. 81-225 (Aug. 4, 1981).

#### § 12-114. General laws apply

Said elections shall be conducted under the laws applicable to regular Primary and General Elections, except that the candidate receiving the highest number of votes in said Primary Election shall be deemed the nominee of his political party, provided that the dates of the elections do not coincide with the dates for the regular Primary, Runoff Primary and General Elections. If the nominee of a political party is unopposed in the Special Election, he shall be issued a certificate of election after the expiration of the contest period following the Primary or Runoff Primary Election, if no contest is filed, and shall immediately assume the duties of said office.

Laws 1974, c. 153, § 12-114, operative Jan. 1, 1975.

#### Historical and Statutory Notes

#### Source:

Laws 1961, p. 431, §§ 3, 4.  
19 O.S.1971, §§ 363, 364.

**§ 12-115. Term**

The successful candidate shall serve the remainder of the unexpired term.

Laws 1974, c. 153, § 12-115, operative Jan. 1, 1975.

**§ 12-116. Special elections on state or local questions**

In the event the Governor or the Legislature shall call for a special statewide election on any measure to be submitted to a vote of the people, said election shall be held not fewer than sixty (60) days from the date said election is called. In the event the board of county commissioners or the governing body of a municipality or school district or vocational-technical school district or any other governmental subdivision calls for a special election on any question, said election shall be held not fewer than forty-five (45) days from the date said election is called. A special election to fill a vacancy for member of the board of education of a school district or to fill a vacancy for municipal office shall be scheduled not fewer than forty-five (45) days from the date said election is called. Laws 1974, c. 153, § 12-116, operative Jan. 1, 1975. Laws 1985, c. 193, § 3, eff. Nov. 1, 1985.

**Historical and Statutory Notes**

The 1985 amendment, in the first sentence (former section), substituted "sixty (60)" for "thirty (30)" and added the second and third sentences.

**Library References**

Statutes ⇌ 321.

WESTLAW Topic No. 361.

C.J.S. Statutes § 136 et seq.

**§ 12-117. General laws apply**

The State Election Board shall conduct such election in the same manner as provided for conducting statewide Primary, Runoff Primary or General Elections.

Laws 1974, c. 153, § 12-117, operative Jan. 1, 1975.

**§ 12-118. Certification**

The State Election Board shall certify the results of said election to the Governor, whereupon the Governor shall issue a proclamation declaring the results of said election and the passage or failure of any measure.

Laws 1974, c. 153, § 12-118, operative Jan. 1, 1975.

## Library References

Statutes ⇐321.  
 WESTLAW Topic No. 361.  
 C.J.S. Statutes § 136 et seq.

## ARTICLE XIII. MUNICIPAL ELECTIONS

**§ 13-101. County election board to conduct**

All municipal elections conducted in the State of Oklahoma shall be conducted by the county election board of the county wherein said municipality's central offices are located, unless otherwise provided by law.

Laws 1974, c. 153, § 13-101, operative Jan. 1, 1975.

## Library References

Municipal Corporations ⇐128.  
 WESTLAW Topic No. 268.

C.J.S. Municipal Corporations § 468 et seq.

**§ 13-102. Notice of elections**

Not fewer than fifteen (15) days before the filing period for any municipal election, or in the event of a special election, not fewer than forty-five (45) days before such election, the governing board of any municipality shall submit a resolution to the secretary of the county election board conducting said election. Said resolution shall contain the following facts:

1. The dates of the election or elections;
2. The offices to be filled or the questions to be voted upon at said election or elections;
3. Qualifications for said offices;
4. Designation of which offices shall be filled by voting by ward and which offices shall be filled by voting at large;
5. Indication of whether the election will be partisan or nonpartisan;
6. For charter cities where the charter is silent, indication of any portion of state law which will apply; and
7. Any other information necessary for conducting said election or elections.

Laws 1974, c. 153, § 13-102, operative Jan. 1, 1975. Laws 1985, c. 193, § 4, eff. Nov. 1, 1985; Laws 1987, c. 75, § 7, eff. July 1, 1987.

**Historical and Statutory Notes**

The 1985 amendment, in the introductory paragraph, first sentence, substituted "forty-five (45)" for "thirty (30)".

The 1987 amendment inserted paragraphs 5 and 6 and redesignated former paragraph 5 as paragraph 7.

**Cross References**

General municipal election or special election, notice, see title 11, § 16-101.

**Library References**

Municipal Corporations ⇐128.  
WESTLAW Topic No. 268.

C.J.S. Municipal Corporations § 468 et seq.

**§ 13-103. Conduct of municipal elections—Partisan elections**

A. All municipal elections shall be held at the same place and in the same manner prescribed for conduct of state and county elections unless otherwise provided by law.

B. A municipality may adopt an ordinance requiring its elections to be partisan. If such an ordinance is adopted, a municipality shall notify the county election board that its election is to be partisan in its resolution calling for an election. If a municipality fails to notify the county election board that its election will be on a partisan basis in the resolution calling for an election, then the municipal election shall be on a nonpartisan basis. Provided, any municipality which is governed by a charter may provide otherwise by charter or ordinance.

C. All precincts totally or partially contained within the limits of a municipality shall be open for all elections held by such municipality; provided, however, that a municipality may authorize any precinct which is only partially contained within the limits of the municipality not to be opened by certifying to the county election board in its resolution calling for an election that no persons reside within that portion of the precinct contained within the limits of the municipality. Polling places shall be open from 7:00 a.m. until 7:00 p.m. Each precinct election board shall be the same as for state and county elections; provided, however, that substitutions, if necessary, shall be made by the county election board. Except as otherwise provided by law, the laws governing state and county Primary and General Elections shall be applicable to all municipal elections.

Laws 1974, c. 153, § 13-103, operative Jan. 1, 1975. Laws 1977, c. 130, § 1, emerg. eff. June 3, 1977; Laws 1987, c. 75, § 8, eff. July 1, 1987.

**Historical and Statutory Notes**

The 1977 amendment, in the second sentence (now first sentence of subsec-

tion C), added "; provided, however, that a municipality may authorize any pre-



cinct which is only partially contained within the limits of the municipality not to be opened by certifying to the county election board in its resolution calling for an election that no persons reside within that portion of the precinct contained within the limits of the municipality".

The 1987 amendment designated the former first sentence as subsection A

and in subsection A added: "unless otherwise provided by law" at the end; inserted subsection B; and designated the former second through fifth sentences as subsection C.

**Source:**

R.L.1910, § 439.  
Laws 1957, p. 194, § 4.  
11 O.S.1971, § 25.

**Cross References**

Conduct of general municipal elections, see title 11, § 16-104.

Conduct of special elections for electing municipal officers, see title 11, § 16-114.

Municipal primary elections, see title 11, §§ 16-107, 16-108.

Municipality governed by charter, conduct of elections, see title 11, § 16-102.

**Library References**

Municipal Corporations ¶129.  
WESTLAW Topic No. 268.

C.J.S. Municipal Corporations §§ 472,  
473.

**§ 13-104. Filing fee or petition not required**

Persons filing declarations of candidacy shall not be required to post a filing fee, nor shall they be required to file petitions supporting their candidacies.

Laws 1974, c. 153, § 13-104, operative Jan. 1, 1975. Laws 1987, c. 75, § 9, eff. July 1, 1987.

**Historical and Statutory Notes**

The 1987 amendment rewrote the section which prior thereto read:

"Persons filing Declarations of Candidacy, who do not file accompanying petitions supporting said filing, shall be required to post a filing fee of Fifty

Dollars (\$50.00) in cashier's check or certified check in municipalities with a population of six thousand (6,000) or more or a filing fee of Five Dollars (\$5.00) in cash in municipalities with a population of fewer than six thousand (6,000)."

**Cross References**

Municipal primary elections, see title 11, § 16-109.

**§ 13-105. Materials and ballots**

All materials and ballots necessary to conduct any municipal election shall be provided by the county election board.

Laws 1974, c. 153, § 13-105, operative Jan. 1, 1975.

**Historical and Statutory Notes**

**Source:**

Laws 1909, p. 265.  
Comp.Laws 1909, § 1003.

R.L.1910, § 442.  
Comp.St.1921, § 4376.  
St.1931, § 6019.

Laws 1963, c. 327, § 1.  
11 O.S.1971, § 28.

**§ 13-106. Certification**

At the time prescribed by law, the county election board shall certify the results of any municipal election to the governing board of the municipality for which said election was held. Certificates of election shall be issued to the successful candidates by the county election board, in the same manner as is prescribed for county officers.

Laws 1974, c. 153, § 13-106, operative Jan. 1, 1975.

**Library References**

Municipal Corporations ¶128.  
WESTLAW Topic No. 268.

C.J.S. Municipal Corporations § 468 et seq.

**§ 13-107. Maps to be provided**

It shall be the mandatory duty of the governing board of each municipality to provide to the county election board or boards of the county or counties wherein said municipality is located a current map of said municipality. Said map must clearly define the municipal limits and ward boundaries of said municipality. Should any changes be made in the municipal limits or ward boundaries of any municipality, the governing board of said municipality shall immediately provide the appropriate county election board or boards with a complete revised map of the municipality.

Laws 1974, c. 153, § 13-107, operative Jan. 1, 1975.

**§ 13-108. Eligible voters**

Only registered voters who reside within the municipal limits of any municipality shall be permitted to vote in any election held for said municipality.

Laws 1974, c. 153, § 13-108, operative Jan. 1, 1975.

**§ 13-109. Copy of charter required**

Municipalities operating under a charter form of government shall be required to furnish a copy of said charter, as it applies to conduct of elections, to the county election board of the county wherein said municipality's central offices are located. Any changes in a charter, as it applies to conduct of elections, shall be provided immediately to the appropriate county election board.

Laws 1974, c. 153, § 13-109, operative Jan. 1, 1975.

**Cross References**

Provisions not applicable to municipalities governed by charter, see title 11, § 16-102.

**§ 13-110. Municipalities in more than one county**

Elections for a municipality which is located in more than one county shall be conducted by the county election board of the county wherein said municipality's central offices are located. The county election board or boards of the other affected county or counties shall provide such assistance as may be necessary for conduct of an election.

Laws 1974, c. 153, § 13-110, operative Jan. 1, 1975.

**§ 13-111. Expenses**

All expenses incurred in the conduct of any municipal election shall be paid by the municipality for which said election was held. Expenses shall include, but shall not be limited to, compensation for members of each precinct election board, per diem and mileage for the chairman and vice-chairman of the county election board, the cost of supplies and ballots and the rental of polling places.

Laws 1974, c. 153, § 13-111, operative Jan. 1, 1975.

**Library References**

Municipal Corporations ⇔128.  
WESTLAW Topic No. 268.

C.J.S. Municipal Corporations § 468 et seq.

**§ 13-112. Dates**

In no event shall any municipality schedule an election on the same day as prescribed for state or county Primary, Runoff Primary or General Elections, or on the date prescribed for annual school elections.

Laws 1974, c. 153, § 13-112, operative Jan. 1, 1975.

**Cross References**

General municipal elections, when held, see title 11, § 16-103.

**ARTICLE XIII-A. SCHOOL DISTRICT AND  
VOCATIONAL-TECHNICAL SCHOOL  
DISTRICT ELECTIONS**

**Cross References**

School boards of education, election procedure, see title 70, § 5-107A.  
School dispensed with, election procedure, see title 70, § 8-106.

**§ 13A-101. Applicability of general election laws**

Except as otherwise provided by law, the general election laws shall apply to all elections for school districts and vocational-technical school districts. When it is impossible or impractical to apply the general election laws for school districts and vocational-technical school districts, the Secretary of the State Election Board shall prescribe procedures consistent with the purposes of the general election laws.

Laws 1988, c. 296, § 2, eff. June 1, 1990.

**Historical and Statutory Notes****Title of Act:**

An Act relating to school elections; amending section 8, chapter 193, O.S.L. 1985 (26 O.S.Supp.1987, section 1-111), which relates to school district and vocational-technical school district elections; modifying prohibition concerning dates for school elections; providing for the conduct of certain school elections; requiring the application of general election laws; providing certain exceptions, and procedures related thereto; providing certain election dates; providing for special elections; providing for certification of certain elections, and procedures related thereto; providing for declarations of candidacy, and procedures related thereto; providing for voter eligibility, and qualifications related thereto; re-

quiring the provision of certain school district maps, and procedures related thereto; providing for certain resolutions, and information and procedures related thereto; providing for certain vacancies, and procedures related thereto; providing for certain reimbursement; repealing 70 O.S.1981, sections 2-101, as amended by section 5, chapter 193, O.S.L.1985, 2-102, as amended by section 1, chapter 108, O.S.L.1982, 2-104, as last amended by section 6, chapter 193, O.S.L.1985, 2-105, 2-106, 2-107, 2-108, 2-109 and 5-112 (70 O.S.Supp.1987, sections 2-101, 2-102 and 2-104), which relate to school elections; providing for codification; providing for severability; and providing an effective date. Laws 1988, c. 296.

**Library References**

Elections ⇨1 et seq.  
Schools ⇨48(1), 53(1).  
WESTLAW Topic Nos. 144, 345.

C.J.S. Elections §§ 1, 2.  
C.J.S. Schools and School Districts  
§§ 93, 107 to 110, 144.

**§ 13A-102. Conduct of elections pursuant to this article**

Unless otherwise provided by law, all elections for every school district and vocational-technical school district shall be conducted in accordance with provisions of this article.

Laws 1988, c. 296, § 3, eff. June 1, 1990.

**§ 13A-103. Election dates—Special elections**

A. The election of members of the board of education of every school district and vocational-technical school district shall be conducted on the first Tuesday in May of each year.

If no candidate receives more than fifty percent (50%) of the votes cast in the election provided for in this subsection, an election

between the two candidates with the highest number of votes shall be conducted on the third Tuesday in June of that year.

B. Elections on the question of making a levy or levies for schools under Section 9, Section 9B or Section 10 of Article X of the Oklahoma Constitution shall be held on the first Tuesday in May of each year.

C. The board of education of every school district or vocational-technical school district may call a special election for the purpose of voting on any matter or question authorized by law.

Laws 1988, c. 296, § 4, eff. June 1, 1990. Laws 1989, c. 132, § 1, eff. June 1, 1990.

#### Historical and Statutory Notes

The 1989 amendment rewrote the section which prior thereto read:

"A. Notwithstanding any other provision of law to the contrary, election of members of the board of education of every school district and vocational-technical school district shall be conducted on the first Tuesday after the first Monday in November of each year.

"B. Notwithstanding any other provision of law to the contrary, for school districts that have nomination elections for members of the board of education, nomination elections shall be conducted on the fourth Tuesday in August of each year.

"C. Notwithstanding any other provision of law to the contrary, elections on the question of making a levy or levies for schools under Section 9 or Section

10 of Article X of the Oklahoma Constitution shall be held on the first Tuesday after the first Monday in November of each year.

"D. The board of education of every school district or vocational-technical school district may call a special election for the purpose of voting on any matter or question authorized by law."

Laws 1989, H.B.1209 (c. 132), was vetoed by Governor on April 11, 1989. Governor's veto was overridden by both houses of the Legislature and filed with the Secretary of State May 2, 1989.

**Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 8 of Laws 1989, c. 132 provides for an effective date.

#### § 13A-104. Certification of election in multi-county district

For school districts and vocational-technical school districts located in more than one county, the county election board located in the county wherein supervision of the district is located shall be responsible for certifying its elections. The Secretary of the State Election Board shall prescribe procedures for certification.

Laws 1988, c. 296, § 5, eff. June 1, 1990.

#### § 13A-105. Declaration of candidacy—Filing

Candidates for member of the board of education of every school district or vocational-technical school district shall file declarations of candidacy in the same place and with the same officials as candidates for county office. Candidates shall file on the second Monday in March through the following Wednesday. For school

districts and vocational-technical school districts located in more than one county, filing shall be in the county wherein supervision of the district is located.

Laws 1988, c. 296, § 6, eff. June 1, 1990. Laws 1989, c. 132, § 2, eff. June 1, 1990.

#### Historical and Statutory Notes

The 1989 amendment, in the first sentence, deleted "at the same time and" following "file declaration of candidacy" and, at the end of the sentence, deleted "during even numbered years", and re-wrote the second sentence, which prior thereto read: "During odd-numbered years, candidates shall file in the same

manner on dates determined in the same manner as dates for filing for county office during even-numbered years."

Laws 1989, H.B.1209 (c. 132), was vetoed by Governor on April 11, 1989. Governor's veto was overridden by both houses of the Legislature and filed with the Secretary of State May 2, 1989.

### § 13A-106. Eligibility to be candidate for school board—Eligibility to vote

A. To be eligible to be a candidate for member of the board of education of a school district or vocational-technical school district, a person must have been a registered voter registered with the county election board at an address located within the geographical boundaries of the district for six (6) months preceding the first day of the filing period. Beginning May 1, 1990, no person shall be eligible to be a candidate for or elected to be a member of the board of education of a school district or vocational-technical school district unless the person has been awarded a high school diploma or certificate of high school equivalency. In school districts that are divided into election districts, a candidate must have been a registered voter registered with the county election board at an address located within the geographical boundaries of the election district for six (6) months preceding the first day of the filing period. Beginning May 1, 1990, no person shall be eligible to be a candidate for or elected to be a member of the board of education unless the person has been awarded a high school diploma or certificate of high school equivalency.

B. To be eligible to vote in a school district election or a vocational-technical school district election, a person must be registered with the county election board at an address located within the geographical boundaries of the district. To be eligible to vote in an election district election within a school district, a person must be registered with the county election board at an address located within the geographical boundaries of the election district.

Laws 1988, c. 296, § 7, eff. June 1, 1990. Laws 1989, 1st Ex.Sess., c. 2, § 25, emerg. eff. April 25, 1990.

**Historical and Statutory Notes**

The 1989 amendment, in subsection A, added the second and fourth sentences.

**§ 13A-107. [Blank]****§ 13A-108. School district maps**

The county superintendent of schools, or in counties with no county superintendent of schools, the State Department of Education, shall provide the county election board with maps showing the boundary lines of school districts within the counties. If the county election board provides the county superintendent of schools or the State Department of Education with maps of precincts within the county, then the county superintendent of schools or State Department of Education shall designate school district boundaries on those maps. Maps shall be provided to the county election board no later than ten (10) days following delivery of the resolution calling for the election to the secretary of the county election board. If the secretary of the county election board already is in possession of accurate maps, the person responsible for providing the maps shall acknowledge that fact in writing, and it shall not be necessary to furnish additional maps.

Laws 1988, c. 296, § 8, eff. June 1, 1990.

**§ 13A-109. Resolution calling for election**

A. The board of education of every school district and vocational-technical school district shall notify, by resolution, the secretary of the county election board responsible for certifying its election of any regular or special election.

B. The resolution calling for an election or elections shall include, but shall not be limited to, the following information:

1. Date or dates of the election or elections;
2. Identification of the office or offices to be filled, qualifications of candidates for office and the length of term of each;
3. Information describing election districts within the school district, if applicable;
4. Ballot titles of the question or questions to be voted upon;
5. Information describing the persons eligible to vote in the election; and
6. All other information necessary for conducting the election or elections.

C. Resolutions calling for regular elections shall be delivered to the secretary of the county election board no fewer than fifteen (15) days preceding the first day of the filing period. The resolution shall contain all questions to be voted upon at the election to be held on the first Tuesday in May.

D. Resolutions calling for special elections shall be delivered to the secretary of the county election board no fewer than forty-five (45) days preceding the election.

Laws 1988, c. 296, § 9, eff. June 1, 1990. Laws 1989, c. 132, § 3, eff. June 1, 1990.

#### Historical and Statutory Notes

The 1989 amendment, in subsection C, first sentence, substituted "fifteen (15)" for "ten (10)" and, in the second sentence, deleted "after the first Monday" following "first Tuesday" and substituted "May" for "November".

Laws 1989, H.B.1209 (c. 132), was vetoed by Governor on April 11, 1989. Governor's veto was overridden by both houses of the Legislature and filed with the Secretary of State May 2, 1989.

### § 13A-110. Vacancies

A. Vacancies for members of the board of education of every school district or vocational-technical school district shall be filled by appointment by the board. Persons appointed to fill vacancies shall serve only until the next succeeding election, at which time the office which they hold shall be placed on the ballot for the balance of the unexpired term. Vacancies filled by appointment following the delivery of the resolution calling for regular elections to the secretary of the county election board shall be filled until the regular elections the following year. Persons elected to fill unexpired terms shall begin those terms at the next regular meeting of the board of education following the election.

B. If the board of education does not fill the vacancy by appointment within sixty (60) days of the date the board declared the seat vacant, the board of education shall call a special election to fill the vacancy for the unexpired term.

Laws 1988, c. 296, § 10, eff. June 1, 1990. Laws 1989, c. 132, § 4, eff. June 1, 1990.

#### Historical and Statutory Notes

The 1989 amendment designated the former section as subsection A and, in subsection A, first sentence, deleted "remaining members of the" following "appointment by the"; and added subsection B.

Laws 1989, H.B.1209 (c. 132), was vetoed by Governor on April 11, 1989. Governor's veto was overridden by both houses of the Legislature and filed with the Secretary of State May 2, 1989.



**§ 13A-111. Costs of elections**

A. At elections held concurrently with county and state elections, the board of education of every school district and vocational-technical school district shall reimburse the county election board only for those costs exclusively attributable to the district.

B. At elections not held concurrently with county and state elections, the board of education of every school district and vocational-technical school district shall reimburse the county election board for all costs of the election. If more than one entity holds an election concurrently, then costs shall be assessed proportionately. Laws 1988, c. 296, § 11, eff. June 1, 1990.

**ARTICLE XIV. ABSENTEE VOTING****§ 14-101. Absentee ballots authorized**

Absentee ballots shall be provided for any election conducted by a county election board. Provided, however, this section shall not apply to charter cities, except that such cities may by ordinance allow absentee ballots in their municipal elections if their charter does not specifically prohibit them.

Laws 1974, c. 201, § 1, operative July 1, 1974. Renumbered from § 327.1 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976. Laws 1981, c. 292, § 5.

**Historical and Statutory Notes**

The 1981 amendment rewrote the section which prior thereto read:

"Absentee ballots shall be provided for any state or county primary election, runoff primary election, general election, statewide special election or any primary or special election to fill a vacancy for United States Senator, United States Representative, State Senator, State Representative or county commissioner."

**Severability clauses, repeal of conflicting laws, and effective/operative dates**

Section 36 of Laws 1974, c. 201 was a severability provision and § 37 provides for an operative date.

**Title of Act:**

An Act relating to elections; authorizing absentee ballots when provided by law; providing for time of requesting, receiving and returning absentee ballots; designating who can use absentee ballots and application form; providing for procedure of absentee ballots; specifying

materials to accompany absentee ballots; providing for return of ballots; providing for cancellation of registration in certain instances; providing for requests from elector in nursing home; designating absentee balloting procedure for elector in military and spouse; allowing for discharged military personnel to register and vote; designating procedure for handling returned ballots; providing for absentee counters and alternative if no counter authorized, and counting procedure; providing for absentee ballot form instructions, list of absentee voters and posting of list; requiring maintenance of voting record; directing retention of materials relative to absentee voting; requiring notice to voter if application or affidavit is rejected; providing certain exemptions from Section 2-131, of Senate Bill No. 415, 2nd Session, 34th Legislature; providing for a general repealer and repealing all of chapter 10 of title 26, Oklahoma Statutes 1971, except Section 345.11 therein; providing for severability; fixing operative date; and

declaring an emergency. Laws 1974, c. 201.

**Library References**

Elections ⇄216.1.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 210.

**§ 14-102. Designation of absentee ballot**

Absentee ballots shall not be authorized for any other election, unless specifically provided for by law.

Laws 1974, c. 201, § 2, operative July 1, 1974. Renumbered from § 327.2 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976. Laws 1981, c. 344, § 1, eff. Jan. 1, 1984; Laws 1984, c. 204, § 1, operative July 1, 1984.

**Historical and Statutory Notes**

As originally enacted this section read:

"Absentee ballots shall not be authorized for any other election, unless specifically provided for by law."

The 1981 amendment rewrote the section to read:

"Absentee ballots shall be designated as 'mail absentee ballots' and 'in-person absentee ballots'."

The 1984 amendment rewrote the section in its present wording.

**Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 10 of Laws 1981, c. 344 provides for severability and § 11 provides for an operative date.

Section 1 of Laws 1982, S.J.R. No. 29 amends Laws 1981, c. 344, § 11 to read as follows:

"This act shall become effective July 1, 1983."

Section 22 of Laws 1983, c. 171 amends § 11 of Laws 1981, c. 344, as amended by § 1 of Laws 1982, S.J.R. No. 29, to read as follows:

"This act shall become effective January 1, 1984."

Section 12 of Laws 1984, c. 204 provides for an operative date.

**Library References**

Elections ⇄216.1.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 210.

**§ 14-103. Time for requesting absentee ballot**

Absentee ballots must be requested no later than 5:00 p.m. on Wednesday preceding an election.

Laws 1974, c. 201, § 3, operative July 1, 1974. Renumbered from § 327.3 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976. Laws 1981, c. 344, § 2, eff. Jan. 1, 1984; Laws 1984, c. 204, § 2, operative July 1, 1984.

**Historical and Statutory Notes**

The 1981 amendment added "Mail" preceding "absentee ballots".

The 1984 amendment deleted "Mail" preceding "absentee ballots".

## Library References

Elections ⇐216.1.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 210.

### § 14-104. Time for return of ballot to secretary of county election board

Absentee ballots shall be returned to the secretary of each county election board no later than 7:00 p.m. the day of the election. Laws 1974, c. 201, § 4, operative July 1, 1974. Renumbered from § 327.4 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976. Laws 1979, c. 240, § 25, emerg. eff. June 1, 1979; Laws 1981, c. 344, § 3, eff. Jan. 1, 1984; Laws 1984, c. 204, § 3, operative July 1, 1984.

## Historical and Statutory Notes

As originally enacted this section read:

"Absentee ballots shall not be transmitted to a voter more than fifteen (15) days prior to any election, except for ballots to be mailed outside the continental limits of the United States which may be mailed not more than thirty (30) days prior to such election, and said ballots must be returned to the secretary of each county election board no later than 7:00 p. m. the day of the election."

The 1979 amendment rewrote the section to read:

"Absentee ballots shall be returned to the secretary of each county election board no later than 7:00 p.m. the day of the election."

The 1981 amendment added "Mail" preceding "absentee ballots".

The 1984 amendment deleted "Mail" preceding "absentee ballots".

## Library References

Elections ⇐216.1.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 210.

### § 14-105. Application for absentee ballot

A registered voter who swears or affirms that he intends to be absent from the county wherein he is registered on the day of the election may apply for an absentee ballot either in person at the county election board, by United States mail, or by telegraph. The Secretary of the State Election Board shall prescribe a form to be used for said application, although any written or telegraphed application setting forth substantially the same facts shall be valid. Laws 1974, c. 201, § 5, operative July 1, 1974. Renumbered from § 327.5 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976. Laws 1979, c. 240, § 26, emerg. eff. June 1, 1979; Laws 1981, c. 344, § 4, eff. Jan. 1, 1984; Laws 1984, c. 204, § 4, operative July 1, 1984; Laws 1985, c. 78, § 1, eff. July 1, 1985.

## Historical and Statutory Notes

As originally enacted this section read:

"A registered voter who swears or affirms that he intends to be absent from

the county wherein he is registered on the day of the election may apply for an absentee ballot either in person at the county election board or by United States mail; provided, however, that no application may be made in person more than fifteen (15) days prior to the date of an election. The Secretary of the State Election Board shall prescribe a form to be used for said application, although any written application setting forth substantially the same facts shall be valid."

The 1979 amendment rewrote the section to read:

"A registered voter who swears or affirms that he intends to be absent from the county wherein he is registered on the day of the election may apply for an absentee ballot either in person at the county election board or by United States mail. The Secretary of the State Election Board shall prescribe a form to be used for said application, although any written application setting forth substantially the same facts shall be valid."

The 1981 amendment rewrote the section to read:

"A registered voter may apply for a mail absentee ballot either in person at the county election board or by United States mail. The Secretary of the State Election Board shall prescribe a form to be used for said application, although any written application setting forth substantially the same facts shall be valid."

The 1984 amendment, in the first sentence, inserted "who swears or affirms that he intends to be absent from the county wherein he is registered on the day of the election" following "registered voter" and substituted "an" for "a mail" preceding "absentee ballot".

The 1985 amendment, in the first sentence, substituted a comma for "or" following "county election board" and, at the end of the sentence, added ", or by telegraph" and, in the second sentence, inserted "or telegraphed" following "any written".

**Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 3 of Laws 1985, c. 78 provides for an effective date.

**Library References**

- Elections ⇐216.1.
- WESTLAW Topic No. 144.
- C.J.S. Elections § 210.

**United States Supreme Court**

Equal protection for voting to persons criminally detained, see *O'Brien v. Skinner*, 1974, 94 S.Ct. 740, 414 U.S. 524, 38 L.Ed.2d 702.

**§ 14-106. Transmittal of ballot to voter**

When such application is received by the secretary of a county election board, it shall be his duty to verify the registration of said voter and to transmit, by United States mail, ballots which said voter has requested and is entitled to receive.

Laws 1974, c. 201, § 6, operative July 1, 1974. Renumbered from § 327.6 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976. Laws 1979, c. 240, § 27, emerg. eff. June 1, 1979.

**Historical and Statutory Notes**

The 1979 amendment deleted the former second sentence which read: "Provided, said ballots shall be mailed not more than fifteen (15) days prior to the election."

**Library References**

Elections ⇐216.1.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 210.

**§ 14-107. Materials to accompany ballot**

Said ballots must be accompanied by:

1. A plain opaque envelope in which voted ballots must be placed by the voter;
2. An envelope bearing an affidavit stating that the voter is qualified to vote, that he has personally marked the ballots, and has not exhibited the marked ballots to any other person; and
3. A return envelope addressed to the secretary of the county election board.

Laws 1974, c. 201, § 7, operative July 1, 1974. Renumbered from § 327.7 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976.

**Library References**

Elections ⇐216.1.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 210.

**§ 14-108. Return of ballots**

The voter shall be required to mark his ballot in ink; seal the ballots in the plain opaque envelope; fill out completely and sign the affidavit, such signature to be notarized by a notary public; seal the plain opaque envelope inside the envelope bearing the affidavit and return both envelopes, sealed inside the return envelope, by United States mail to the county election board.

Laws 1974, c. 201, § 8, operative July 1, 1974. Renumbered from § 327.8 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976. Laws 1981, c. 344, § 5, eff. Jan. 1, 1984; Laws 1984, c. 204, § 5, operative July 1, 1984.

**Historical and Statutory Notes**

The 1981 amendment added a second sentence which read: "In the event the signature is witnessed, rather than notarized as hereinbefore provided, it shall be unlawful for the same two voters to witness more than one signature at any election, unless the signatures being witnessed are those of voters registered at a single address."

The 1984 amendment, in the first sentence (now section), deleted "or witnessed by two other registered voters of the same precinct" following "a notary public" and deleted the former second sentence.

**Library References**

Elections ⇐216.1.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 210.

## ABSENTEE VOTING

26 § 14-111

Repealed

### § 14-109. Repealed by Laws 1979, c. 240, § 30, emerg. eff. June 1, 1979

#### Historical and Statutory Notes

The repealed section, relating to cancellation of registration in certain instances, was derived from Laws 1974, c. 201, § 9; Laws 1976, c. 90, § 11.

### § 14-110. Repealed by Laws 1981, c. 344, § 8, eff. Jan. 1, 1984

#### Historical and Statutory Notes

The repealed section, relating to applications for ballots for incapacitated voters, was derived from: Laws 1976, c. 90, § 11.  
Laws 1981, c. 154, § 1.  
See § 14-110.1 of this title.

### § 14-110.1. Physically incapacitated persons—Absentee ballot

A registered voter who swears or affirms that he is physically unable to vote in person at his precinct on the day of the election because:

1. He is physically incapacitated; or
2. He is charged with the care of another person who is physically incapacitated and who cannot be left unattended;

may apply for an absentee ballot by United States mail or by telegraph. The Secretary of the State Election Board shall prescribe a form to be used for said application, although any written or telegraphed application setting forth substantially the same facts shall be valid.

Laws 1984, c. 204, § 6, operative July 1, 1984. Laws 1985, c. 78, § 2, eff. July 1, 1985.

#### Historical and Statutory Notes

The 1985 amendment inserted "or by mail" and inserted "or telegraphed" following "by United States" following "although any written".

#### Library References

Elections ⇐216.1.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 210.

### § 14-111. Repealed by Laws 1981, c. 344, § 8, eff. Jan. 1, 1984

#### Historical and Statutory Notes

The repealed section, relating to transmittal of ballot to voter, was derived from Laws 1974, c. 201, § 11; Laws 1976, c. 90, § 11.  
See § 14-111.1 of this title.

**§ 14-111.1. Transmittal of ballot to voter**

When such application is received by the secretary of a county election board, it shall be his duty to verify the registration of said voter and to transmit, by United States mail, ballots which said voter has requested and is entitled to receive.

Laws 1984, c. 204, § 7, operative July 1, 1984.

**§ 14-112. Repealed by Laws 1981, c. 344, § 8, eff. Jan. 1, 1984****Historical and Statutory Notes**

The repealed section, relating to materials that must accompany a ballot, was derived from Laws 1974, c. 201, § 12; Laws 1976, c. 90, § 11.

See § 14-112.1 of this title.

**§ 14-112.1. Materials to accompany ballot**

Said ballots must be accompanied by:

1. A plain opaque envelope in which voted ballots must be placed by the voter;

2. An envelope bearing an affidavit stating that the voter is qualified to vote, that he has personally marked the ballots, and has not exhibited the marked ballots to any other person; and

3. A return envelope addressed to the secretary of the county election board.

Laws 1984, c. 204, § 8, operative July 1, 1984.

**§§ 14-113, 14-113.1. Repealed by Laws 1981, c. 344, § 8, eff. Jan. 1, 1984****Historical and Statutory Notes**

Section 14-113, relating to the return of ballots, was derived from Laws 1974, c. 201, § 13; Laws 1976, c. 90, § 11.

place to vote by absentee ballot, was derived from Laws 1979, c. 240, § 28.

Section 14-113.1, allowing voters more than ten miles from the polling

See §§ 14-113.2, 14-113.3 of this title.

**§ 14-113.2. Marking and return of ballot**

The voter shall be required to mark his ballots in ink; seal the ballots in the plain opaque envelope; fill out completely and sign the affidavit, such signature to be witnessed by two persons whose signature and address shall appear on the affidavit; seal the plain opaque envelope inside the envelope bearing the affidavit and return both envelopes, sealed inside the return envelope, by United States mail to the county election board.

Laws 1984, c. 204, § 9, operative July 1, 1984.

**§ 14-113.3. Persons more than 10 miles from polling place—  
Absentee ballots**

A registered voter who swears or affirms that he must travel more than ten (10) miles from the address at which he is registered to the polling place in his precinct shall be entitled to vote by absentee ballot in the same manner as prescribed for a registered voter who swears or affirms that he intends to be absent from the county wherein he is registered on the day of the election.

Laws 1984, c. 204, § 10, operative July 1, 1984.

**§ 14-114. Voters confined to nursing or convalescent hospital  
outside county**

If the secretary of a county election board receives such a request from an incapacitated elector confined to a nursing home or convalescent hospital outside the county of his jurisdiction, the secretary shall provide ballots and materials in the manner hereinbefore prescribed.

Laws 1974, c. 201, § 14, operative July 1, 1974. Renumbered from § 327.14 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976.

**Library References**

Elections ⇄216.1.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 210.

**§ 14-115. Voters confined to nursing home or convalescent  
hospital within county—Procedure**

If the secretary of a county election board receives a request from an incapacitated elector confined to a nursing home or convalescent hospital within the county of his jurisdiction, the secretary shall cause to be implemented the following procedures:

1. The secretary shall designate one or more absentee voting boards, to be composed of two members each, with each member to be of a different political affiliation. No later than August 1, 1974, and each two (2) years thereafter, the chairmen of the county central committees of the two political parties having the highest number of registered voters in the county shall each submit a list of ten names to the secretary. Said lists shall contain names of registered voters of the county, who may be members of the county election board, except the secretary, or precinct election boards or counters. The secretary shall be confined to said list in designating membership on the absentee voting board or boards, unless all persons on said lists are ineligible or unwilling to serve. In the event the chairman of the county central committee of a political



party fails to submit a list as herein provided, the secretary shall appoint membership to said board or boards from the ranks of registered voters of said party within the county. Provided further, that in the event the list of names of either or both parties is exhausted and additional absentee voting boards are needed, the secretary shall appoint additional members to said boards from the ranks of said party or parties in the county.

2. On the Friday, Saturday or Monday preceding the election, said absentee voting board shall deliver to each registered voter who is confined to a nursing home or convalescent hospital and who requested ballots for an incapacitated voter said ballots and materials as may be necessary to vote same.

3. The voter must mark his ballots in the manner hereinbefore provided in the presence of the absentee voting board, but in such a manner as to make it impossible for any person other than the voter to ascertain how said ballots are marked. Insofar as is possible, the voting procedure shall be the same as if the voter were casting his vote in person at a precinct.

4. The voter shall then seal said ballots in the plain opaque envelope and shall seal said plain opaque envelope in the envelope bearing an affidavit. The voter must complete said affidavit, and his signature on same must be witnessed by both members of the absentee voting board.

5. The envelope bearing an affidavit then must be sealed in the return envelope, which shall be returned by the absentee voting board to the secretary of the county election board on the same day said affidavit was executed.

6. Members of an absentee voting board shall be reimbursed for their expenses at the rate of Twenty Dollars (\$20.00) per day. One member of each such board shall also be allowed mileage reimbursement at the rate prescribed for travel by state employees. Laws 1974, c. 201, § 15, operative July 1, 1974. Renumbered from § 327.15 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976.

#### Library References

Elections ⇐216.1.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 210.

### **§ 14-115.1. Physically incapacitated voter unable to vote in person—Procedure**

A registered voter who, because of a physical incapacity which originates after 5:00 p.m. on Tuesday preceding an election, is

unable to vote in person at his precinct on the day of the election may make a written request signed by him, or signed by a witness at the voter's direction if the voter is unable to sign his name, and transmit said request to the secretary of the county election board. The person transmitting said request on behalf of the voter may be anyone of the voter's choosing at least sixteen (16) years of age, provided said person is not employed by nor related within the third degree of consanguinity or affinity to any person whose name appears on the ballot. Said person becomes the voter's agent for purposes of voting by absentee ballot. The voter's request must be accompanied by a sworn statement by a duly-licensed physician. Said statement must attest to the fact that the voter is in fact unable to vote in person at his precinct on the day of the election because of a physical incapacity and that said physical incapacity originated after 5:00 p.m. on Tuesday preceding an election. Upon receipt of the voter's request and accompanying sworn statement, the secretary of the county election board shall issue to the voter's agent the appropriate ballots and envelopes required for voting by incapacitated voters. Said ballots must be returned by the agent to the secretary of the county election board no later than 7:00 p.m. on the day of the election. No person may be the agent for more than one voter at any election. Upon return of the absentee ballots, the secretary of the county election board shall cause said ballots to be processed in the same manner as is prescribed for other absentee ballots.

Laws 1979, c. 240, § 29, emerg. eff. June 1, 1979.

#### Library References

Elections ⇐216.1.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 210.

**§§ 14-115.2, 14-115.3. Repealed by Laws 1984, c. 204, § 11, operative July 1, 1984**

#### Historical and Statutory Notes

The repealed sections, derived from application for and casting in-person absentee ballot, respectively.  
Laws 1981, c. 344, §§ 6, 7 and Laws 1983, c. 171, §§ 18 and 19, related to

**§ 14-116. Voters in armed forces—Request for ballot—Transmission of ballot**

Any qualified elector who is in the Armed Forces of the United States, or in the Merchant Marine of the United States, and the spouse or officially accredited dependent of such elector, or a citizen of the United States, temporarily residing outside the territo-

rial limits of the United States and the District of Columbia, and who is absent from the place of his residence, may make written application to the secretary of the county election board of his residence for an absentee ballot at any election for which absentee ballots are authorized, and shall be entitled, without being registered, if a qualified elector in the precinct of his residence, to receive said absentee ballots. Upon receipt of an application from such an elector during any calendar year, the secretary of the county election board shall transmit absentee ballots to the elector for any elections in which the elector is eligible to vote during the calendar year, without requiring further application.

Laws 1974, c. 201, § 16, operative July 1, 1974. Renumbered from § 327.16 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976. Laws 1984, c. 66, § 1, operative July 1, 1984.

#### Historical and Statutory Notes

The 1984 amendment added the last sentence.

Section 3 of Laws 1984, c. 66 provides for an operative date.

**Severability clauses, repeal of conflicting laws and effective/operative dates**

#### Cross References

Husband and Wife, obligations, see title 43, § 201 et seq.

#### Library References

Elections ⇨216.1.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 210.

### § 14-117. Form of application to be used by voters in armed forces

Said electors may apply for absentee ballots by using Standard Form 76, Post Card Application for Absentee Ballot, as provided for in the Federal Voting Assistance Act of 1955, as amended,<sup>1</sup> or by letter setting forth substantially the same facts. Said application shall be transmitted by United States mail to the secretary of the county election board of the elector's residence.

Laws 1974, c. 201, § 17, operative July 1, 1974. Renumbered from § 327.17 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976.

<sup>1</sup> 50 U.S.C.A. § 1451 et seq.

#### Library References

Elections ⇨216.1.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 210.

**§ 14-118. Transmittal of ballot to voter**

When such application is received by the secretary of a county election board, it shall be his duty to transmit, by United States mail, ballots which said elector has requested and is entitled to receive.

Laws 1974, c. 201, § 18, operative July 1, 1974. Renumbered from § 327.18 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976.

**Library References**

Elections ⇐216.1.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 210.

**§ 14-119. Materials to accompany ballot**

Said ballots must be accompanied by:

1. A plain opaque envelope in which voted ballots must be placed by the voter;

2. An envelope bearing an affidavit stating that the voter is qualified to vote, that he has personally marked the ballots, and has not exhibited the marked ballots to any other person; and

3. A return envelope addressed to the secretary of the county election board.

Laws 1974, c. 201, § 19, operative July 1, 1974. Renumbered from § 327.19 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976.

**Library References**

Elections ⇐216.1.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 210.

**§ 14-120. Return of ballots**

The voter shall be required to mark his ballots in ink, seal the ballots in the plain opaque envelope, fill out completely and sign the affidavit, seal the plain opaque envelope inside the envelope bearing the affidavit, and return both envelopes, sealed inside the return envelope, by United States mail.

Laws 1974, c. 201, § 20, operative July 1, 1974. Renumbered from § 327.20 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976. Laws 1984, c. 66, § 2, operative July 1, 1984; Laws 1987, c. 56, § 1, eff. Nov. 1, 1987.

**Historical and Statutory Notes**

As originally enacted this section read: plain opaque envelope; fill out completely and sign the affidavit, such signature to be attested to by a commissioned or warrant officer, noncommissioned of-

"The voter shall be required to mark his ballots in ink; seal the ballots in the

ficer not below the rank of sergeant, or petty officer, or other person authorized to so attest; seal the plain opaque envelope inside the envelope bearing the affidavit; and return both envelopes, sealed inside the return envelope, by United States mail."

The 1984 amendment made nonsubstantive grammatical changes and inserted "if the voter is in the Armed Forces of the United States," following "or other person authorized to attest" and added a second paragraph which read:

"A voter who is not in the Armed Forces of the United States but is in the Merchant Marine of the United States, the spouse or officially accredited dependent of a person in the Armed Forces or Merchant Marine of the United States, or a citizen of the United States and is temporarily residing outside the territorial limits of the United States and the

District of Columbia shall not be required to have his ballots attested to by another person but may sign the affidavit without attestation thereof and a notice informing such voter of this fact shall accompany the ballot when mailed to him by the county election board."

The 1987 amendment, in the first paragraph (now section), deleted "such signature to be attested to by a commissioned or warrant officer, noncommissioned officer not below the rank of sergeant, or petty officer, or other person authorized to so attest if the voter is in the Armed Forces of the United States," following "and sign the affidavit," and deleted the former second paragraph.

#### **Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 2 of Laws 1987, c. 56 provides for an effective date.

### **Library References**

Elections ⇨ 216.1.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 210.

## **§ 14-120.1. Special write-in absentee ballots**

A. Notwithstanding any other law to the contrary, any qualified elector who is in the Armed Forces of the United States or in the Merchant Marine of the United States, and the spouse or officially accredited dependent of such elector, or who is a citizen of the United States, temporarily residing outside the territorial limits of the United States and the District of Columbia, and who is absent from the place of residence of the elector may make written application within ninety (90) days before an election for presidential preference, presidential electors, or members of the United States Senate and United States House of Representatives to the secretary of the county election board of residence of the elector for a special write-in absentee ballot for said federal offices being contested in the election. The elector shall be entitled, without being registered, if a qualified elector in the precinct of his residence, to receive the special write-in absentee ballot.

B. Application shall be by using Standard Form 76, Post Card Application for Absentee Ballot, as provided for in the Federal Voting Assistance Act of 1955, as amended,<sup>1</sup> or by letter setting forth substantially the same facts. The special write-in absentee ballots shall be issued only if the applicant states that due to military contingencies or due to living in an isolated or extremely

remote area of the world, the regular application procedure cannot be followed.

C. Upon receipt of the application, the secretary of the county election board shall issue to the elector the ballot which shall be prescribed by the Secretary of the State Election Board, a list of the offices to be voted upon, and other materials as described in Section 14-119 of this title. As soon as a completed list of nominated candidates including the party designations of the candidates is available, the secretary shall send the list to each applicant. If the list of candidates is not available when the ballot is issued, the secretary shall include a statement indicating that the list shall be mailed as soon as it becomes available.

D. The ballot shall permit the elector to vote by writing in the names of specific candidates, the names of persons whom the voter prefers, or, in the case of a general election, the party preference for each office. The ballot shall be returned in the manner specified in Section 14-120 of this title.

E. A voter who requests a special write-in absentee ballot pursuant to the provisions of this section may also request regular absentee ballots pursuant to the provisions of Section 14-116 of this title. If the regular absentee ballots are properly returned, the special write-in absentee ballot shall be deemed void and shall be rejected without the opaque envelope being opened.

F. Special write-in absentee ballots shall be counted and tabulated according to procedures prescribed by the Secretary of the State Election Board.

Laws 1990, c. 241, § 1, emerg. eff. May 21, 1990.

<sup>1</sup> 42 U.S.C.A. § 1973cc et seq. [Repealed.]

### **§ 14-121. Discharged military personnel—Authorization to vote**

Any person eligible to register, who has been honorably discharged from the armed forces of the United States, or who has been terminated in his service or employment overseas and returned home too late to register at the time when, and at the place where, registration is required, to vote at the next ensuing election, shall be entitled to vote at such election in the precinct in which he is a qualified elector without being registered. Such person shall be entitled to vote upon satisfying the precinct inspector that he is entitled to vote at such election.

Laws 1974, c. 201, § 21, operative July 1, 1974. Renumbered from § 327.21 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976.

### Historical and Statutory Notes

#### Source:

Laws 1943, p. 99, § 1.  
26 O.S.1951, § 91.

#### Library References

Elections ⇄216.1.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 210.

#### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

#### Notes of Decisions

#### Construction and application 1

##### 1. Construction and application

One who was a resident of county and district he sought to represent as State Representative since 1942 but was not a registered voter and who entered the Navy in 1943 before he could legally register and was not returned to civil life until February 1, 1946, since which there has been no registration period and next registration period would occur between the last day of the filing period for candidates and the day of primary election, was qualified to file as a candidate in

primary election in view of statute dispensing with registration of qualified voters serving in land or naval forces. *Love v. State Election Bd.*, 197 Okl. 157, 170 P.2d 193 (1946).

Under former § 91 of this title (repealed; now this section) dispensing with registration of qualified voters serving in land or naval forces, Legislature intended that during service in armed forces qualified voters might refrain from registering and proceed wholly as qualified electors notwithstanding, and come out of the armed forces without losing any civil right by reason of failure to register. *Id.*

#### § 14-121.1. Replacement absentee ballots

A registered voter whose application is on file and who lost or did not receive absentee ballots may apply for a second set of absentee ballots if more than seven (7) days have passed since the ballots were transmitted to the voter by the county election board. To receive a second set of ballots, the voter must swear or affirm that he lost or did not receive the original set of ballots for that election and that he will vote only one set of ballots. The Secretary of the State Election Board shall prescribe a form to be used for such application, although any written application setting forth substantially the same facts shall be valid. The written application for replacement ballots shall be personally signed by the voter and acknowledged before a notary public and may be transmitted to the county election board in person by the voter, by United States Mail or by an agent designated by the voter. The person transmitting such application on behalf of the voter may be anyone of the voter's choosing at least sixteen (16) years of age, provided said person is not employed by or related within the third degree of consanguinity

or affinity to any person whose name appears on the ballot. No person may be the agent for more than one voter at any election. Such second ballot set shall be transmitted by the voter to the county election board in the same manner as provided in the original set.

Laws 1990, c. 306, § 7, emerg. eff. May 30, 1990.

### **§ 14-122. Handling of returned ballots**

When received, the secretary of the county election board shall cause envelopes containing absentee ballots to be placed in a ballot box, locked with three locks, in a secure place.

Laws 1974, c. 201, § 22, operative July 1, 1974. Renumbered from § 327.22 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976.

#### **Library References**

Elections ⇐216.1.

WESTLAW Topic No. 144.

C.J.S. Elections § 210.

### **§ 14-123. Removal of outer envelopes—Examination of affidavits**

At 10:00 a.m. on Saturday preceding the election, or at such time thereafter as the county election board may desire, the county election board may meet and publicly remove the outer envelopes from all absentee ballots then received, examine the affidavits and place the properly-executed envelopes bearing affidavits in a ballot box, locked with three locks. Said procedure shall be repeated until such time as all ballots have been received.

Laws 1974, c. 201, § 23, operative July 1, 1974. Renumbered from § 327.23 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976.

#### **Library References**

Elections ⇐216.1.

WESTLAW Topic No. 144.

C.J.S. Elections § 210.

### **§ 14-124. Absentee counters—Appointment**

The secretary of the county election board shall appoint absentee counters as authorized by the State Election Board, said absentee counters meeting all qualifications required of precinct counters.

Laws 1974, c. 201, § 24, operative July 1, 1974. Renumbered from § 327.24 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976.



## Library References

Elections ¶51.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 57 et seq.

## § 14-125. Counting procedure

A. At 7:00 a.m. on the day of the election, or at such later time that day as the secretary of the county election board may prescribe, the absentee counters shall meet at the county courthouse or at the offices of the county election board if located elsewhere to count absentee ballots in the following manner:

1. The ballot box containing the properly executed envelopes bearing affidavits shall be opened and the envelopes bearing affidavits removed;

2. The plain opaque envelopes shall be placed in a ballot box locked with three locks; and

3. The ballot box shall be shaken to mix the plain opaque envelopes, after which the box shall be opened, the envelopes removed, and the ballots counted according to law.

B. The procedure described in this section shall be repeated as is necessary until all ballots have been counted. In no event shall fewer than twelve ballots be counted at any time, unless fewer than twelve ballots are received in total or after the first count is made. The results of said absentee ballots shall not be announced earlier than 7:00 p.m. on the day of the election.

Laws 1974, c. 201, § 25, operative July 1, 1974. Renumbered from § 327.25 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976. Laws 1983, c. 45, § 1, operative July 1, 1983.

## Historical and Statutory Notes

The 1983 amendment designated the former introductory paragraph and paragraphs 1 to 3 as subsection A and designated former paragraph 4 as subsection B; in subsection A, introductory paragraph, substituted "7:00 a.m." for "4:00 p.m.", and "the" for "said" preceding "absentee counters", inserted "or at the office of the county election board if located elsewhere" following "county courthouse" and "following" preceding "manner" and deleted "hereafter described" following "manner"; in subsec-

tion B, first sentence, deleted "hereinbefore described" preceding "procedure" and inserted "described in this section" following "procedure", in the second sentence substituted "In" for "Provided, however, that in" and added the third sentence.

**Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 2 of Laws 1983, c. 45 provides for an operative date.

## Library References

Elections ¶239, 241.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 224, 227.

**§ 14-126. Counting by county election board in certain cases**

In the event no absentee counters are authorized, the county election board shall conduct the count of absentee ballots in the manner hereinbefore provided.

Laws 1974, c. 201, § 26, operative July 1, 1974. Renumbered from § 327.26 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976.

**Historical and Statutory Notes****Source:**

Laws 1927, c. 203, § 21.

Laws 1955, p. 209, § 21.

26 O.S.1971, § 291.

**§ 14-127. Prescribing forms**

The Secretary of the State Election Board shall prescribe all forms to be used in administering absentee ballot provisions of the law.

Laws 1974, c. 201, § 27, operative July 1, 1974. Renumbered from § 327.27 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976.

**§ 14-128. Instructions**

The Secretary of the State Election Board shall prescribe instructions for voting by absentee ballot. A copy of said instructions shall be mailed to each voter requesting an absentee ballot.

Laws 1974, c. 201, § 28, operative July 1, 1974. Renumbered from § 327.28 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976.

**Library References**

Elections ¶216.1.

WESTLAW Topic No. 144.

C.J.S. Elections § 210.

**§ 14-129. List of absentee voters**

The secretary of each county election board shall cause to be printed the words "Absentee Ballot Request" next to the voter's name on the precinct registry for all voters in a precinct who have requested absentee ballots prior to election day.

Laws 1974, c. 201, § 29, operative July 1, 1974. Renumbered from § 327.29 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976. Laws 1990, c. 331, § 18, eff. July 1, 1990.

**Historical and Statutory Notes**

The 1990 amendment rewrote the section which prior thereto read:

"The secretary of each county election board shall provide a list of all voters in

a precinct who have requested absentee ballots to the precinct election board prior to election day."

**Library References**

Elections §216.1.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 210.

**§ 14-130. Posting of lists**

The secretary of each county election board shall publicly post a list of all voters by precinct who have requested absentee ballots at the office of the county election board on the day preceding the election.

Laws 1974, c. 201, § 30, operative July 1, 1974. Renumbered from § 327.30 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976. Laws 1990, c. 331, § 19, eff. July 1, 1990.

**Historical and Statutory Notes**

The 1990 amendment rewrote the section which prior thereto read:

"Copies of said lists shall be publicly posted at the office of the county elec-

tion board on the day preceding the election."

**§ 14-131. Repealed by Laws 1990, c. 331, § 21, eff. July 1, 1990****Historical and Statutory Notes**

The repealed section, relating to the crediting of voters voting absentee, was derived from Laws 1974, c. 201, § 31.

See § 7-138 of this title.

**§ 14-132. Retention of materials**

All materials used for procuring and casting an absentee ballot shall be retained by the secretary of the county election board for a period of twenty-two (22) months after the day of the election. Laws 1974, c. 201, § 32, operative July 1, 1974. Renumbered from § 327.32 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976. Laws 1983, c. 171, § 20, emerg. eff. June 6, 1983.

**Historical and Statutory Notes**

The 1983 amendment substituted "twenty-two (22) months" for "one (1) year".

**§ 14-133. Notification of rejection**

In the event a voter's application or affidavit is rejected for any reason, the secretary of the county election board shall immediately notify said voter in writing of the rejection and the reason therefor. Laws 1974, c. 201, § 33, operative July 1, 1974. Renumbered from § 327.33 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976.

**§ 14-134. Repealed by Laws 1976, c. 90, § 8, emerg. eff. May 6, 1976**

**Historical and Statutory Notes**

The repealed section, derived from Laws 1974 c. 201, § 34; Laws 1975, c. 363, § 3, related to exemption as to age limitations of members of county and precinct election boards.

Renumbered from 26 O.S.Supp.1974, § 327.34 by Laws 1976, c. 90, § 11.

**ARTICLE XV. CAMPAIGN CONTRIBUTIONS AND EXPENDITURES**

**§ 15-101. Repealed by Laws 1986, c. 255, § 33, emerg. eff. June 13, 1986**

**Historical and Statutory Notes**

The repealed section, relating to the short title of the Campaign Contributions and Expenditures Act, was derived

from Laws 1974, c. 154, § 1; Laws 1976, c. 90, § 12.

**§ 15-102. Repealed by Laws 1986, c. 255, § 33, emerg. eff. June 13, 1986**

**Historical and Statutory Notes**

The repealed section, providing definitions for the Campaign Contributions and Expenditures Act, was derived from Laws 1974, c. 154, § 2.

See § 4202 of title 74.

**§ 15-103. Renumbered as § 4211 of title 74 by Laws 1986, c. 255, § 34, emerg. eff. June 13, 1986**

**§ 15-104. Repealed by Laws 1985, c. 44, § 8, eff. Jan. 1, 1986**

**Historical and Statutory Notes**

The repealed section, providing for enforcement of the financial disclosure act and venue of proceedings, was derived

from Laws 1974, c. 154, § 4; Laws 1976, c. 90, § 12.

**§§ 15-105 to 15-112. Renumbered as §§ 4213 to 4221 of title 74 by Laws 1986, c. 255, § 34, emerg. eff. June 13, 1986**

**ARTICLE XVI. PENALTIES**

**§ 16-101. Felony offenses**

Any person deemed guilty of a felony under provisions of this act shall, upon conviction, be confined in the State Penitentiary for not more than two (2) years, or fined not more than Five Thousand Dollars (\$5,000.00), or both.

Laws 1974, c. 153, § 16-101, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1907-08, p. 368.  
 Laws 1909, p. 274.  
 Comp.Laws 1909, § 3290.

R.L.1910, § 3040.  
 Comp.St.1921, § 6109.  
 St.1931, § 5776.  
 Laws 1957, p. 178, § 23.  
 26 O.S.1971, §§ 93.23, 131.

**Library References**

Elections ⇐332.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 353.

**§ 16-102. Voting illegally**

Any person who votes more than once at any election or who, knowing that he is not eligible to vote at an election, willfully votes at said election shall be deemed guilty of a felony.

Laws 1974, c. 153, § 16-102, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Comp.Laws Dak.1887, §§ 6267, 6269, 6271.  
 St.1890, §§ 1915, 1917, 1919.  
 St.1893, §§ 1904, 1906, 1908.  
 St.1903, §§ 1989, 1991, 1993.  
 Laws 1907-08, pp. 346, 368.  
 Laws 1909, p. 274.  
 Comp.Laws 1909, §§ 2089, 2091, 2093, 3205, 3290.

R.L.1910, §§ 2118, 2120, 2122, 3040, 3132.  
 Laws 1913, c. 157, p. 321, § 16.  
 Laws 1913, c. 157, p. 323, § 23.  
 Comp.St.1921, §§ 1535, 1537, 1539, 6109, 6203, 6290, 6297.  
 St.1931, §§ 2015, 2017, 2019, 5776, 5842, 5844.  
 21 O.S.1971, §§ 195, 197, 199.  
 26 O.S.1971, §§ 131, 433, 475, 482.

**Library References**

Elections ⇐313, 318.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 325, 331.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**United States Supreme Court**

Disenfranchising convicted felons who have completed their sentences and paroles, see *Richardson v. Ramirez*, 94 S.Ct. 2655, 418 U.S. 24, 41 L.Ed.2d 551 (1974), on remand 117 Cal.Rptr. 562, 12 C.3d 912, 528 P.2d 378.

## Notes of Decisions

Construction and application 1  
 Defenses 2  
 Intent 3

ly attempting to vote at a primary election in violation of Laws 1913, c. 157, § 23 (repealed; now this section). Bell v. State, 11 Okl.Cr. 37, 141 P. 804 (1914).

## 1. Construction and application

The crime of illegal voting may be committed by a person casting an illegal vote at a primary or general election, knowing himself not to be legally qualified to vote. Bell v. State, 11 Okl.Cr. 37, 141 P. 804 (1914).

## 2. Defenses

Honest ignorance of the disqualifying fact excused one charged with unlawful-

## 3. Intent

In a prosecution for unlawfully attempting to vote in violation of former Laws 1913, c. 157, § 23 (repealed; now this section), the intent with which the unlawful act was done could be proven by evidence either directly or indirectly tending to establish the fact, or by inference of law from other facts proven. Bell v. State, 11 Okl.Cr. 37, 141 P. 804 (1914).

## § 16-103. False swearing

Any person who swears or affirms a false affidavit in order to become eligible to vote shall be deemed guilty of a felony.

Laws 1974, c. 153, § 16-103, operative Jan. 1, 1975.

## Historical and Statutory Notes

## Source:

Comp.Laws Dak.1887, §§ 6270, 6272.  
 St.1890, §§ 1918, 1920.  
 St.1893, §§ 1907, 1909.  
 St.1903, §§ 1992, 1994.  
 Laws 1907-08, p. 347, 368.  
 Laws 1909, p. 274.  
 Comp.Laws 1909, §§ 2092, 2094, 3206, 3290.

Laws 1910, p. 244.  
 R.L.1910, §§ 2121, 2123, 3040, 3122, 3133.  
 Laws 1913, c. 157, p. 323, § 22.  
 Comp.St.1921, §§ 1538, 1540, 6109, 6189, 6204, 6296.  
 St.1931, §§ 5647, 5776, 5848, 5849.  
 Laws 1953, p. 112, § 23.  
 26 O.S.1971, §§ 65, 103.22, 131, 434, 481.

## Library References

Elections ¶312, 318.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 326, 331.

## WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## Notes of Decisions

Construction and application 1

## 1. Construction and application

An elector has the duty to read registration affidavit and he is accountable for representations set forth in affidavit which he signs. Ingram v. State, Okl.Cr. App., 275 P.2d 334 (1954).

Elector "knowingly" signed registration affidavit aware of the fact that it set out his residence at his office address which was a place different from his true and actual place of abode, even though elector truthfully disclosed his actual residence and someone other than elector filled in answers in the affidavit. Id.

## 26 § 16-103

## ELECTIONS

### Note 1

Although elector truthfully disclosed his actual residence to election official and sought to be entitled to reregister and vote in ward where his office was located rather than in ward of his residence, nevertheless where official caused registration affidavit to be pre-

pared actually representing office address to be elector's residential address, upon execution of affidavit by elector the written statement supplemented all oral representations and elector was held accountable for representations in affidavit. Id.

### § 16-104. False notarization

Any person, notary public or other official authorized to administer oaths who notarizes, verifies, acknowledges or attests to the signature on the affidavit of an absent voter or on the attestation of an incapacitated voter, without the person whose affidavit or attestation is being taken actually appearing in person before said person, notary public or official authorized to administer oaths, shall be deemed guilty of a felony.

Laws 1974, c. 153, § 16-104, operative Jan. 1, 1975.

#### Historical and Statutory Notes

##### Source:

Laws 1907-08, p. 368.  
Laws 1909, p. 274.  
Comp.Laws 1909, § 3290.

R.L.1910, § 3040.  
Comp.St.1921, § 6109.  
St.1931, § 5776.  
26 O.S.1971, § 131.

#### Library References

Elections ¶318.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 331.

### § 16-105. Fraud

Any person who knowingly perpetrates fraud, or who steals supplies used to conduct an election, in order to change a voter's vote, or to change the composition of the official ballot or ballots, or to change the counting of the ballots, or to change the certification of the results of an election, shall be deemed guilty of a felony.

Laws 1974, c. 153, § 16-105, operative Jan. 1, 1975.

#### Historical and Statutory Notes

##### Source:

Comp.Laws Dak.1887, § 6261.  
St.1890, § 1909.  
St.1893, § 1898.  
St.1903, § 1983.  
Laws 1907-08, pp. 347, 348, 351, 368.  
Laws 1909, p. 274.  
Comp.Laws 1909, §§ 2083, 3207, 3209,  
3219, 3222, 3290.

R.L.1910, §§ 2112, 3040, 3134, 3136,  
3146, 3149.  
Laws 1913, c. 157, pp. 321, 322, §§ 15,  
17, 18.  
Comp.St.1921, §§ 1529, 6109, 6205,  
6207, 6217, 6220, 6289, 6291, 6292.  
St.1931, §§ 5776, 5835, 5838, 5841,  
5845, 5846, 5856, 5864.  
26 O.S.1971, §§ 131, 435, 437, 447, 450,  
474, 476, 477.

## Library References

Elections ¶318.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 331.

## § 16-106. Bribes to influence votes

Any person who offers, solicits or accepts something of value intended to directly or indirectly influence the vote of the person soliciting or accepting same shall be deemed guilty of a felony. Laws 1974, c. 153, § 16-106, operative Jan. 1, 1975.

## Historical and Statutory Notes

<b>Source:</b>	R.L.1910, §§ 3040, 3139, 3140, 3143, 3144.
Laws 1907-08, pp. 349, 350, 351, 368.	Comp.St.1921, §§ 6109, 6210, 6211, 6214, 6215.
Laws 1909, p. 274.	St.1931, §§ 5776, 5859 to 5862.
Comp.Laws 1909, §§ 3212, 3213, 3216, 3217, 3290.	26 O.S.1971, §§ 131, 440, 441, 444, 445.

## Constitutional Provisions

Const. Art. 17, § 7 provides: directly or indirectly, for the purpose of influencing any voter for or against any competing town in such election, shall be deemed guilty of bribery."

"Any person or corporation offering money or other thing of value, either

## Library References

Elections ¶316.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 332.

## WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## Notes of Decisions

**Bribery, effect of 1**  
**Campaign expenses 2**

be rejected. *City of Blackwell v. City of Newkirk*, 31 Okl. 304, 121 P. 260 (1912).

## 2. Campaign expenses

## 1. Bribery, effect of

It is well settled that all votes obtained by paying, giving, or offering to pay or give, anything of value to electors therefor are, upon proper proof, to be rejected by a court in a contest. But the votes of those who neither directly nor indirectly participated in the bribery or unlawful agreement, and who are not the recipients of any benefits of the unlawful conduct of him who attempts to influence corruptly any election, are not to

Expenditures for payment of voters for polling votes, postage, stenographic help, pamphlets, circulars, newspaper advertising, etc., in county seat election are not unlawful. *City of Tecumseh v. City of Shawnee*, 148 Okl. 128, 297 P. 285 (1931).

Expenditure of funds in county seat election for purpose not authorized by statutes renders void votes influenced thereby but not result of election, in absence of statute so providing. *Id.*



**§ 16-107. Bribe for withdrawal of candidacy**

Any person who shall offer or give to another anything of value to induce or cause such other person to withdraw from a political contest as a candidate or nominee at any election shall be deemed guilty of a felony.

Laws 1974, c. 153, § 16-107, operative Jan. 1, 1975.

**Historical and Statutory Notes**

<b>Source:</b>	R.L.1910, §§ 3040, 3147.
Laws 1907-08, pp. 351, 368.	Comp.St.1921, §§ 6109, 6218.
Laws 1909, p. 274.	St.1931, §§ 5776, 5865.
Comp.Laws 1909, §§ 3220, 3290.	26 O.S.1971, §§ 131, 448.

**Library References**

Elections ⇐316.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 332.

**§ 16-108. Acceptance of bribe for withdrawal**

Any person who shall solicit or accept from another anything of value for withdrawing from any political contest as a candidate or nominee for any office at any election shall be deemed guilty of a felony.

Laws 1974, c. 153, § 16-108, operative Jan. 1, 1975.

**Historical and Statutory Notes**

<b>Source:</b>	R.L.1910, §§ 3040, 3148.
Laws 1907-08, pp. 351, 368.	Comp.St.1921, §§ 6109, 6219.
Laws 1909, p. 274.	St.1931, §§ 5776, 5866.
Comp.Laws 1909, §§ 3221, 3290.	26 O.S.1971, §§ 131, 449.

**Library References**

Elections ⇐316.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 332.

**§ 16-109. Coercion prohibited**

Any person who, by means of coercion or any other method, knowingly attempts to prevent a qualified elector from becoming registered, or a registered voter from voting, shall be deemed guilty of a felony.

Laws 1974, c. 153, § 16-109, operative Jan. 1, 1975.

**Historical and Statutory Notes**

<b>Source:</b>	St.1890, §§ 1925, 1926.
Comp.Laws Dak.1887, §§ 6277, 6278.	St.1893, §§ 1914, 1915.

St.1903, §§ 1999, 2000.  
 Laws 1907-08, pp. 349, 368.  
 Laws 1909, p. 274.  
 Comp.Laws 1909, §§ 2099, 2100, 3212,  
 3213, 3290.  
 R.L.1910, §§ 2128, 2129, 3040, 3139,  
 3140.

Comp.St.1921, §§ 1545, 1546, 6109,  
 6210, 6211.  
 St.1931, §§ 2025, 2026, 5776, 5859,  
 5860.  
 21 O.S.1971, §§ 214, 215.  
 26 O.S.1971, §§ 131, 440, 441.

#### Library References

Elections ⇐320.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 333.

### § 16-110. Misdemeanors

Any person deemed guilty of a misdemeanor under provisions of this act shall, upon conviction, be confined to the county jail for not more than one (1) year, or fined not more than One Thousand Dollars (\$1,000.00) or both.

Laws 1974, c. 153, § 16-110, operative Jan. 1, 1975.

#### Historical and Statutory Notes

**Source:**  
 Laws 1907-08, pp. 368, 376.  
 Laws 1909, p. 274.  
 Comp.Laws 1909, §§ 3290, 3304.

R.L.1910, §§ 3040, 3055.  
 Comp.St.1921, §§ 6109, 6124.  
 St.1931, §§ 5776, 5797.  
 26 O.S.1971, §§ 131, 132.

#### Library References

Elections ⇐332.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 353.

### § 16-111. Electioneering

Any person who electioneers within three hundred (300) feet of any ballot box while an election is in progress, and any person except election officials and other persons authorized by law who remains within fifty (50) feet of any ballot box while an election is in progress shall be deemed guilty of a misdemeanor.

Laws 1974, c. 153, § 16-111, operative Jan. 1, 1975.

#### Historical and Statutory Notes

**Source:**  
 Laws 1907-08, pp. 347, 368.  
 Laws 1909, p. 274.  
 Comp.Laws 1909, §§ 3208, 3290.  
 R.L.1910, §§ 3040, 3135.

Comp.St.1921, §§ 6109, 6206.  
 St.1931, §§ 5776, 5855.  
 Laws 1931, p. 108, § 17.  
 Laws 1971, c. 93, § 1.  
 26 O.S.1971, §§ 131, 436.

#### Library References

Elections ⇐211, 319.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 200, 330.

**§ 16-112. Intoxicating liquors**

Any person who takes intoxicating liquors of any kind or quantity to within one-half (1/2) mile of any polling place on an election day shall be deemed guilty of a misdemeanor.

Laws 1974, c. 153, § 16-112, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1907-08, pp. 350, 368.

Laws 1909, p. 274.

Comp.Laws 1909, §§ 3214, 3290.

R.L.1910, §§ 3040, 3141.

Comp.St.1921, §§ 6109, 6212.

St.1931, §§ 5776, 5852.

26 O.S.1971, §§ 131, 442.

**Library References**

Elections ⇐309.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 324, 334.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions****In general 1**

should be rejected, but not the entire box of the precinct. *City of Blackwell v. City of Newkirk*, 31 Okl. 304, 121 P. 260 (1912).

**1. In general**

If any persons were influenced by a partisan dispensing liquor, such votes

**§ 16-113. Interference with voter or conduct of election**

Any person who interferes with a registered voter who is attempting to vote, or any person who attempts to influence the vote of another by means of force or intimidation, or any person who interferes with the orderly and lawful conduct of an election shall be deemed guilty of a misdemeanor.

Laws 1974, c. 153, § 16-113, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Comp.Laws Dak.1887, §§ 6262, 6277, 6278.

St.1890, §§ 1910, 1925, 1926.

St.1893, §§ 1899, 1914, 1915.

St.1903, §§ 1984, 1999, 2000.

Laws 1907-08, pp. 350, 352, 368.

Laws 1909, p. 274.

Comp.Laws 1909, §§ 2084, 2099, 2100, 3215, 3223, 3290.

R.L.1910, §§ 2113, 2128, 2129, 3040, 3142, 3150.

Laws 1913, c. 157, p. 320, § 13.

Laws 1913, c. 157, p. 322, § 20.

Comp.St.1921, §§ 1530, 1545, 1546, 6109, 6213, 6221, 6287, 6294.

St.1931, §§ 2010, 2025, 2026, 5776, 5836, 5839, 5853, 5854.

21 O.S.1971, §§ 186, 214, 215.

26 O.S.1971, §§ 131, 443, 451, 472, 479.

**Library References**

Elections ⇄319.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 330.

**§ 16-114. Failure to perform duty**

Any member or employee of a county election board or precinct election board who willfully fails to perform his lawful duty shall be deemed guilty of a misdemeanor.

Laws 1974, c. 153, § 16-114, operative Jan. 1, 1975.

**Historical and Statutory Notes**

<b>Source:</b>	Laws 1913, c. 157, p. 320, § 12.
Laws 1907-08, pp. 346, 351, 368.	Comp.St.1921, §§ 6109, 6201, 6202, 6217, 6286.
Laws 1909, p. 274.	St.1931, §§ 5776, 5834, 5850, 5851, 5864.
Comp.Laws 1909, §§ 3203, 3204, 3219, 3290.	26 O.S.1971, §§ 131, 431, 432, 447, 471.
R.L.1910, §§ 3040, 3130, 3131, 3146.	

**Cross References**

Crimes against elective franchise, see Title 21, §§ 181 to 183.

**Library References**

Elections ⇄314.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 327.

**§ 16-115. Disclosure by voter**

Any person who, within the election enclosure, discloses to any other person how he voted shall be deemed guilty of a misdemeanor.

Laws 1974, c. 153, § 16-115, operative Jan. 1, 1975.

**Historical and Statutory Notes**

<b>Source:</b>	Comp.St.1921, §§ 6109, 6206.
Laws 1907-08, pp. 347, 368.	Laws 1931, p. 108, § 17.
Laws 1909, p. 274.	St.1931, §§ 5776, 5855.
Comp.Laws 1909, §§ 3208, 3290.	Laws 1971, c. 93, § 1.
R.L.1910, §§ 3040, 3135.	26 O.S.1971, §§ 131, 436.

**Library References**

Elections ⇄309.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 324, 334.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

## Notes of Decisions

Construction and application 1  
Purpose 2

## 2. Purpose

## 1. Construction and application

Provision of St.1903, c. 33, § 44, para. 2949 as to disclosure of ballot was mandatory. Board v. Dill, 26 Okl. 104, 110 P. 1107 (1910).

Purpose of Laws 1905, c. 17, § 5 (repealed; see, now, this section) forbidding disclosure was to make secret the ballot and to reject it where section violated. Harris v. Palmer, 25 Okl. 770, 108 P. 385 (1910).

## § 16-116. Disclosure by election official

Any election official who discloses how any voter may have voted shall be deemed guilty of a misdemeanor.

Laws 1974, c. 153, § 16-116, operative Jan. 1, 1975.

## Historical and Statutory Notes

## Source:

Laws 1907-08, p. 368.  
Laws 1909, p. 274.  
Comp.Laws 1909, § 3290.

R.L.1910, § 3040.  
Laws 1913, c. 157, p. 322, § 19:  
Comp.St.1921, §§ 6109, 6293.  
St.1931, §§ 5776, 5847.  
26 O.S.1971, §§ 131, 478.

## Library References

Elections ⇐314.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 327.

## § 16-117. Disclosure of count

Any person who discloses the count during an election prior to the time such disclosure is authorized by law shall be deemed guilty of a misdemeanor.

Laws 1974, c. 153, § 16-117, operative Jan. 1, 1975.

## Historical and Statutory Notes

## Source:

Laws 1907-08, pp. 325, 326, 368.  
Laws 1909, p. 274.  
Comp.Laws 1909, §§ 3134, 3136, 3290.  
R.L.1910, §§ 3040, 3082, 3084.  
Laws 1910-11, c. 106, p. 227, § 7.  
Laws 1913, c. 157, p. 324, § 25.

Comp.St.1921, §§ 6109, 6149, 6151, 6299.  
Laws 1927, c. 100, p. 161, § 1.  
Laws 1931, p. 104, § 10.  
St.1931, §§ 5776, 5802, 5804, 5809.  
Laws 1935, p. 121, § 1.  
Laws 1963, c. 109, § 2.  
26 O.S.1971, §§ 131, 366, 368, 369.

## Library References

Elections ⇐314.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 327.

**§ 16-118. Removal of ballot**

Any person who removes a ballot from the polling place or who carries a ballot into the polling place shall be deemed guilty of a misdemeanor.

Laws 1974, c. 153, § 16-118, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1907-08, p. 368.  
Laws 1909, p. 274.  
Comp.Laws 1909, § 3290.  
R.L.1910, § 3040.

Laws 1913, c. 157, p. 321, § 14.  
Laws 1913, c. 157, p. 323, § 21.  
Comp.St.1921, §§ 6109, 6288, 6295.  
St.1931, §§ 5776, 5837, 5840.  
26 O.S.1971, §§ 131, 473, 480.

**Library References**

Elections ¶309.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 324, 334.

**Notes of Decisions****In general 1****1. In general**

Election protection sought to be achieved by former § 473 of this title (repealed; now this section) is against

changes in any ballot, and where separate ballots are involved, separate and distinct offences are committed, and they may be charged in as many informations as there are separate ballot changes. *Glass v. State*, Okl. Cr., 361 P.2d 230 (1961).

**§ 16-119. Expenditure of public funds**

Any official in this state who shall direct or authorize the expenditure of any public funds under his care, except as specifically authorized by law, to be used either in support of, or in opposition to, any measure which is being referred to a vote of the people by means of the initiative or referendum, or which citizens of this state are attempting to have referred to a vote of the people by the initiative or referendum, shall be deemed guilty of a misdemeanor, and the office held by such party shall be adjudged vacant and shall be filled in the manner prescribed by law.

Laws 1974, c. 153, § 16-119, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1907-08, p. 368.  
Laws 1909, p. 274.  
Comp.Laws 1909, § 3290.

R.L.1910, § 3040.  
Laws 1913, c. 54, p. 91, § 1.  
Comp.St.1921, §§ 6109, 6663.  
St.1931, §§ 2512, 5776.  
26 O.S.1971, §§ 131, 501.

## Library References

Elections  $\Rightarrow$  314.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 327.

## WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## Notes of Decisions

**Construction and application 1**  
**Reimbursement of funds 4**  
**Sentence and punishment 2**  
**Taxation 5**  
**Vacation of office 3**

**1. Construction and application**

This section prohibiting use of public funds to influence election is applicable only to official who unlawfully directs or authorizes expenditure of public funds to influence outcome of measure which is being referred to voters by means of initiative or referendum. *Quinn v. City of Tulsa, Okl.*, 777 P.2d 1331 (1989).

Bond election was not subject to statutes on initiative and referendum for municipal questions, where no petition for calling of election was circulated and signed by voters within municipality, and thus statutory penalties for improper expenditure of public funds on initiative or referendum were inapplicable. *Quinn v. City of Tulsa, Okl.*, 777 P.2d 1331 (1989).

Expenditure of public funds to influence the outcome of school millage elections is prohibited by this section. *Op. Atty.Gen. No. 80-310* (Feb. 23, 1981).

This section prohibits a public official from directing or authorizing the expenditure or use of public funds, equipment or employees time to influence any measure which is being referred to a vote of the people by means of initiative or referendum. *Op. Atty.Gen. No. 79-346* (Nov. 28, 1979).

The practice of setting up booths in the Oklahoma State University Student Union Building to solicit signatures on initiative petitions is not expressly prohibited by statute or constitutional provisions, although the Board of Regents for Agricultural and Mechanical Colleges is authorized to promulgate reasonable

rules and regulations governing the use of university facilities. A university official who authorizes or permits such activity does not violate this section which makes unlawful the expenditure of public funds in support of or in opposition to any measure under initiative or referendum petition, unless there is an actual disbursement or spending of money. *Op. Atty.Gen. No. 73-287* (Jan. 22, 1974).

Any public official who acts contrary to the provisions of § 501 of this title (repealed; now this section), or any other law of the State of Oklahoma, is subject to being charged and his guilt or innocence determined by a court and jury. *Op. Atty.Gen. No. 72-161* (April 12, 1972).

**2. Sentence and punishment**

Any official violating the provisions of this section shall be deemed guilty of a misdemeanor and under § 16-110 of this title shall be subject to confinement in the county jail for not more than one (1) year, or fined not more than One Thousand Dollars (\$1,000.00) or both. *Op. Atty.Gen. No. 79-346* (Nov. 28, 1979).

The penalty for the violation of § 501 of this title (repealed; now this section) is a fine not less than One Hundred nor more than Five Hundred Dollars, and the office held by such party shall be adjudged vacant. Further, the official violating such act shall be the one so penalized. *Op. Atty.Gen. No. 72-161* (April 12, 1972).

**3. Vacation of office**

In addition to the criminal ramifications, this section requires the office held by an official guilty of a violation of this section to be adjudged vacant and thereafter filled in the manner prescribed by law. *Op. Atty.Gen. No. 79-346* (Nov. 28, 1979).

**4. Reimbursement of funds**

The voluntary reimbursement of illegally expended public funds in violation of this section does not prohibit criminal prosecution nor a subsequent vacancy adjudication of the office held by the violator. However, such reimbursement could conceivably be considered in mitigating the criminal sanctions imposed by a court of law against the official deemed guilty of violating the provisions of this section. Op.Atty.Gen. No. 79-346 (Nov. 28, 1979).

**5. Taxation**

When a city commission mails a flyer with its utility bills which advocates a specific stand on a sales tax election, it does not violate title 11, § 22-104, but it does violate this section. Op.Atty.Gen. Nos. 80-241 and 80-249 (Nov. 18, 1980).

The calling of municipal employees from their jobs while on payroll to attend a presentation promoting the adoption of a sales tax in an election violates this section. Id.

**§ 16-120. Printing or possession of ballots illegally**

Any person who causes to be printed, or who has in his possession, ballots not authorized by law shall be deemed guilty of a misdemeanor.

Laws 1974, c. 153, § 16-120, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1907-08, p. 368.

Laws 1909, p. 274.

Comp.Laws 1909, § 3290.

R.L.1910, § 3040.

Comp.St.1921, § 6109.

St.1931, § 5776.

26 O.S.1971, § 131.

**Library References**

Elections ⇨309.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 324, 334.

**§ 16-121. False application**

Any person who knowingly executes a false application for an absentee ballot shall be deemed guilty of a misdemeanor.

Laws 1974, c. 153, § 16-121, operative Jan. 1, 1975.

**Historical and Statutory Notes****Source:**

Laws 1907-08, p. 368.

Laws 1909, p. 274.

Comp.Laws 1909, § 3290.

R.L.1910, § 3040.

Comp.St.1921, § 6109.

St.1931, § 5776.

26 O.S.1971, § 131.

**Library References**

Elections ⇨313.

WESTLAW Topic No. 144.

C.J.S. Elections § 325.



Repealed

**§ 16-122. Repealed by Laws 1983, c. 200, § 3****Historical and Statutory Notes**

The repealed section, relating to anonymous campaign literature, was derived from:

Laws 1907-08, p. 368.

Laws 1909, p. 274.

Comp.Laws 1909, § 3290.

R.L.1910, § 3040.

Comp.St.1921, § 6109.

St.1931, § 5776.

Laws 1968, c. 233, §§ 1, 2.

26 O.S.1971, §§ 131, 491, 492.

Laws 1974, c. 153, § 16-122.

26 O.S.1981, § 16-122.

See § 15-111 of this title.

**ARTICLE XVII. MISCELLANEOUS****§ 17-111. Repealed by Laws 1980, c. 68, § 1, emerg. eff. April 10, 1980****Historical and Statutory Notes**

The repealed section, providing for the codification of Articles I through XVI of

Laws 1974, c. 153, was derived from Laws 1974, c. 153, § 17-111.

**§ 17-112. Effect of headings**

Article and section headings contained in this act shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any article or section hereof. Laws 1974, c. 153, § 17-112, operative Jan. 1, 1975.

**§ 17-113. Repealed by Laws 1989, c. 154, § 2, operative July 1, 1989****Historical and Statutory Notes**

The repealed section, providing for the severability of the provisions of Laws

1974, c. 153, was derived from Laws 1974, c. 153, § 17-113.

**§§ 17-114 to 17-116. Repealed by Laws 1980, c. 68, § 1, emerg. eff. April 10, 1980****Historical and Statutory Notes**

The repealed sections, relating to repealer, operative date and emergency clause, respectively, for Laws 1974, c.

153, was derived from Laws 1974, c. 153, §§ 17-114 to 17-116.

**ARTICLE XVIII. CAMPAIGN FINANCE ACT****§§ 18-101 to 18-113. Repealed by Laws 1986, c. 255, § 33, emerg. eff. June 13, 1986****Historical and Statutory Notes**

Section 18-101, relating to the short title of the Campaign Finance Act, was derived from Laws 1979, c. 180, § 1.

Section 18-102, relating to definitions, was derived from Laws 1979, c. 180, § 2.

Section 18-103, relating to the creation of the campaign finance fund, was derived from Laws 1979, c. 180, § 3.

Section 18-104, relating to campaign finance fund deposits, was derived from Laws 1979, c. 180, § 4.

Section 18-105, relating to rules and regulations, was derived from Laws 1979, c. 180, § 5.

Section 18-106, relating to disbursement of funds to political parties and candidates, was derived from Laws 1979, c. 180, § 6.

Section 18-107, relating to distribution of funds to political parties and candidates, was derived from Laws 1979, c. 180, § 7.

Section 18-108, relating to expenditure of funds, was derived from Laws 1979, c. 180, § 8.

Section 18-109, relating to eligibility of candidates to receive funds, was derived from Laws 1979, c. 180, § 9.

Section 18-110, relating to allocation of funds among political parties, was derived from Laws 1979, c. 180, § 10.

Section 18-111, relating to allocation of funds among candidates, was derived from Laws 1979, c. 180, § 11.

Section 18-112, relating to expenditure reports, was derived from Laws 1979, c. 180, § 12.

Section 18-113, relating to unlawful expenditure of funds, was derived from Laws 1979, c. 180, § 13.

See § 4200 et seq. of title 74.

## ARTICLE XIX. FINANCIAL DISCLOSURE ACT

**§ 19-101. Repealed by Laws 1986, c. 255, § 33, emerg. eff. June 13, 1986**

### Historical and Statutory Notes

The repealed section, relating to the short title of the Financial Disclosure Act, was derived from Laws 1985, c. 44, § 1.

**§§ 19-102 to 19-106. Renumbered as §§ 4222 to 4226 of title 74 by Laws 1986, c. 255, § 34, emerg. eff. June 13, 1986**

**§ 19-107. Repealed by Laws 1986, c. 255, § 33, emerg. eff. June 13, 1986**

### Historical and Statutory Notes

See, now, § 4207 of title 74.

## ARTICLE XX. PRESIDENTIAL PREFERENCE PRIMARY

**§ 20-101. Date of primary—Other elections prohibited**

A. A Presidential Preferential Primary for recognized political parties shall be held on the second Tuesday in March, 1988, and on the same weekday in each of the years thereafter in which the President and Vice President of the United States are to be elected.

B. If one or more states having a mutual boundary with this state establish a single date for a regional primary, the State

Election Board is authorized to change the date of the Oklahoma primary to the date established for the regional primary.

C. No county, municipality, school district or other entity authorized by law to call elections shall schedule an election on any date during the twenty (20) days immediately preceding the date of any such Primary Election. However, this subsection shall not apply to home rule municipalities.

Laws 1986, c. 4, § 1, eff. Nov. 1, 1986. Laws 1990, c. 306, § 1, emerg. eff. May 30, 1990.

### Historical and Statutory Notes

The 1990 amendment added subsection C.

#### Severability clauses, repeal of conflicting laws and effective/operative dates

Section 6 of Laws 1986, c. 4 provides for an effective date.

#### Title of Act:

An Act relating to elections; establishing a Presidential Preferential Primary;

providing dates, procedures, filings, fees and ballots; requiring certification of votes and results; providing for selection and award of delegates; permitting certain methods of allocating certain votes under certain conditions; requiring delegates and alternate delegates to file certain affidavit; providing that certain votes are void; providing for codification; and providing an effective date. Laws 1986, c. 4.

### Library References

Elections ¶126.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 111 et seq.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### Notes of Decisions

#### Validity 1

##### 1. Validity

Legislature has lawfully reposed discretion in the State Election Board to

determine date upon which the Oklahoma Presidential Preferential Primary shall be conducted. Op.Atty.Gen. No. 86-73 (1-9-87).

## § 20-102. Filing with Secretary of State—Qualifications—Petition—Fees—Ballots

A. Candidates for the nomination for President of the United States shall file with the Secretary of the State Election Board. Said candidates shall be members of political parties recognized under the laws of the State of Oklahoma and shall have filed a statement of candidacy with the Federal Election Commission and shall have raised and expended not less than Five Thousand Dollars (\$5,000.00) for said office. The candidates shall be required to swear an oath or affirm that they meet the aforementioned quali-

cations, and their signatures shall be witnessed by a notary public. Said filing beginning at 8:00 a.m. on the second Monday in January and ending at 5:00 p.m. on the next succeeding Wednesday, or at a time prescribed by the State Election Board for a Presidential Preferential Primary to be held on a date other than the second Tuesday in March. A statement of candidacy must be accompanied by a petition supporting a candidate's filing signed by one percent (1%) of the registered voters in each congressional district eligible to vote for a candidate or one thousand (1,000) registered voters in each congressional district eligible to vote for a candidate, whichever is less, as reflected by the latest January 15 registration report; or by a cashier's check or certified check in the amount of Two Thousand Five Hundred Dollars (\$2,500.00). Said check shall be forfeited unless a candidate receives more than fifteen percent (15%) of the votes cast. The State Election Board shall cause the names of all candidates who have filed within the proper time to be printed on the official ballots. The ballots shall be prepared as provided for by law. Voters shall be restricted to one vote for the candidate of his choice of the political party in which the voter is registered.

B. Each page of a petition supporting a candidate's filing shall identify the county and the congressional district, and shall contain the names of registered voters in only one congressional district and in only one county.

C. Each page of a petition supporting a candidate's filing shall be verified. Verification shall be made in substantial compliance with the provisions of Section 6 of Title 34 of the Oklahoma Statutes.

Laws 1986, c. 4, § 2, eff. Nov. 1, 1986. Laws 1987, c. 86, § 4, eff. Nov. 1, 1987.

#### Historical and Statutory Notes

The 1987 amendment designated the former section as subsection A and in subsection A, fifth sentence, substituted "one percent (1%)" for "five percent (5%)" and inserted "in each congressional district" following "one percent (1%)"

and inserted "or one thousand (1,000) registered voters in each congressional district eligible to vote for a candidate, whichever is less,;" and added subsections B and C.

#### § 20-103. Primary election statutes applicable

Except as provided for in this act,<sup>1</sup> the provisions of Title 26 of the Oklahoma Statutes relating to primary elections shall apply to Presidential Preferential Primary elections.

Laws 1986, c. 4, § 3, eff. Nov. 1, 1986.

<sup>1</sup> Section 20-101 et seq. of this title.

**§ 20-104. Certification of candidates—Allocation of delegates—Future primaries—Delegate voting**

A. Upon the completion of the state canvass of the results of the Presidential Preferential Primary, the Secretary of the State Election Board shall certify to the state chairman of each political party which has candidates participating in the primary:

1. the names of the party's candidates and the votes each received, by congressional district as well as statewide; and
2. the total of the votes cast in the political party, by congressional district as well as statewide.

B. Each candidate shall be awarded delegates by congressional districts proportionately, by the ratio of votes they received to the total vote cast in said congressional district; provided however, no delegates shall be awarded to any candidate receiving less than fifteen percent (15%) of the vote, and such votes shall be allocated among the other candidates in proportion to their total vote. If no candidate receives fifteen percent (15%) or more of the vote, then the candidate receiving the highest number of votes in that district shall be awarded all the delegates from that district.

C. The candidate receiving the largest number of votes statewide shall be awarded all delegate votes authorized by the National Committee of the political party which are selected as the at-large delegates at the state convention of said party.

D. Votes shall be allocated on a basis of not less than one-half ( $\frac{1}{2}$ ) delegate vote or the minimum allowed by the national party rules.

E. Each political party shall then select, by a method to be determined by the party, as many delegates to the national party convention as are allotted it by the national committee of that party.

F. No later than 5:00 p.m. on the tenth day of January, 1988, and each year thereafter in which the President and Vice President of the United States are to be elected, the Attorney General shall submit to the Secretary of the State Election Board notice of the manner in which results of the next following Presidential Preferential Primary are to be certified and to whom said results are to be certified. The State Election Board shall certify results according to the manner prescribed in the notice. The Attorney General shall be required to provide said notice in such a way as to be consistent with the methods required by the recognized political parties relative to selection of delegates to their national conventions.

G. Each delegate or alternate delegate to the national convention of his political party shall cast their vote on all ballots for the candidate who received this state's vote. If that candidate is for any reason no longer a candidate, the votes of the Oklahoma delegation shall be cast for any candidate of their choice.

H. If the political parties involved in the primary elections will not accept the minimum threshold or other provisions of this section, or have a different method of allocating the votes of all candidates falling below such threshold, either as to the congressional districts or statewide vote, then these matters may be governed by the respective political parties involved.

Laws 1986, c. 4, § 4, eff. Nov. 1, 1986. Laws 1987, c. 86, § 3, eff. Nov. 1, 1987.

**Historical and Statutory Notes**

The 1987 amendment deleted former subsection D which prior thereto read:

"If the political parties involved in the primary elections will not accept the minimum threshold, or have a different method of allocating the votes of all candidates falling below such threshold, ei-

ther as to the congressional districts or statewide vote, then these matters may be governed by the respective political parties involved."

; redesignated former subsections E to H as subsections D to G; and added subsection H.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

**Validity 1**

**1. Validity**

Oklahoma Presidential Preferential Primary Act of 1986, 26 O.S.Supp.1986, § 20-101 et seq., by virtue of provisions

in this section, requiring that party's methods prevail over terms of Act in cases of conflict, protects against interference with associational rights under U.S.C.A.Const. Amend. 1, and thus, is constitutional on its face. Op.Atty.Gen. No. 86-73 (1-9-87).

**§ 20-105. Delegates and alternates to file affidavits on voting**

No person selected as a delegate or alternate delegate shall qualify to attend the national convention of his political party unless he files with the state central committee of his party a signed affidavit of acceptance stating his name, address, that he is a registered voter of the political party and, pursuant to effectuating the purpose and the result of the Presidential Preferential Primary in this state, that he pledges himself to vote as provided for in Section 4 of this act.<sup>1</sup>

Any vote cast by a delegate which is not in accordance with his delegate pledge shall be void.

Laws 1986, c. 4, § 5, eff. Nov. 1, 1986.

<sup>1</sup> Section 20-104 of this title.

## ARTICLE XXI. ELECTRONIC DATA PROCESSING SYSTEMS

**§ 21-101. Unitary, unified, integrated system of election administration—Implementation—Procedures**

A. The Secretary of the State Election Board is hereby authorized beginning July 1, 1989, to purchase equipment for and implement a unitary, unified, integrated system of election administration for the State of Oklahoma that includes an electronic data processing system for maintenance of voter registration records, certification of election results and other election-related applications, and the installation of electronic, optical scanning voting devices compatible with the same system in every precinct polling place.

B. The Secretary of the State Election Board is authorized to adopt procedures consistent, insofar as practicable, with existing law for implementation of the system.

C. Except as provided in subsection A, no electronic data processing applications shall be implemented by a county election board, nor shall voting devices be purchased by a county, except for those electronic data processing applications and voting devices already in use or for which a contract had been signed by no later than March 31, 1986.

Laws 1986, c. 137, § 1, emerg. eff. April 17, 1986. Laws 1989, c. 338, § 1, emerg. eff. May 31, 1989.

**Historical and Statutory Notes**

The 1989 amendment, in subsection A, inserted "beginning July 1, 1989," substituted "purchase equipment for and implement" for "conduct a study for the development of" and "includes" for "include" and inserted ", optical scanning"; inserted subsection B; and redesignated former subsection B as subsection C and, at the beginning of subsection C, substituted "Except as provided in subsection A, no" for "No".

Editorially renumbered as this section from § 20-101 of this title to avoid a duplication in numbering.

**Title of Act:**

An Act relating to elections; authorizing the Secretary of the State Election Board to conduct a study; prohibiting county election boards from implementing certain applications or counties purchasing certain voting devices; providing for codification; and declaring an emergency. Laws 1986, c. 137.

**§ 21-102. Procedures to protect proprietary interest in computer programs**

The Secretary of the State Election Board is authorized to adopt procedures and take any other actions consistent with existing law to protect the state's proprietary interest in computer programs and software, training materials, publications and any other documents developed as part of a unitary, unified, integrated system of election administration for the State of Oklahoma.

Laws 1990, c. 331, § 20, eff. July 1, 1990.

## CHAPTER 1

### GENERAL PROVISIONS [REPEALED]

#### § 1. Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

##### Historical and Statutory Notes

The repealed section, relating to the time of general elections, was derived from:

Comp.Laws 1909, § 3095.  
R.L.1910, § 3096.  
Comp.St.1921, § 6126.  
St.1931, § 5792.

Laws 1907-08, p. 316.

See now § 1-101 of this title.

#### § 2. Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

##### Historical and Statutory Notes

The repealed section, derived from Laws 1959, p. 115, § 1, provided for the determination of dates pertaining to elections.

See § 1-106 of this title.

#### §§ 6.1 to 6.5. Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

##### Historical and Statutory Notes

The repealed sections, derived from Laws 1941, p. 92, §§ 1 to 5, prohibited

political parties affiliated with certain foreign or revolutionary organizations.

#### § 7. Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

##### Historical and Statutory Notes

The repealed section, derived from Laws 1943, p. 86, § 1, provided for recall of the certification of the vote of the

people on a proposed constitutional amendment.

#### § 8. Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

##### Historical and Statutory Notes

The repealed section, derived from Laws 1973, c. 40, § 3, established registration qualifications of candidates for state office selected by statewide vote.

See § 5-101 et seq. of this title.



## CHAPTER 2

### ELECTION BOARDS [REPEALED]

**TABLE I**

Showing where the subject matter of sections of this Chapter which were repealed in 1974 by Laws 1974, c. 153, § 17-144, operative January 1, 1975, is incorporated in the 1974 enactment.

#### Chapter 2

Former Section	1974 Enactment	Former Section	1974 Enactment
11	2-101, 2-103, 2-104	32	2-124
12	2-102	33	2-124
13	2-105, 2-107, 2-108, 2-109	34	2-124
21	2-110, 2-111, 2-112	35	none
23	2-113	36	2-124
24a	2-115, 2-118	37	2-126
24c	None	51	2-132
25	3-115	52	3-125
25a	3-119	53	3-125
26	3-116	54	none
27	None	55	2-102
31	2-123	57	7-130

**TABLE II**

Showing the derivation and subject matter of former sections of this Chapter which were repealed prior to 1974.

Former Section	Derivation	Subject Matter	Repealed by
22	Comp.St.1921, § 6276	Expiration of initial terms of county election board	Laws 1961, p. 241, § 1
24	Laws 1907-08, p. 319; Comp.Laws 1909, § 3102; Comp.St.1921, § 6130	Compensation of election board members	Laws 1937, p. 143, § 3
24b	Laws 1953, p. 102, § 2; Laws 1967, c. 254, §§ 1, 2	Additional fees for ex officio county registrar	Laws 1968, c. 389, § 4
56	Laws 1907-08, p. 324; Comp.Laws 1909, § 3115; Comp.St.1921, § 6143	Determination of nomination petition objections by election board	Laws 1941, p. 462, § 1

## ELECTION BOARDS

TABLE III

Listing former sections of this Chapter repealed in 1974 by Laws 1974, c. 153, § 17-144, operative January 1, 1975, which have no counterpart and showing the derivation and subject matter.

Former Section	Derivation	Subject Matter
24c	Laws 1953, p. 103, § 2	Fees of county registrar in counties of 325,000 or more population
27	Laws 1957, p. 654, § 1	Secretary of county election board attendance at election law study conferences
35	Laws 1907-08, p. 323; Comp.Laws 1909, § 3110; R.L.1910, § 3071; Comp.St.1921, § 6138	Notification of appointment and meeting of precinct board
54	Laws 1913, ch. 157, p. 317, § 7; Comp.St.1921, § 6281	Removal of members of county and precinct boards

## CHAPTER 3

### ELECTORS [REPEALED]

#### § 61. Repealed by Laws 1965, c. 84, § 1, eff. May 5, 1965

##### Historical and Statutory Notes

The repealed section, relating to the qualifications of electors was derived from:

Laws 1907-08, p. 341.  
Comp.Laws 1909, § 3193.  
Laws 1910, p. 241.

R.L.1910, § 3118.  
Laws 1910-11, c. 106, p. 231, § 12.  
Comp.St.1921, § 6185.  
St.1931, § 5643.

See Const. Art. 3, § 1; § 4-101 et seq. of this title.

#### § 62. Repealed by Laws 1937, p. 141, § 15

##### Historical and Statutory Notes

The repealed section, relating to residence of soldiers and sailors in service, was derived from:

Laws 1907-08, p. 341.

Comp.Laws 1909, § 3194.  
R.L.1910, § 3119.  
Comp.St.1921, § 6186.

See Const. Art. 3, § 2.

#### § 63. Repealed by Laws 1967, c. 27, § 1, eff. March 13, 1967

##### Historical and Statutory Notes

The repealed section, relating to the procedure for determining voter eligibility and for challenging a voter, was derived from:

Laws 1907-08, p. 341.  
Comp.Laws 1909, § 3195.

Laws 1910, p. 242.  
R.L.1910, § 3120.  
Laws 1910-11, c. 106, p. 232, § 13.  
Comp.St.1921, § 6187.

See § 7-114 of this title.

#### §§ 64, 65. Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

##### Historical and Statutory Notes

The repealed sections, which related to arrest for unlawful voting and to willfully making a false affidavit, were derived from:

Laws 1910, p. 244.

R.L.1910, §§ 3121, 3122.  
Comp.St.1921, §§ 6188, 6189.  
St.1931, §§ 5646, 5647.

See §§ 16-102, 16-103 of this title.

## CHAPTER 4

### REGISTRATION

**§§ 71 to 92.** Repealed by Laws 1957, p. 178, § 24, eff. May 25, 1957

#### Historical and Statutory Notes

The repealed sections, which related to voter registration, were derived from:

Laws 1916, c. 24, pp. 33 to 50, §§ 1 to 20.  
Laws 1917, c. 159, p. 253, § 1.  
Comp.St.1921, §§ 6249 to 6268.  
St.1931, §§ 5651 to 5670.  
Laws 1941, p. 93, § 1.

Laws 1943, p. 99, § 1.  
Laws 1944, Ex.Sess. p. 1, § 1.  
Laws 1944, Ex.Sess. p. 2, § 1.  
Laws 1945, p. 98, § 1.  
Laws 1945, p. 99, § 1.  
Laws 1945, p. 100, § 1.  
Laws 1949, pp. 214 to 217, §§ 1 to 4.

See § 4-101 et seq. of this title.

**§§ 93.1 to 93.30.** Repealed by Laws 1961, p. 256, § 8, eff. Oct. 27, 1961; Laws 1967, c. 27, § 1, eff. March 13, 1967; Laws 1974, c. 75, § 25, eff. April 19, 1974; Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

#### Historical and Statutory Notes

The repealed sections, which related to registration of voters, were derived from:

Laws 1957, pp. 172 to 178, §§ 1 to 23, 26.  
Laws 1959, p. 115, § 1.  
Laws 1959, p. 119, §§ 1, 2.  
Laws 1961, pp. 242 to 245, § 1.  
Laws 1961, p. 255, § 7.  
Laws 1965, c. 170, § 1.  
Laws 1965, c. 465, § 1.  
Laws 1967, c. 5, §§ 1, 2.

Laws 1967, c. 7, § 1.  
Laws 1967, c. 32, § 5.  
Laws 1967, c. 38, § 1.  
Laws 1967, c. 182, § 1.  
Laws 1968, c. 389, § 2.  
Laws 1969, c. 217, §§ 1, 2.  
Laws 1971, c. 161, § 1.  
Laws 1971, pp. 1039, 1040, H.J.R. No. 1027, §§ 1, 2.  
Laws 1972, c. 211, §§ 1, 2.

See § 4-101 et seq. of this title.

**§§ 93.31 to 93.54.** Renumbered as §§ 4-101 to 4-124, by Laws 1976, c. 90, § 10, emerg. eff. May 6, 1976

**§§ 94.1 to 94.6.** Repealed by Laws 1957, p. 178, § 24, eff. May 25, 1957

#### Historical and Statutory Notes

The repealed sections, which related to reregistration, were derived from Laws 1953, p. 113, §§ 1 to 6.

See § 4-101 et seq. of this title.

Repealed

**§§ 96.1 to 96.4.** Repealed by Laws 1957, p. 178, § 24, eff. May 25, 1957; Laws 1965, c. 504, § 4, eff. July 20, 1965

#### Historical and Statutory Notes

The repealed section, which related to the appointment of registrars, was derived from Laws 1947, p. 236, §§ 1 to 4.

See § 4-101 et seq. of this title.

**§§ 101 to 101p.** Repealed by Laws 1963, c. 141, § 1, eff. June 4, 1963; Laws 1974, c. 75, § 25, eff. April 19, 1974

#### Historical and Statutory Notes

The repealed sections, which related to voter registration, were derived from:

Laws 1937, pp. 143 to 149, §§ 1 to 17.

Laws 1941, p. 94, § 1.

Laws 1941, p. 96, §§ 2 to 4.

Laws 1945, pp. 100, 101, §§ 1 to 3.

Laws 1953, p. 115, § 1.

Laws 1955, p. 202, §§ 1, 2.

Laws 1961, pp. 245, 246, §§ 1 to 3.

Laws 1963, c. 201, § 1.

Laws 1965, c. 504, § 1.

Laws 1967, c. 182, § 2.

Laws 1968, c. 151, § 1.

Laws 1969, c. 217, §§ 3, 4.

Laws 1972, c. 211, §§ 3, 4.

Laws 1972, c. 226, § 1.

See § 4-101 et seq. of this title.

**§§ 102.1 to 102.17.** Repealed by Laws 1974, c. 75, § 25, eff. April 19, 1974

#### Historical and Statutory Notes

The repealed sections, which related to redistricting and reregistration in counties of 56,000-80,000 population, were derived from:

Laws 1953, p. 563, §§ 1 to 17.

Laws 1957, p. 182, §§ 1, 2.

Laws 1961, p. 247, § 1.

Laws 1963, c. 177, § 1.

Laws 1963, c. 201, § 2.

Laws 1968, c. 151, §§ 2, 3.

Laws 1968, c. 389, § 3.

Laws 1969, c. 217, §§ 5, 6.

Laws 1972, c. 154, § 1.

Laws 1972, c. 211, §§ 5, 6.

Laws 1973, c. 10, § 1.

See § 4-101 et seq. of this title.

**§§ 103.1 to 103.22.** Repealed by Laws 1967, c. 27, § 1, eff. March 13, 1967; Laws 1974, c. 75, § 25, eff. April 19, 1974; Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

#### Historical and Statutory Notes

The repealed sections, which related to registration of voters, were derived from:

Laws 1953, pp. 104 to 112, §§ 1 to 23.

Laws 1957, p. 179, §§ 1 to 4.

Laws 1957, p. 180, §§ 5 to 7.

Laws 1957, p. 181, §§ 8, 9.

Laws 1957, p. 182, § 10.

Laws 1959, p. 116, §§ 1 to 5.

Laws 1959, p. 117, §§ 6 to 10.

Laws 1959, p. 118, §§ 2, 11, 13; 14.

Laws 1961, p. 243, § 3.

Laws 1963, c. 201, § 3.

Laws 1965, c. 136, § 1.

Laws 1965, c. 504, §§ 2, 3.

Laws 1967, c. 182, § 3.

Laws 1969, c. 217, § 7.

Laws 1971, c. 293, § 4.

Laws 1972, c. 211, § 7.

Laws 1972, c. 226, §§ 2 to 12.

See § 4-101 et seq. of this title.

## CHAPTER 5

### PRIMARIES [REPEALED]

**TABLE 1**

Showing where the subject matter of sections of this chapter which were repealed in 1974 by Laws 1974, c. 153, § 17-144, operative January 1, 1975, is incorporated in the 1974 enactment.

Former Section	1974 Enactment	Former Section	1974 Enactment
111.....	1-107, 1-108, 1-109	162d.....	11-108
112a.....	1-102	162e.....	11-101
113.....	1-102, 8-105		to
114.....	3-114		11-107
116.....	3-115, 3-116, 3-118	162f.....	11-108, 11-109
117.....	7-102	162g.....	11-108
118.....	6-109	162i.....	11-102
119.....	6-117	162k.....	11-101, 11-102
120.....	7-107	162l.....	11-110, 11-111
121.....	7-131	162p.....	11-103
122.....	1-104	163.....	5-110
123.....	1-104	163a.....	12-101, 12-102
124.....	7-117	164.....	5-114
125.....	7-123	165a.....	5-118
127.....	2-128		to
131.....	16-101		5-131
	to	166.....	6-102
	16-122	167.....	6-102
132.....	16-110	168.1.....	8-101
161.....	5-101	168.2.....	8-101
162.....	5-111	172.....	1-103
162c.....	5-107, 5-108		

**TABLE 2**

Showing the derivation and subject matter of former sections of this chapter which were repealed in 1974 by Laws 1974, c. 153, § 17-144 and without parallel in the present statute.

Former Section	Derivation	Subject Matter
115	Laws 1907-08, p. 359 Comp.Laws 1909, § 3268 R.L.1910, § 3026 Comp.St.1921, § 6095	Selection of primary voting place and officers in accordance with general election laws.
126	Laws 1907-08, p. 366	Counting of ballots and making of return in primary in accordance with general election laws.

## ELECTIONS

Former Section	Derivation	Subject Matter
	Comp.Laws 1909, § 3285 R.L.1910, § 3035 Comp.St.1921, § 6104	
162b	Laws 1941, p. 102, § 2	Ineligibility of persons affiliated with Communist Party, etc. for political office.
162h	Laws 1968, c. 387, § 7	Persons entitled to vote for and time of election of associate district judges.
162j	Laws 1968, c. 387, § 9	Numbering offices of district judge candidates.
162m	Laws 1968, c. 387, § 12	Separate ballots without political designation for certain judicial positions.
	Laws 1970, c. 274, § 14	
162o	Laws 1968, c. 387, § 15	Applicability of election laws to certain judicial elections.
	Laws 1970, c. 247, § 17	

**TABLE 3**

Showing the disposition of former sections of this chapter repealed prior to 1974.

Former Section	Present Section	Repealed By
112	1-109	Laws 1943, p. 100, § 1
162n	T. 20, § 1404	Laws 1971, c. 86, § 2

**TABLE 4**

Showing the derivation and subject matter of former sections of this chapter repealed prior to 1974.

Former Section	Derivation	Subject Matter	Repealed By
128-130	Laws 1907-08, pp. 367, 376 Laws 1909, p. 272 Comp.Laws 1909, §§ 3287, 3303 R.L.1910, §§ 3037, 3038, 3054 Comp.St.1921, §§ 6106, 6107, 6123	Official counters, certificate of nomination, challenge of correctness of ballots, recount of ballots, and contests arising out of primary elections.	Laws 1941, pp. 462, 466, §§ 1, 13

## PRIMARIES

Former Section	Derivation	Subject Matter	Repealed By
162a	Laws 1929, c. 241, p. 308, § 6 Laws 1937, p. 138, § 5	Statement of race in notification, declaration and on ballot.	Laws 1961, p. 249, § 1.
165	Laws 1927, ch. 98, § 1	Challenge by electors of filing of a person as a candidate for nomination by a political party and in run-off primary elections.	Laws 1937, p. 138, § 7  Laws 1943, p. 100, § 1
171	Laws 1929, c. 241, p. 306, § 4 Laws 1931, p. 96, § 5 1943, p. 90, § 4	Run-off primary elections.	Laws 1937, p. 138, § 7  Laws 1947, p. 246, § 18
171.1	Laws 1937, p. 138, § 7 Laws 1943, p. 90, § 4 State Question No. 312, Referendum Petition No. 89 Laws 1945, p. 113, § 10	Run-off primary elections.	Laws 1947, p. 246, § 18



## CHAPTER 6

### ELECTION SUPPLIES [REPEALED]

**TABLE**

Showing where the subject matter of former sections of this Chapter which were repealed in 1974 by Laws 1974, c. 153, § 17-144, operative January 1, 1975, is incorporated in the 1974 enactment.

Former Section	1974 Enactment	Former Section	1974 Enactment
181.....	6-103, 6-120	190.....	3-123
182.....	6-104, 6-120	191.....	6-117
183.....	6-103	192.....	6-114
184.....	7-102, 7-103, 7-105	193.....	7-103
184.1.....	7-102, 7-103	194.....	7-102
185.....	7-102, 7-103	195.....	3-121
186.....	6-114	196.....	7-133
187.....	3-124	197 <sup>1</sup> .....	1-102
188.....	7-137	198 <sup>2</sup> .....	none
189.....	2-126, 2-119		

<sup>1</sup> Former section 197 was repealed by Laws 1968, c. 55, § 1, eff. March 18, 1968.

<sup>2</sup> Former section 198, which required furnishing each precinct with a copy of the election laws, was without parallel in the 1974 enactment and was derived from:

Laws 1907-08, p. 334.  
 Comp.Laws 1909, § 3172.  
 R.L.1910, § 3105.

Comp.St.1921, § 6172.  
 St.1931, § 5715.

## CHAPTER 7

### BALLOTS AND RETURNS [REPEALED]

TABLE

Showing the disposition of the former sections of this chapter repealed in 1974 by Laws 1974, c. 153, § 17-114, operative January 1, 1975, in the 1974 enactment.

Former Section	1974 Enactment	Former Section	1974 Enactment
221.....	6-103, 6-104, 6-120	227.....	6-111
222.....	6-103, 6-104, 6-114, 6-115	227.1.....	6-105
223.....	6-103, 6-104	228.....	6-106
224.....	6-106	229.....	5-112
224a.....	6-101	230.....	6-113
225.....	6-106	231.....	7-132
226.....	6-106	232 <sup>1</sup> ..	2-126, 7-102, 7-103, 7-105
		233.....	1-105, 5-115, 5-116
		234.....	8-103, 8-104, 8-108

<sup>1</sup> Section 232 was repealed by Laws 1941, p. 462, § 1.

## CHAPTER 8

### CONDUCT OF ELECTIONS [REPEALED]

TABLE

Showing the disposition of former sections of this chapter which were repealed by Laws 1974, c. 153, § 17-114, operative January 1, 1975, in the 1974 enactment.

Former Section	1974 Enactment	Former Section	1974 Enactment
251.....	7-104	255.....	7-122
252.....	7-107	256.....	7-131
253.....	7-112	257.....	none <sup>1</sup>
254.....	7-123	258 <sup>2</sup> .....	7-104
		259.....	7-111
		260.....	7-104

<sup>1</sup> The repealed section which permitted preparation of written ballots where election supplies were not received was derived from:

Laws 1907-08, p. 345.

Comp.Laws 1909, § 3202.

R.L.1910, § 3129.

Comp.St.1921, § 6200.

St.1931, § 5732.

<sup>2</sup> Section 258 was repealed by Laws 1967, c. 27, § 1, effective March 13, 1967.

## CHAPTER 9

### VOTING MACHINES [REPEALED]

**TABLE I**

Showing the disposition of former sections of this chapter which was repealed by Laws 1974, c. 153, § 17-114, operative January 1, 1975, in the 1974 enactment.

Former Section	1974 Enactment	Former Section	1974 Enactment
271.....	9-101	283.....	9-116
272.....	9-102	284.....	none
273.....	9-103	285.....	9-110
274.....	9-104	286.....	9-118
275.....	9-105	287.....	7-130, 9-111
276.....	9-106	288.....	9-111
277.....	9-107	288.1.....	none
278.....	3-114, 6-114	289.....	9-113
279.....	9-104, 9-107, 9-108	290.....	none
280.....	none	291.....	327.26
281.....	none	292.....	9-110
282.....	7-105	293 <sup>1</sup> .....	none
		294.....	9-118

<sup>1</sup> Section 293 which prohibited party voting levers on voting machines under certain conditions was derived from Laws 1968, c. 305, § 1, and defeated at referendum November 3, 1970.

**TABLE II**

Showing the derivation and subject matter of former sections of this chapter repealed in 1974 without disposition in the 1974 enactment.

Former Section	Derivation	Subject Matter
280	Laws 1927, ch. 203, § 10	Counties where voting machines used.
281	Laws 1955, p. 206, § 10 Laws 1927, ch. 203, § 11	Instruction of officials by custodian of voting machines.
284	Laws 1955, p. 206, § 11 Laws 1927, ch. 203, § 14 Laws 1955, p. 207, § 14	Placement of voting machines.
288.1	Laws 1959, p. 122, § 4 Laws 1959, p. 123, § 8	Procedures for voting machines using ballots or ballot cards; directions to election officers; certificates; central canvass of votes.

## ELECTIONS

**Former  
Section  
290**

**Derivation**

Laws 1927, ch. 203, § 20

Laws 1955, p. 209, § 20

**Subject Matter**

Application of election laws to  
use of voting machines.

## CHAPTER 10

### ABSENTEE VOTING

#### GENERAL PROVISIONS

**§§ 321 to 323.** Repealed by Laws 1937, p. 141, § 15

##### Historical and Statutory Notes

These sections, relating to the authorization of absentee voting, mailing and counting of ballots, and false affidavits, were derived from:

Laws 1916, c. 25, pp. 51 to 54, §§ 1 to 4.

Laws 1919, c. 88, p. 141, § 1.

Comp.St.1921, §§ 6190, 6191, 6193.

See § 14-101 et seq. of this title.

**§§ 324 to 324m.** Repealed by Laws 1945, p. 106, § 11

##### Historical and Statutory Notes

Sections, derived from Laws 1937, p. 139, §§ 1 to 14; Laws 1944, Ex.Sess., p. 3, § 1, related to absentee voting.

See § 14-101 et seq. of this title.

**§§ 325 to 325k.** Repealed by Laws 1957, p. 192, § 16, eff. April 2, 1957

##### Historical and Statutory Notes

The repealed sections, which regulated absentee voting, were derived from:

Laws 1945, pp. 102 to 106, §§ 1 to 12

Laws 1945, p. 107, § 1.

Laws 1947, pp. 238 to 240, §§ 1 to 6.

Laws 1949, pp. 217, 218, §§ 5, 6.

See § 14-101 et seq. of this title.

**§ 325L.** Repealed by Laws 1945, p. 108, § 3

##### Historical and Statutory Notes

Section, derived from Laws 1945, p. 106, § 13, related to the forwarding of

applications for absentee ballots of electors in military or naval service.

**§ 325m.** Repealed by Laws 1957, p. 192, § 16, eff. April 2, 1957

##### Historical and Statutory Notes

The repealed section, which related to absentee voting, was derived from Laws 1945, p. 106, § 14.

See § 14-101 et seq. of this title.

26 §§ 326 to 326n  
Repealed

ELECTIONS

§§ 326 to 326n. Repealed by Laws 1974, c. 201, § 35, operative July 1, 1974

Historical and Statutory Notes

The repealed sections regulated absentee voting. They were derived from:

Laws 1957, pp. 186 to 192, §§ 1 to 15.

Laws 1959, p. 124, § 1.  
Laws 1961, pp. 251 to 255, §§ 1 to 6.  
Laws 1968, c. 154, § 4.  
Laws 1972, c. 213, §§ 1 to 3.  
See § 14-101 of this title.

§§ 327.1 to 327.34. Renumbered as §§ 14-101 to 14-134, by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976

§§ 331 to 342. Repealed by Laws 1937, p. 141, § 15

Historical and Statutory Notes

The repealed sections, relating to absentee voting by soldiers and sailors, were derived from Comp.St.1921,

§§ 6304 to 6315 and Laws 1919, c. 65, pp. 102 to 105, §§ 1 to 12.  
See § 14-116 et seq. of this title.

§ 343. Repealed by Laws 1974, c. 201, § 35, operative July 1, 1974

Historical and Statutory Notes

The repealed section, which related absentee voting by members of the armed forces, was derived from Laws 1943, p. 100, § 2.

See § 14-116 et seq. of this title.

§§ 344 to 344t. Repealed by Laws 1945, p. 114, § 11; Laws 1947, p. 246, § 18

Historical and Statutory Notes

The repealed sections, relating to absentee voting by electors in armed forces or merchant marine and other services, were derived from Laws 1944, Ex. Sess.

pp. 3 to 11, §§ 1 to 23; Laws 1945, pp. 108 to 113, §§ 1 to 9.

See § 14-116 et seq. of this title.

§§ 345.1, 345.2. Repealed by Laws 1974, c. 201, § 35, operative July 1, 1974

Historical and Statutory Notes

The repealed sections, which related to absentee voting, were derived from:

Laws 1947, p. 241, §§ 1, 2.  
Laws 1957, p. 193, § 1.

Laws 1961, p. 256, § 1.  
Laws 1972, c. 224, § 1.

See § 14-101 et seq. of this title.

§ 345.3. Repealed by Laws 1972, c. 224, § 6, eff. April 7, 1972

Historical and Statutory Notes

The repealed section, which related to absentee voting, was derived from Laws 1947, p. 243, § 3; Laws 1961, p. 258, § 3.

See § 14-101 et seq. of this title.

## **ABSENTEE VOTING**

**26 §§ 345.12 to 345.17**  
**Repealed**

### **§ 345.4. Repealed by Laws 1961, p. 258, § 5, eff. March 29, 1961**

#### **Historical and Statutory Notes**

The repealed section, which related to absentee voting, was derived from Laws 1947, p. 243, § 4.

See § 14-101 et seq. of this title.

### **§§ 345.5 to 345.10. Repealed by Laws 1974, c. 201, § 35, operative July 1, 1974**

#### **Historical and Statutory Notes**

The repealed sections, which related to absentee voting, were derived from:

Laws 1961, p. 258, § 4.

Laws 1968, c. 151, § 5.

Laws 1972, c. 224, §§ 2, 3.

Laws 1947, pp. 243 to 245, §§ 5 to 10.

See § 14-101 et seq. of this title.

### **§ 345.11. Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975**

#### **Historical and Statutory Notes**

The repealed section, which related to runoff primaries, was derived from:

Laws 1961, p. 248, § 3.

Laws 1967, c. 32, § 4.

Laws 1947, p. 245, § 11.

See § 1-103 of this title.

### **§§ 345.12 to 345.17. Repealed by Laws 1974, c. 201, § 35, operative July 1, 1974**

#### **Historical and Statutory Notes**

The repealed sections, which related to absentee voting, were derived from Laws 1947, p. 246, §§ 12, to 17; Laws 1972, c. 224, § 4.

See § 14-101 et seq. of this title.



## CHAPTER 11

### COUNTING [REPEALED]

**TABLE 1**

" Showing the disposition of the subject matter of former section of this chapter, repealed by Laws 1974, c. 153, § 17-114, operative January 1, 1975, in the 1974 enactment.

Former Section	1974 Enactment	Former Section	1974 Enactment
361.....	2-128	366.....	16-117, 7-126
361.1.....	7-125	367.....	7-125
362.....	none <sup>1</sup>	368.....	16-117, 7-132
363.....	7-125	369.....	16-117, 7-130, 7-132
364.....	7-126	370.....	7-137
364.1.....	6-102	371.....	8-114, 7-127
365.....	none <sup>2</sup>	372.....	8-114
		373.....	7-133, 7-134
		374.....	2-128, 2-129

<sup>1</sup> Section 362, which related to notice of appointment and oath of counters, was derived from:

Laws 1907-08, p. 325.  
Comp.Laws 1909, § 3130.  
R.L.1910, § 3078.

Comp.St.1921, § 6145.  
St.1931, § 5798.  
Laws 1969, c. 216, § 1.

<sup>2</sup> Section 365, which provided for tally of ballots by political party in primaries, was derived from:

Laws 1907-08, p. 325.  
Comp.Laws 1909, § 3133.  
R.L.1910, § 3081.

Comp.St.1921, § 6148.  
St.1931, § 5801.

## CHAPTER 12

### CONTESTS [REPEALED]

**§§ 391 to 394.** Repealed by Laws 1974, c. 65, § 4, emerg. eff. April 13, 1974; Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

#### Historical and Statutory Notes

The repealed sections, which related to election contests, were derived from:

Laws 1927, c. 63, p. 82, § 1.  
Laws 1929, c. 241, p. 309, § 7.  
Laws 1931, p. 97, § 8.  
Laws 1931, p. 101, § 9.

St. 1931, §§ 5812, 5813.  
Laws 1944, Ex. Sess., p. 11, § 1.  
Laws 1957, p. 194, § 1.  
Laws 1957, p. 198, §§ 2, 3.

See § 8-101 et seq. of this title.

**§§ 395.1 to 395.3.** Repealed by Laws 1976, c. 90, § 9, emerg. eff. May 6, 1976

Repealed § 395.1, relating to issuance of certificate of nomination and certificate of election and contesting correctness of election results, was derived from Laws 1974, c. 65, § 1.

See § 8-101 et seq. of this title.

Repealed § 395.3, relating to challenging election results on grounds of fraud

or other irregularities, was derived from Laws 1974, c. 65, § 3.

See § 8-118 et seq. of this title.

Repealed § 395.2, relating to recounts, was derived from Laws 1974, c. 65, § 2.

See § 8-110 et seq. of this title.

## CHAPTER 13

### CAMPAIGN CONTRIBUTIONS AND EXPENDITURES

#### Section

401 to 423.10. Repealed.

424.1 to 424.12. Renumbered.

**§§ 401 to 412.** Repealed by Laws 1955, p. 211, § 9; Laws 1957, p. 200, § 2, eff. May 24, 1957; Laws 1967, c. 27, § 1, eff. March 13, 1967; Laws 1968, c. 403, § 10; eff. May 17, 1968; Laws 1974, c. 154, § 13, eff. May 4, 1974

#### Historical and Statutory Notes

The repealed sections, which related to campaign contributions and expenditures, were derived from:

Laws 1907-08 pp. 368 to 374.

Comp.Laws 1909, §§ 3292 to 3302.

Laws 1909, p. 274.

R.L.1910, §§ 3042 to 3053.

Comp.St.1921, §§ 6111 to 6122.

St.1931, §§ 5780 to 5791.

Laws 1955, p. 211, § 1.

See, now, § 15-101 et seq. of this title.

**§§ 413 to 422.** Repealed by Laws 1957, p. 200, § 2, eff. June 1, 1957; Laws 1968, c. 403, § 10, eff. May 17, 1968

#### Historical and Statutory Notes

The repealed sections, which related to campaign contributions and expenditures, were derived from:

Laws 1955, pp. 209 to 211, §§ 1 to 11.

Laws 1957, p. 199, § 1.

Laws 1957, p. 200, § 1.

See, now, § 15-101 et seq. of this title.

**§§ 423.1 to 423.10.** Repealed by Laws 1974, c. 154, § 13, eff. May 4, 1974

#### Historical and Statutory Notes

The repealed sections, which related to campaign contributions and expenditures, were derived from Laws 1968, c. 403, §§ 1 to 9, 11.

See, now, § 15-101 et seq. of this title.

**§§ 424.1 to 424.12.** Renumbered as §§ 15-101 to 15-112, by Laws 1976, c. 90, § 12, emerg. eff. May 6, 1976

## CHAPTER 14

### OFFENSES AND PENALTIES [REPEALED]

#### DISPOSITION TABLE

Showing where the subject matter of Chapter 14 repealed by Laws 1974, c. 153, § 17-114 can now be found:

Former Section	1974 Enactment	Former Section	1974 Enactment
431.....	16-114	451.....	16-113
432.....	16-114	471.....	16-114
433.....	16-102	472.....	16-113
434.....	16-103	473.....	16-118
435.....	16-105	474.....	16-105
436.....	16-111	475.....	16-102
	16-115	476.....	16-105
437.....	16-105	477.....	16-105
438.....	7-101	478.....	16-116
439.....	424.10	479.....	16-113
440.....	16-106	480.....	16-118
	16-109	481.....	16-103
441.....	16-106	491.....	16-122
	16-109		424.11
442.....	16-112	492.....	16-122
443.....	16-113		424.11
444.....	16-106	501.....	16-119
445.....	16-106	Repealed § 446, which related to witnesses' rights before grand juries, was derived from:	
446.....	none	Laws 1907-08, p. 351.	
447.....	16-105	Comp.Laws 1909, § 3218.	
	16-114	R.L.1910, § 3145.	
448.....	16-107	Comp.St.1921, § 6216.	
449.....	16-108	St.1931, § 5863.	
450.....	16-105		

**§§ 431 to 451.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

#### Historical and Statutory Notes

See, now, Disposition Table preceding § 431 of this title.

**§§ 471 to 481.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

#### Historical and Statutory Notes

See, now, Disposition Table preceding § 431 of this title.

26 § 482  
Repealed

**ELECTIONS**

**§ 482. Repealed by Laws 1961, p. 258, § 1, eff. Oct. 27, 1961**

**Historical and Statutory Notes**

See, now, § 16-102 of this title.

**§§ 491, 492. Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975**

**Historical and Statutory Notes**

See, now, Disposition Table preceding  
§ 431 of this title.

**§ 501: Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975**

**Historical and Statutory Notes**

See, now, Disposition Table preceding  
§ 431 of this title.

## CHAPTER 15

### PRESIDENTIAL ELECTORS [REPEALED]

#### DISPOSITION TABLE

Showing where the subject matter of Chapter 15 repealed by Laws 1974, c. 153, § 17-114 can now be found.

Former Section	1974 Enactment	Former Section	1974 Enactment
511.....	10-103	518.....	10-106
512.....	10-105	519.....	10-102
513.....	10-105		10-108
516.....	10-107	520.....	10-102
517.....	10-108	521.....	10-109
		522.....	10-101

**§§ 511 to 513.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

#### Historical and Statutory Notes

See, now, Disposition Table preceding § 511 of this title.

**§§ 514, 515.** Repealed by Laws 1937, p. 143, § 1

#### Historical and Statutory Notes

See, now, § 10-106 of this title.

**§§ 516 to 522.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

#### Historical and Statutory Notes

See, now, Disposition Table preceding § 511 of this title.

## CHAPTER 16

# ELECTIONS TO FILL VACANCIES IN LEGISLATURE AND CONGRESS [REPEALED]

### DISPOSITION TABLE

Showing where the subject matter of §§ 541 to 545 repealed by Laws 1974, c. 153 can now be found in §§ 12-106 to 12-109 enacted thereby.

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Former Section	1974 Enactment	Former Section	1974 Enactment
541.....	12-106	543.....	12-108
542.....	12-107	544.....	12-109
	12-108	545.....	12-109

**§§ 541 to 545.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975.

**§ 548.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975.

### Historical and Statutory Notes

See, now, §§ 12-101 to 12-103 of this title.

## CHAPTER 17

### ELECTION EXPENSES [REPEALED]

**§ 551. Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975**

#### Historical and Statutory Notes

The repealed section, which related to payment of expenses for state wide regular and special elections, was derived from:

Laws 1933, c. 199, p. 470, § 1.

Laws 1957, p. 201, § 1.

Laws 1959, p. 125, § 1.

See, now, § 3-104 et seq. of this title.

**§ 552. Repealed by Laws 1943, p. 100, § 1, emerg. eff. April 13, 1943**

#### Historical and Statutory Notes

The repealed section, derived from Laws 1933, c. 199, § 2, related to payment of expenses for regular and special elections caused by vacancies.

See, now, §§ 3-104 et seq. and 12-101 et seq. of this title.

**§§ 553 to 555. Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975**

#### Historical and Statutory Notes

Repealed § 553, which related to issuance of warrants for payment of itemized county claims for election expenses, was derived from Laws 1933, c. 199, p. 470, § 3.

derived from Laws 1933, c. 199, p. 471; Laws 1935, p. 120, § 1.

Repealed § 554, which related to a special fund for the safekeeping and payment of election expense moneys, was

Repealed § 555, which related to counters and watchers in special elections, was derived from Laws 1933, c. 199, p. 471, § 5.

See, now, § 3-104 et seq. of this title.

**§ 556. Repealed by Laws 1937, p. 143, § 3, emerg. eff. May 11, 1937**

#### Historical and Statutory Notes

See, now, § 2-129 of this title.

**§ 556a. Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975**

#### Historical and Statutory Notes

See, now, § 2-129 of this title.



§ 557. Obsolete

**Historical and Statutory Notes**

This section, derived from Laws 1915, c. 268, § 2, provided that the compensation provided for in the act was in lieu of all compensation and repealed conflicting laws.

§ 558. Repealed by Laws 1941, p. 464, § 4, emerg. June 7, 1941.

**Historical and Statutory Notes**

The repealed section, derived from Laws 1915, c. 268, § 3, related to how compensation provided for in the act should be paid.

§ 559. Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

**Historical and Statutory Notes**

The repealed section, which provided for severability, was derived from Laws 1933, c. 199, p. 472, § 8.

## CHAPTER 18

### UNIFORM ACT FOR VOTING BY NEW RESIDENTS [REPEALED]

**§§ 601 to 614.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

#### Historical and Statutory Notes

The repealed sections, which comprised the uniform act for voting by new residents, were derived from Laws 1967, c. 266, §§ 1 to 14; Laws 1968, c. 76, §§ 1, 2. See § 4-101 et seq. of this title.

\*



# TITLE 27

## EMINENT DOMAIN

### GENERAL PROVISIONS

#### Section

1. State lands subject to right of eminent domain.
2. Condemnation procedure for state lands.
3. Compensation of appraisers of state lands.
4. Water-power companies—Right of eminent domain.
5. Local governments and cemeteries—Eminent domain.
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- 7.10. Public utility lines—Relocating, rerouting, construction changes, etc.—Expenses and expenditures.
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8. Common carriers—Joint or union station or terminal.
9. Application.
10. Reimbursement of owner for expenses after acquisition.
11. Reimbursement of expenses when property not acquired.
12. Inverse condemnation proceedings—Reimbursement of expenses.
13. Policies.
14. Buildings, structures and other improvements—Taking with real property.
15. Effect of statement of policies.

### CONDEMNATION PROCEDURE ACT

21 to 37. Expired.

### Constitutional Provisions

Amendment 5 of U.S.C.A. Const. provides:

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising

in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor

be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Section 24 of Article 2 provides:

"Private property shall not be taken or damaged for public use without just compensation. Just compensation shall mean the value of the property taken, and in addition, any injury to any part of the property not taken. Any special and direct benefits to the part of the property not taken may be offset only against any injury to the property not taken. Such compensation shall be ascertained by a board of commissioners of not less than three freeholders, in such manner as may be prescribed by law. Provided however, in no case shall the owner be required to make any payments should the benefits be judged to exceed damages. The commissioners shall not be appointed by any judge or court without reasonable notice having been served upon all parties in interest. The commissioners shall be selected

from the regular jury list of names prepared and made as the Legislature shall provide. Any party aggrieved shall have the right of appeal, without bond, and trial by jury in a court of record. Until the compensation shall be paid to the owner, or into court for the owner, the property shall not be disturbed, or the proprietary rights of the owner divested. When possession is taken of property condemned for any public use, the owner shall be entitled to the immediate receipt of the compensation awarded, without prejudice to the right of either party to prosecute further proceedings for the judicial determination of the sufficiency or insufficiency of such compensation. The fee of land taken by common carriers for right of way, without the consent of the owner, shall remain in such owner subject only to the use for which it is taken. In all cases of condemnation of private property for public or private use, the determination of the character of the use shall be a judicial question."

### **Cross References**

- Airports, acquisition of property for, see title 3, §§ 61, 65.2, 65.3.
- Airspace, condemnation of, see title 60, §§ 804, 814.
- Appraisers and commissioners, compensation, see title 28, §§ 49.1, 49.2.
- Cemeteries, exemption from appropriation, see title 8, § 7.
- Cities, powers of eminent domain, see title 11, § 22-105.
- Conservation districts, acquisition of lands by eminent domain, see title 82, § 1501-502.
- Damages and compensation, immediate payment, see Const. Art. 2, § 24; title 66, § 54.
- Foreign corporations, restrictions on exercise of right of eminent domain, see Const. Art. 9, § 31.
- Gas, condemnation of subsurface stratum or formation for storage purposes, see title 52, § 36.3 et seq.
- Grand River Dam Authority, see title 82, § 862.
- Highway purposes, condemnation for, see title 69, § 1203.
- Indian or federal lands, condemnation procedure, see title 69, § 646.
- Irrigation districts, condemnation of lands for, see title 82, § 277.6.
- Municipal corporations, condemnation for municipal businesses and public utilities, parks, and improvements, see title 11, § 22-104.
- Municipal waterworks, condemnation for, see title 11, § 37-103.
- Oil and gas, condemning public lands for, see title 64, § 288.
- Pipe lines for natural gas, eminent domain for, see title 52, §§ 3, 22, 27.
- Pipe lines for oil, eminent domain for, see title 52, §§ 52, 60, 61.
- Railroad corporations, power of eminent domain, see title 66, §§ 51 et seq., 161.
- Railroads, applicable statutes extended to other corporations and to State of Oklahoma, see title 66, § 57.
- Regional water distribution districts, right of eminent domain, see title 82, § 1272.
- Streets over public property, declaration of necessity, see title 11, § 36-410.
- Taking or damaging private property for private or public use, see Const. Art. 2, §§ 23, 24.
- Telegraph and telephone lines, eminent domain for, see title 18, § 601.

Waters, acquisition of right-of-way for storage or conveyance for beneficial use, see title 82, § 105.3.

### United States Code Annotated

Civil procedure, condemnation of property for use of United States, see 28 U.S.C.A. §§ 1358, 1403; Rule 71A, Federal Rules of Civil Procedure, 28 U.S.C.A.

Federal officials, right to condemn realty, see 40 U.S.C.A. § 257.

Federally licensed water power projects, condemnation by federal, state, or municipal authorities, see 16 U.S.C.A. § 807.

Indian lands, condemnation under state laws, see 25 U.S.C.A. § 357.

River and harbor improvements, federal condemnation proceedings, see 33 U.S.C.A. § 591.

## GENERAL PROVISIONS

### § 1. State lands subject to right of eminent domain

The lands set apart for the use and benefit of the State of Oklahoma for public schools, for public buildings and educational institutions, either by congressional enactment or executive reservation, are hereby declared to be subject to the right of eminent domain in behalf of any public enterprises now authorized by law to condemn private property for mills, sewers, railroads, side tracks, station grounds and other municipal or corporate public uses, and all of the laws of this state with reference to the taking of private property for public use are hereby made applicable to the said lands.

R.L.1910, § 3183.

### Historical and Statutory Notes

#### Source:

Laws 1895, p. 122.  
St.1903, § 2974.

Comp.Laws 1909, § 3332.

Comp.St.1921, § 6316.

St.1931, § 10046.

### Law Review Commentaries

Annual Survey of Oklahoma Law: Condemnation and inverse condemnation. 3 Okl. City U.L.Rev. 375 (1978).

Eminent domain: Constitutional problems in taking of church lands. Richard C. Howard. 31 Okl.L.Rev. 191 (1978).

Federal agency's right to exercise eminent domain in state courts. 6 Okl.L. Rev. 188 (May 1953).

Option to purchase held compensable. 1 Okl. City U.L.Rev. 203 (1976).

### Library References

Eminent Domain ¶46.  
WESTLAW Topic No. 148.  
C.J.S. Eminent Domain § 86.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

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## 1. In general

Condemnation proceedings are special proceedings that are neither strictly tort in nature nor subject to all rules of law or equity. *State ex rel. Dept. of Highways v. O'Dea, Okl., 555 P.2d 587 (1976).*

Right of "eminent domain" is the power to take private property for public uses by the state at large, local municipal bodies, or by private persons or corporations authorized to exercise functions of public character. *City of Pryor Creek v. Public Service Co. of Oklahoma, Okl., 536 P.2d 343 (1975).*

Where property is included in an urban renewal project, owner of such property is not precluded from making a reasonable use of his property until urban renewal authority finally decides to take the property. *McAlester Urban Renewal Authority v. Lorince, Okl., 499 P.2d 925 (1972).*

In condemnation proceedings by city to acquire land being purchased by an individual from commissioners of land office which retained a vendor's lien, this section and §§ 2 and 3 of this title relating to procedure for condemnation of land set apart for use of state for public schools, public buildings, and educational institutions did not apply, and city properly followed procedure for condemnation of private property for public use. *Delfeld v. City of Tulsa, 191 Okl. 541, 131 P.2d 754 (1943).*

## 2. Power of eminent domain—In general

Separate legal or administrative entity, created by agreement of signatory local governmental units or public agencies, is not vested with power of eminent domain by Interlocal Cooperation Act (74 Okl.St. Ann. §§ 1001 to 1008). *Rollow v. West, Okl., 479 P.2d 962 (1971).*

Municipality, as condemnor, owes no greater duty to its condemnee than any other condemnor owes to condemnee, *Oklahoma City v. Shadid, Okl., 439 P.2d 190 (1966), certiorari denied 37 S.Ct. 1486, 386 U.S. 1034, 18 L.Ed.2d 597.*

## 3. — Nature of power

The court in a condemnation proceeding possesses the power to invoke the sanction of contempt for State's failure to act. *State ex rel. Dept. of Highways v. O'Dea, Okl., 555 P.2d 587 (1976).*

The general plenary power of the district courts of Oklahoma is sufficient to allow discretion in the judge to order either party in a condemnation proceeding to substitute parties. *Id.*

In exercise of eminent domain, private property is taken for public use and owner is invariably entitled to compensation while the police power is usually exerted merely to regulate the use and enjoyment of property by owner, or, if he is deprived of his property outright, it is not taken for public use, but rather destroyed in order to promote general welfare. *Frost v. Ponca City, Okl., 541 P.2d 1321 (1975).*

Right of eminent domain is an attribute of sovereignty which belongs to every independent government and requires no constitutional recognition. *City of Pryor Creek v. Public Service Co. of Oklahoma, Okl., 536 P.2d 343 (1975).*

As against public interest, an abutting owner's privileges vary conversely to extent of actual public use, so that as public needs advance the owner's privileges are diminished and damage may be suffered. *Petition of Grand River Dam Authority, Okl., 484 P.2d 505 (1971).*

The fundamental power of the state to exercise the right of eminent domain lies dormant until the Legislature by specific enactment designates occasions, modes, and agencies by and through which it

may be placed in operation. *Harn v. State ex rel. Williamson*, 184 Okl. 306, 87 P.2d 127 (1939).

Necessity for exercise of right of eminent domain is vested in Legislature, or Legislature may delegate power to public officials. *Bilby v. District Court of Ninth Judicial Dist.*, 159 Okl. 268, 15 P.2d 38 (1932).

Right of eminent domain is attribute of sovereignty and provisions of constitution and statutes are limitations upon exercise of right. *Arthur v. Choctaw*, 43 Okl. 174, 141 P. 1 (1914).

Necessity, utility, or expediency of exercise of right is vested in legislature, or legislature may delegate power to public officials, and court may not interfere with reasonable exercise thereof. *Id.*

#### **4. — Public use or purpose, power of eminent domain**

Filing by city of supplemental designation of the record in suit to condemn property for park purposes was not a jurisdictional matter for which defendants could seek a dismissal of cause on appeal. *City of Stillwater v. Focht*, Okl. App., 574 P.2d 1091 (1978).

Pipeline company and its predecessor in title had right of eminent domain over property when, in 1932, predecessor in title buried pipeline across property, where predecessor in title had complied with title 52, § 58 and had filed plat showing where trunk lines were proposed to be constructed and where corporation commission entered order finding that predecessor in title was entitled to exercise right of eminent domain within state. *Cox Enterprises, Ltd. v. Phillips Petroleum Co.*, Okl., 550 P.2d 1324 (1976).

Where complaint against pipeline company contained no allegation that pipeline company or its predecessor in title was willful or wanton in placing pipeline across landowner's property, landowner could not sue in trespass, but was limited to remedy of inverse condemnation. *Id.*

Where hydrocarbons underlying landowners' property presented hazard to health and safety, municipal ordinance prohibited landowners from removing hydrocarbons themselves, and landowners had no facilities to store hydro-

carbons, municipality had authority to remove hydrocarbons and sell them, but was required to account to landowners for proceeds of such sales, less amount sufficient to reimburse municipality for all reasonable expenses incurred in collecting, transporting and selling hydrocarbons and reasonable amount to reimburse municipality for future expenditures it would incur for purpose of preventing recurrence of hazardous situation. *Frost v. Ponca City*, Okl., 541 P.2d 1321 (1975).

Noise control, elimination of safety hazards, and providing sites for subsidiary suppliers, repair shops and industrial activities closely related and dependent upon normal activities of airport are public purposes for which municipality may acquire land. *Oklahoma City v. Shadid*, Okl., 439 P.2d 190 (1966) certiorari denied 87 S.Ct. 1486, 386 U.S. 1034, 18 L.Ed.2d 597.

#### **5. — Title or estate taken, power of eminent domain**

Title does not vest in the condemnor until compensation awarded by the commissioners has been paid to the landowner. *State ex rel. Dept. of Highways v. O'Dea*, Okl., 555 P.2d 587 (1976).

There cannot ordinarily be a dismissal of a condemnation proceeding with or without prejudice for failure to prosecute where an award is entered, taken down and distributed, and possession granted. *Id.*

Whether condemnation proceedings by state will pass greater interest in realty than easement depends primarily on ultimate purpose to be accomplished or occasion to be met, as determined from language employed by Legislature in particular act authorizing acquisition. *Harn v. State ex rel. Williamson*, 184 Okl. 306, 87 P.2d 127 (1939).

Condemnation proceedings ordinarily do not transfer fee-simple estate to condemnor, in absence of express statutory provision to that effect, but pass only right to use and occupy premises for purpose for which they were condemned, resulting in reverter to private owner on abandonment of public use. *Id.*



## 6. — Mineral rights, power of eminent domain

State or city, acting pursuant to its police power, may establish regulations which have effect of regulating or abrogating in a measure of the law of capture; however, these regulations may only restrict landowner's right to capture minerals underlying his property and may not authorize third persons to enter upon his premises and capture minerals underlying the same without compensating landowner, since to authorize third person to enter upon landowner's premises and exercise right to capture minerals underlying premises would constitute taking of landowner's property. *Frost v. Ponca City, Okl.*, 541 P.2d 1321 (1975).

Under "law of capture," landowner does not own migratory substances underlying his land, but has exclusive right to drill for, produce, or otherwise gain possession of such substances, subject only to restrictions and regulations pursuant to police power. *Id.*

Landowner does not acquire title or absolute ownership of migratory substances underlying his land until substances are reduced to actual possession by being brought to surface and then controlled. *Id.*

## 7. Value of property

Limited access features of highway and its effect on market value of condemnee's remaining land may be considered by jury in valuing such land in condemnation proceedings. *Gaylord v. State ex rel. Dept. of Highways, Okl.*, 540 P.2d 558 (1975).

In appraising land in condemnation proceedings, way in which frontage road providing access for condemnee's land to highway is constructed and way other access roads in that locality are constructed must be taken into consideration by trier of fact. *Id.*

Where commissioners' report on partition and plaintiff's election to purchase property at appraised value were approved and confirmed two days prior to cotenant's filing of objections and exceptions to commissioners' report, but execution was stayed until after cotenant's filing for purpose of allowing any individual or party to make application for writ of prohibition, cotenant's objections and exceptions were filed after report

had been approved and confirmed. *Sun Inv. & Loan Corp. v. McIntyre, Okl.*, 537 P.2d 341 (1975).

Where plaintiff in partition proceeding timely elected to take property at appraised value of \$10,000, no other party timely elected to take property at appraised value nor timely filed his objections and exceptions to commissioners' report prior to its approval, upon another cotenant's application for leave to file election to take property at appraised value out of time and objections and exceptions to commissioners' report, which alleged that cotenant had been offered \$15,000 for property, trial court was not required to order new appraisal or require property to be sold at public auction, and its order issuing deed to plaintiff for modified consideration of \$15,001 was not abuse of discretion. *Id.*

Although there might have been element of uncertainty as to whether rezoning of condemned property from residential to commercial could have been accomplished, element of uncertainty did not prevent condemnees from submitting evidence concerning value of property based on a commercial use, which they contended was the highest and best use of the property, although it was zoned residential, where there was evidence tending to establish that property could, within a reasonable probability, be rezoned, and admission of evidence concerning fair market value of the land based on a commercial use was not error. *McAlester Urban Renewal Authority v. Lorince, Okl.*, 499 P.2d 925 (1972).

Evidence of land's adaptability to a particular use, evidence of zoning regulations and evidence of plausible and probable changes in character of neighborhood and zoning ordinances are matters of evidentiary significance for jury to consider in determining fair market value of the condemned property. *Id.*

All facts and circumstances which a buyer and seller would consider in connection with purchase and sale of property are relevant and material in determining fair market value in a condemnation proceeding, and owner of condemned property is entitled to show, as bearing upon question of value, any fact which owner would naturally and proba-

bly bring to attention of buyer with whom he was negotiating a sale. *Id.*

Witnesses in a condemnation action were not guilty of misconduct warranting a new trial because of testimony that highway improvement project increased value of condemned land, especially in view of fact objection to such testimony was sustained and jurors instructed that their only consideration must be value of property at time of taking. *Smith v. State ex rel. Dept. of Highways, Okl. App., 477 P.2d 851 (1970).*

In condemnation proceedings, extent of range of inquiry to be permitted regarding value of property taken or damaged is largely in discretion of trial court, and action of trial court in admitting or excluding evidence concerning value will not be disturbed unless there has been an abuse of such discretion. *State ex rel. Dept. of Highways v. Robb, Okl., 454 P.2d 313 (1969).*

In condemnation proceedings, any competent evidence of matters not merely speculative, which would be considered by prospective vendor or purchaser or which tend to enhance or depreciate value of property is admissible as affecting value of property. *Id.*

#### 8. Burden of proof and presumptions

Where exhibits attached to condemning authority's answers clearly established that it had made a bona fide offer to purchase prior to filing condemnation action, and had passed a resolution of necessity to take, and condemnees declined to hear witnesses offered by condemning authority to substantiate said exhibits, burden of proof on these issues shifted to condemnees. *Oklahoma Gas & Elec. Co. v. Chez, Okl., 527 P.2d 165 (1974).*

#### 9. Damages

In action brought by state against property owner and lessee of property to acquire for highway purposes part of tract of land and all access rights of defendants from whole tract to existing federal highway, in which testimony of defendants' three experts estimated total damage from \$91,000 to \$108,833, and state's sole expert estimated total damages at \$15,000, but testified that such figure did not include loss of access, trial court did not abuse its discretion in sustaining defendants' motions for new tri-

al, following jury verdict setting total damages at \$45,000. *State ex rel. Dept. of Highways v. Owen, Okl., 548 P.2d 212 (1976).*

Landowner's evidence, without anything therein to indicate that street changes effected an absolute denial of ingress or egress between street and his property or that such changes constituted unreasonable or capricious exercise of city's police power to regulate and accommodate movement of traffic on such street, was insufficient to establish inverse condemnation cause of action for damages to value of property. *Brewer v. City of Norman, Okl., 527 P.2d 1134 (1974).*

If authorized construction of electric transmission line within boundaries of city streets should result in injury to abutting property owners different from that suffered by general public, or such owners' ingress or egress to property is destroyed, or materially impaired, owners' remedy is by action in nature of reverse condemnation and not by injunction. *Petition of Grand River Dam Authority, Okl., 484 P.2d 505 (1971).*

Damages are not recoverable for incidental inconvenience or consequential injury resulting from taking property for public use under Const. Art. 2, § 24, governing taking or damaging of private property for private use; however, where special damage results from injury which is different from that suffered by the community in general, as where ingress or egress is cut off, or materially affected, action in nature of damages for reverse condemnation may be maintained. *Id.*

Where improper argument to jury that it would be taxpayers who would ultimately bear cost of condemnation damages awarded was deliberately injected and was inflammatory plea to jurors' passions, fact that trial court admonished jury to disregard statement did not by itself necessarily constitute so complete a cure as to make further remedy by way of new trial erroneous and subsequent grant of new trial under circumstances was not arbitrary or capricious. *State ex rel. Department of Highways v. Collins, Okl., 482 P.2d 583 (1971).*

It is improper to argue to jury in condemnation proceeding that it is the tax-

payers who will ultimately bear cost of condemnation damages awarded. *Id.*

Measure of damages, where a part only of a tract of land is condemned and damages are sought for value of that taken and consequential damages to that not taken, is difference between fair market value of whole property immediately before taking and fair market value of portion left immediately after taking and in addition evidence may be admitted of specific factors which contribute to depreciation in fair market value. *State ex rel. Dept. of Highways v. Robb*, Okl., 454 P.2d 313 (1969).

Supreme Court will not substitute its judgment for jury's in matter of damages to be awarded for condemnation of property. *Champlin Refining Co. v. Donnell*, 173 Okl. 527, 49 P.2d 208 (1935).

#### **10. Jury questions**

In issuing instructions to commissioners in condemnation proceedings, court is acting in ministerial not judicial capacity, and judicial question does not arise until time of report of commission-

ers. *Gaylord v. State ex rel. Dept. of Highways*, Okl., 540 P.2d 558 (1975).

Weight and credibility of condemnees' evidence that in all probability the condemned property could be rezoned from residential to commercial was for jury. *McAlester Urban Renewal Authority v. Lorince*, Okl., 499 P.2d 925 (1972).

#### **11. Instructions**

When property is zoned for a particular purpose and there is evidence tending to establish a reasonable probability that property could be rezoned, condemnor is not entitled to an instruction which could be construed by jury as barring considerations of increased values based on prospective changes in uses to which land might be devoted. *McAlester Urban Renewal Authority v. Lorince*, Okl., 499 P.2d 925 (1972).

Instruction in eminent domain case on damage to be awarded based on jury's viewing of the premises was not improper on theory of lack of completeness. *Smith v. State ex rel. Dept. of Highways*, Okl.App., 477 P.2d 851 (1970).

## **§ 2. Condemnation procedure for state lands**

Before any public corporation, municipality or other entity or person authorized to exercise the right of eminent domain under existing law, shall have the right to condemn or take any part of such lands, a plat of the grounds proposed to be taken, showing the part of the particular subdivision, shall be prepared and filed with the Governor of said state, together with a sworn statement of the engineer or superintendent in charge of such public work, that the taking of such lands is necessary to the exercise of the powers of such municipality or corporation; and it shall be the duty of the Governor to appoint three disinterested persons, resident householders of the county in which such land is located, who shall first take an oath to fairly and impartially appraise the value of the ground so taken, and the damage to the remaining parts of such subdivision by the taking thereof, and the said appraisers shall notify the Governor and the officers of such corporation of the time and place when they will proceed to appraise such damage, and at such time and place, upon actual view of the premises, the said appraisers shall meet and appraise the damage, in writing, and return one copy thereof under their signatures to the Governor of the state, and one copy to the principal officer of such corporation or municipality in charge of such construction, and if either party is

aggrieved they may, within ten (10) days, appeal to the district court of the county where such land is located, in the same manner that appeals are taken from judgment of justices of the peace, where the amount of such damage shall be tried by a jury, as other causes are tried. In case no appeal is taken from the award of such appraisers, such corporation or municipality shall have the right to occupy such grounds by the paying into the State Treasury the amount of such award. In case either party appeals, such corporation or municipality shall have the right to occupy such grounds upon giving bond in treble the amount of the award, with sureties to be approved by the clerk of the district court where such appeal is pending, to the effect that the corporation or municipality will pay said award if such appeal be dismissed, or shall pay any judgment finally rendered in said action if the same shall be tried.

R.L.1910, § 3184.

#### Historical and Statutory Notes

##### Source:

Laws 1895, p. 122.  
St.1903, § 2975.

Comp.Laws 1909, § 3333.

Comp.St.1921, § 6317.

St.1931, § 10047.

#### Cross References

Acquisition of state lands by United States for public purposes, negotiations and conveyances in lieu of condemnation proceedings, see title 64, § 423.

#### Law Review Commentaries

Constitutional problems in taking of church lands. Richard C. Howard. 31 Okl.L.Rev. 191 (1978).

Option to purchase condemned land held compensable. 1 Okl. City U.L.Rev. 203 (1976).

#### Library References

Eminent Domain ⇐166 et seq.  
WESTLAW Topic No. 148.  
C.J.S. Eminent Domain § 209.

### § 3. Compensation of appraisers of state lands

The said appraisers shall receive as their compensation for their services the sum of Four Dollars (\$4.00) each, per day, for the time actually engaged in making such appraisal, to be verified by them under their oath, and which shall be paid, in addition to the award, by the company or corporation requiring their services.  
R.L.1910, § 3185.

#### Historical and Statutory Notes

##### Source:

Laws 1895, p. 123.  
T.26 to 28 O.S.A.—11

St.1903, § 2976.

Comp.Laws 1909, § 3334.

Comp.St.1921, § 6318.  
St.1931, § 10048.

#### Cross References

Compensation of appraisers and commissioners appointed by district court, see title 28, §§ 49.1, 49.2.

Selection of appraisers by land office commissioners, see title 64, § 3.

#### Library References

Eminent Domain ⇨230.  
WESTLAW Topic No. 148.  
C.J.S. Eminent Domain § 305.

### § 4. Water-power companies—Right of eminent domain

Any water power company, organized under the laws of this state, shall have power to exercise the right of eminent domain in like manner as railroad companies, for the purpose of securing sites for the erection of water power plants, together with the necessary dams over any nonnavigable stream and sites for the storage of water, and of securing rights-of-way for the necessary flumes and conduits for the purpose of conducting water for public or private consumption, and generating power, and for the purpose of securing rights-of-way for poles, wire and cables for transferring and transmitting electricity generated by water.

R.L.1910, § 3187.

#### Historical and Statutory Notes

<b>Source:</b>	Comp.St.1921, § 6320.
Laws 1907-08, p. 261.	St.1931, § 10050.
Comp.Laws 1909, § 3329.	

#### Cross References

Railroad companies, power of eminent domain, see title 66; §§ 51 et seq., 161.

#### Law Review Commentaries

Annual Survey of Oklahoma Law: Condemnation and inverse condemnation: 3 Okl. City U.L.Rev. 375 (1978).	Robert C. Stubbs. 9 Okl.City U.L.Rev. 431 (1984).
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Constitutional problems in taking of church lands. Richard C. Howard. 31 Okl.L.Rev. 191 (1978).	Tort liability under damage clauses in constitutional eminent domain provisions; special grants of power of eminent domain. Henry H. Foster, Jr., 5 Okl.L.Rev. 1, 19 (Feb.1952).
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Problems in litigating eminent domain claims involving transmission lines.

#### Library References

Eminent Domain ⇨10(1), 35.  
WESTLAW Topic No. 148.  
C.J.S. Eminent Domain §§ 24, 58.

## WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## Notes of Decisions

## Construction and application 1

## 1. Construction and application

The generating, storing and distribution of electricity for the use of all who

may have need of it, upon equal and reasonable terms, is a public use, so as to justify an exercise of the power of eminent domain conferred by this section. *Tuttle v. Jefferson Power & Improvement Co.*, 31 Okl. 710, 122 P. 1102 (1912).

## § 5. Local governments and cemeteries—Eminent domain

Any county, city, town, township, school district, or board of education, or any board or official having charge of cemeteries created and existing under the laws of this state, shall have power to condemn lands in like manner as railroad companies, for highways, rights-of-way, building sites, cemeteries, public parks and other public purposes.

R.L.1910, § 3188.

## Historical and Statutory Notes

## Source:

Laws 1907-08, p. 261.

Comp.Laws 1909, § 3330.

Comp.St.1921, § 6321.

St.1931, § 10051.

## Cross References

Boards of education, acquisition of property by condemnation, see title 70, § 5-117.  
Counties, aid to cities, towns, and federal government in acquiring land for forest reserves, parks, and other purposes, see title 19, § 349.

Exemption of cemeteries from appropriation, see title 8, § 7.

Power of city to condemn land for particular purposes,

Hospitals, see title 11, § 22-104.

Nuisance prevention and removal, see title 11, § 22-121.

Parks, boulevards, etc., see title 11, § 36-401 et seq.

Waterworks, see title 11, § 37-103 et seq.

Railroad companies, power of eminent domain, see title 66, §§ 51 et seq., 161.

## Law Review Commentaries

Annual Survey of Oklahoma Law: Condemnation and inverse condemnation. 3 Okl. City U.L.Rev. 375 (1978).

Cemeteries, developing in Oklahoma for oil and gas purposes. 8 Okl.L.Rev. 474 (Nov.1955).

Constitutional problems in taking of condemned church lands. Richard C. Howard. 31 Okl.L.Rev. 191 (1978).

Tort liability under damage clauses in constitutional eminent domain provisions; special grants of power of eminent domain. Henry H. Foster, Jr., 5 Okl.L.Rev. 1, 19 (Feb.1952).

## Library References

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## WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

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## 1. Power of municipality

Enactment of laws which enable municipalities to exercise eminent domain is within the legislative power of the state. *City of Pryor Creek v. Public Service Co. of Oklahoma, Okl., 536 P.2d 343 (1975).*

Power of eminent domain is of state-wide interest and importance; such right cannot be extended and expanded by provisions of a city charter. *City of Pryor Creek v. Public Service Co. of Oklahoma, Okl., 536 P.2d 343 (1975).*

Authority has not been granted to a municipal corporation to take, either expressly or by implication, under the power of eminent domain, property already devoted to the same public use for which the municipality seeks to condemn it. *City of Pryor Creek v. Public*

*Service Co. of Oklahoma, Okl., 536 P.2d 343 (1975).*

General rule is that property already legally appropriated to a public use is not to be afterwards taken by a municipality for a like use unless the intention of the legislature that it should be so taken has been manifested by express terms or by necessary implication; to hold otherwise would amount simply to the taking of property from one and destroying his right to operate although expressly authorized to do so, and giving it to another without any benefit to the public. *City of Pryor Creek v. Public Service Co. of Oklahoma, Okl., 536 P.2d 343 (1975).*

Fundamental power to exercise the right to acquire property by eminent domain lies dormant in the state until the legislature by specific enactment designates the occasion, modes, and agencies by which it may be placed in operation; in absence of statutory authority, municipalities may not exercise such power. *City of Pryor Creek v. Public Service Co. of Oklahoma, Okl., 536 P.2d 343 (1975).*

Separate legal or administrative entity, created by agreement of signatory local governmental units or public agencies, is not vested with power of eminent domain by Interlocal Cooperation Act (§§ 1001 to 1008 of title 74). *Rollow v. West, Okl., 479 P.2d 962 (1971).*

Mere statutory authorization for voluntary associations of public agencies created by written agreement is not a specific enactment by legislature designating occasions, modes, and agencies by and through which the fundamental power to exercise right of eminent domain may be placed in operation. *Id.*

## 2. Necessity for taking

Particular property sought to be condemned must be necessary for proposed project, but condemner's decision as to

necessity for taking particular property will not be disturbed in absence of fraud, bad faith, or abuse of discretion. *Seba v. Independent School Dist. No. 3 of Dewey County*, 208 Okl. 83, 253 P.2d 559 (1953).

### 3. Method of procedure

The procedure for acquisition of property by eminent domain may be invoked by a municipality without regard to willingness or unwillingness of property owner. *Incorporated Town of Pittsburg v. Cochrane*, 200 Okl. 497, 197 P.2d 287 (1948).

Whether condemner be the state or municipality method of procedure for condemnation of land is the same as procedure for condemnation of land for railroad purposes. *Harn v. State ex rel. Williamson*, 184 Okl. 306, 87 P.2d 127 (1939).

### 4. Election of remedies

Plaintiff in reverse condemnation proceeding was not precluded from maintaining such proceeding by an election of remedies because in a former action he asked that title to property be quieted and restored to him and refused to agree to condemnation of property by town, in which proceeding town was held to be entitled to possession of property, since right to prevent condemnation was not vested in plaintiff and in actuality there was no choice of remedies. *Incorporated Town of Pittsburg v. Cochrane*, 200 Okl. 497, 197 P.2d 287 (1948).

### 5. Title or estate taken

In determining the extent or quantum of estate taken by virtue of condemnation proceedings, court will examine statute authorizing condemnation and the proceedings instituted pursuant thereto, and will determine what estate or interest is reasonably necessary to serve the public purpose in view. *City of Cushing v. Gillespie*, 208 Okl. 359, 256 P.2d 418 (1953).

A condemner is not required to condemn title to the full extent permitted by the law, but may voluntarily restrict itself to so much of the landowner's interest as the public need actually requires. *Id.*

Where town took possession of water works consisting of real estate upon

which lake or water supply was located and of pipes and other property subject to depreciation in value and use of property by town would be permanent in nature, compensation was properly awarded on theory that town took fee simple title to property involved rather than an easement. *Incorporated Town of Pittsburg v. Cochrane*, 200 Okl. 497, 197 P.2d 287 (1948).

Proceedings by town to condemn land for sewer and septic tank purposes and judgment condemning land did not show intention to take fee simple title thereto, where words "fee simple" or other words denoting such estate were not used in proceedings and judgment used only word "possession" in connection with interest intended to be conveyed to town. *Martin v. City of Bethany*, 199 Okl. 57, 182 P.2d 517 (1947).

Generally, the applicable rule of construction to determine the extent of the grant of power of eminent domain is held to be that its exercise is limited to the express terms or clear implication of the statute in which the grant is contained, so if the statute expressly or by necessary implication declares that the fee shall be taken, the condemner will acquire the fee specified. *Jones v. Oklahoma City*, 192 Okl. 470, 137 P.2d 233 (1943).

Where land which had been conveyed in fee upon condition that it be devoted to a certain use is taken by eminent domain for a different use, the grantor is not entitled to compensation, but, as the interest of the grantee is in fee simple, the entire "estate" is in him and the rights of the grantor are not an estate or "interest" in the land and are not "property" in the constitutional sense. *Oklahoma City v. Local Federal Savings & Loan Ass'n of Oklahoma City*, 192 Okl. 188, 134 P.2d 565 (1943).

Generally condemnation does not give fee, but only right to use and occupy land for purposes taken. *Carter v. Davis*, 141 Okl. 172, 284 P. 3 (1930).

A school district that purchases property for school purposes within the confines of a residential development is not bound by the restrictive covenants allowing only residential use of that property, and there is no distinction with regard to the rights acquired by a school district taking said property by warranty deed



or by condemnation proceedings with particular reference to the extent and degree of the estate taken, excepting the desirability of warranties attached to said estate. *Op. Atty. Gen. No. 71-148* (Feb. 12, 1971).

#### 6. Railroad property

A municipality is not authorized to condemn railroad property for park purposes. *Oklahoma City v. Local Federal Savings & Loan Ass'n of Oklahoma City*, 192 Okl. 188, 134 P.2d 565 (1943).

Where intervenor's ancestor conveyed land to a railroad on condition subsequent that the land be used as a railroad right of way and city acquired the land for use as a park by agreement in lieu of condemnation proceeding, city's acquisition of the land did not defeat intervenor's right to terminate the estate when the use of the land as a railroad ceased. *Id.*

Under this section and §§ 53 and 57 of title 66, railroads and municipalities are granted equal powers of eminent domain for their respective requirements. *Id.*

#### 7. Waters and water courses

A municipal corporation under legislative grant may acquire land and water rights for municipal purposes, either by purchase or condemnation proceeding and the power and authority thus vested in municipalities, may be exercised under the law of eminent domain as to rivers, streams, surface waters or percolating water. *Bowles v. City of Enid*, 206 Okl. 611, 245 P.2d 730 (1952).

#### 8. Uses or purposes—In general

Property presently devoted to a public use cannot generally be taken for a wholly different public use pursuant to the power of eminent domain except where the second taking is necessary to the public welfare. *Oklahoma City v. Local Federal Savings & Loan Ass'n of Oklahoma City*, 192 Okl. 188, 134 P.2d 565 (1943).

#### 9. — Cemeteries, uses or purposes

City could condemn land for cemetery purposes, and land sought to be condemned being owned by an individual, notwithstanding it was being used for cemetery purposes by such individual, was subject to condemnation as to un-

sold portions of land. *Landree v. City of Mangum*, 196 Okl. 281, 164 P.2d 630 (1946).

#### 10. — Public utilities, uses or purposes

Power of a governmental body subordinate to the state to acquire an existing electrical plant or system and subject it to the same use is dependent on statutory authority. *City of Pryor Creek v. Public Service Co. of Oklahoma*, Okl., 536 P.2d 343 (1975).

Power of municipality to take property of a public service corporation for public utility purposes must rest on legislative authority either granted expressly or by necessary implication; general authority to exercise the power of eminent domain is insufficient. *Id.*

A charter provision which attempts to designate authority to a city to condemn a public utility is void. *Id.*

#### 11. — Sewer systems, uses or purposes

Proceedings by town to condemn land for sewer and septic tank purposes must be construed most strongly against town and in favor of owner of property taken. *Martin v. City of Bethany*, 199 Okl. 57, 182 P.2d 517 (1947).

Under *Comp. Laws 1909, § 3330*, now incorporated in this section, any city is empowered to condemn land, in the same manner as railroads, for right of way, outlet, or outfall for its sewer system, since a sewer is a public utility and the condemnation of a right of way, outlet or outfall for a sewerage system is a public purpose. *Cunningham v. Ponca City*, 27 Okl. 858, 113 P. 919 (1911).

#### 12. — Waterworks, uses or purposes

Statutes relating to the power of eminent domain of municipal corporation, to ownership of water, to waterworks of municipal corporation and to ground water are in *pari materia*. *Bowles v. City of Enid*, 206 Okl. 611, 245 P.2d 730 (1952).

#### 13. Estoppel and waiver

Condemnees who appeared and fully participated in eminent domain proceedings, which resulted in condemnees finding award acceptable for their property

and their withdrawal of amount thereof from the court clerk, had acquiesced and consented to the jurisdiction of the court, and condemnees had waived any deficiencies in the proceedings, including erroneous description of property in the petition and subsequent filings. *Oklahoma City v. Lockert*, Okl., 484 P.2d 523 (1971).

Property owner who stands by after city has taken possession of property for park purposes and permits city to spend large sums of money in making improvements thereon held estopped from maintaining either trespass or ejection, but is entitled to damages for value of land at time of appropriation. *Vinson v. Oklahoma City*, 179 Okl. 590, 66 P.2d 933 (1937).

#### **14. Abandonment of proceedings**

Where landowner's possessory rights are not disturbed, eminent domain proceedings may be abandoned without subjecting condemner to award of damages, even after jury trial and verdict fixing amount of compensation, but before final judgment. *Board of Com'rs of Pontotoc County v. Rayburn*, 192 Okl. 624, 138 P.2d 820 (1943).

The "actual possession" required by the general rule prohibiting abandonment of condemnation proceedings by condemner is not a temporary possession but rather such possession as invests condemner with title and gives landowner vested rights to compensation. *Id.*

Right of abandonment or dismissal of condemnation proceedings is not lost by mere wrongful taking of possession by condemner. *Id.*

Acts of servant of county in grading road over which county is entitled to an easement will not bind county to pay condemnation money for adjacent lands on abandonment of proceedings, where there is no intent on part of county to take possession of lands, though by such acts there may be slight and occasional encroachments on the land, since the "actual possession" by condemner which will preclude abandonment of eminent domain proceedings is not a fugitive or temporary trespass, but such possession as will give landowner a vested right of compensation. *Id.*

Where county exercising powers of eminent domain instituted condemnation proceedings, and commissioners appointed to appraise lands made reports showing landowner's damages to accrue, but landowner's possessory rights were not disturbed, county could abandon proceedings and decline to pay assessed value of lands sought to be condemned. *Id.*

In action of debt, by landowner against county to enforce awards in condemnation proceedings, showing of injury to plaintiff's fence dividing road, to which county claimed title by prescription, from lands in dispute, as incident to grading and draining of roadway by county's agent, was insufficient to establish "possession" by county of portion of condemned lands other than the road so as to render county liable therefor on abandonment of condemnation proceedings. *Id.*

#### **15. Pleadings**

Where condemnor city and condemnees proceeded upon the assumption that property was correctly described in petition and subsequent filings and where condemnees had not been misled or prejudiced through error in description of property which was in fact inspected by commissioners and was correctly described in resolution of necessity attached as an exhibit to the petition, condemnor was entitled to amend the petition and subsequent filings to reflect the correct description of the property without prejudice to its demand for a jury trial to determine the question of compensation to be paid to condemnees. *Oklahoma City v. Lockert*, Okl., 484 P.2d 523 (1971).

Condemnor had not waived privilege of amending its pleadings to reflect correct description of property by any delay in requesting an amendment where there was no immediate pressing need to amend, where proceeding was pending for years before condemnees apparently discovered the error in the description, where land had been taken and reduced to condemnor's possession, where condemnees had withdrawn the award from clerk of court years before and where matter was not at trial and condemnees were not prejudiced by the delay. *Id.*

## 16. Evidence

In action to condemn small strip of school district property in connection with replacing lightly traveled two-lane road 67 feet from functioning elementary school with important four-lane highway 37 feet from school, evidence as to increase of traffic noise and its detrimental effect on school was admissible. *City of Tulsa v. Mingo School Dist. No. 16, Okl.App., 559 P.2d 487 (1977).*

In proceeding to condemn small strip of school district property, on which functioning elementary school was located, to construct important four-lane highway where lightly traveled two-lane road had been, allegedly resulting in excessive noise rendering building unusable as school, evidence of cost to restore utility of school was admissible. *Id.*

In condemnation proceeding, testimony by one potential purchaser that he had, four years earlier, offered landowner \$15,000 for property and by another potential purchaser that he had, two years earlier, offered landowner \$18,000 for property was improperly admitted. *McAlester Urban Renewal Authority v. Watts, Okl., 516 P.2d 261 (1973).*

Evidence of unaccepted offers to purchase is generally inadmissible for purpose of establishing market value in condemnation proceedings. *Id.*

In condemnation proceeding, evidence of adaptability of land to particular use could be considered, and for such purpose a plan or plat showing possible scheme of subdivision development was admissible in evidence though such a plan or plat had not been recorded. *Del City v. Haynes, Okl., 483 P.2d 1152 (1971).*

City's objection, in condemnation proceeding, to admissibility of evidence that property would continue to be subject to taxation because taking by city was described as permanent easement was not ground for reversal on appeal where such objection had not been made when evidence was admitted and no admonition to jury had been requested. *Id.*

In eminent domain proceeding where in city sought permanent easement across property, evidence that division of property for sale was highest and best use of property, and an exhibit setting

out proposed plat of property, were admissible for purpose of showing adaptable use and reduction in usable building space. *Id.*

There was substantial evidence to sustain jury finding that property owners from whom parcels were taken for extension of city sewer system and who had been compensated in ordinary phase of trial for value of land taken and damage to remainder had not established that they were entitled to additional damages by reason of a nuisance as result of operation of sewage disposal plant near dwelling on their land. *Batson v. City of Stillwater, Okl., 453 P.2d 1019 (1969).*

The range of inquiry as to value of land permitted in a condemnation proceeding rests largely in trial court's discretion. *State ex rel. City of Ardmore v. Winters, 195 Okl. 243, 156 P.2d 798 (1945).*

In condemnation proceeding, jury may consider all elements that have a bearing on market value, including nature and extent of improvements and condition of growing crops. *Id.*

Where airport was in operation at time of trial in condemnation proceeding to determine damages for land taken for airport, evidence as to facts existing at time of trial, relating to damages to part of land not taken, from orderly operation of airport was admissible. *Id.*

## 17. Instructions

Where substitute facility doctrine was proper method of measuring compensation for partial taking of school property, it would have been appropriate to instruct jury to award reasonable cost, if any, required to restore property to its former condition of usefulness as school, but instruction given to effect that jury was entitled to consider items necessary to repair property to establish its usefulness, in coming to conclusion as to depreciation in fair market value, was not erroneous, inasmuch as it was clear that jury awarded cost of restoration and that award was within evidence. *City of Tulsa v. Mingo School Dist. No. 16, Okl.App., 559 P.2d 487 (1976).*

Omission of word "reasonable" from city's requested instruction, in condemnation proceeding, to effect that pro-

posed use, if any, to which defendants might put property must be reasonable and not cost disproportionate amount in relation to value of remainder of property was not fundamental error. *Del City v. Haynes*, Okl., 483 P.2d 1152 (1971).

Where, considering other instructions, purpose of damage instruction given in eminent domain proceeding wherein city sought permanent easement across property was to inform jury that they should consider matter of reduction, if any, of space available for parking and effect thereof on maximum allowable square footage of a building, instruction was not objectionable as being confusing. *Del City v. Moore*, Okl., 483 P.2d 324 (1971).

In city's condemnation proceeding for part of owner's land, where instructions properly defined measure of damages, instructions that city was required to pay all damages arising from condemning the land, and that in determining damages or depreciation to remaining property jury should consider property's nature, purpose for which it was used, and any other elements of damage or depreciation detracting from property's value, and render verdict accordingly, were not improper. *State ex rel. City of Ardmore v. Mock*, 195 Okl. 246, 156 P.2d 802 (1945).

Where jury was instructed that measure of damages for land taken in condemnation proceeding is fair cash market value, an instruction that in determining such value jury "should consider the value of the improvements taken or destroyed, and the value of the growing crops thereon, if any," was not erroneous, on ground it could be construed as meaning that jury should allow for value of improvements and crops apart from and in addition to market value of land. *State ex rel. City of Ardmore v. Winters*, 195 Okl. 243, 156 P.2d 798 (1945).

#### 18. Damages, In general

Under substitute facilities doctrine, condemnor may be obliged to furnish replacement that will provide functional equivalent to condemned property or to pay for cost of necessary restoration of utility lost and doctrine requires trier of fact to focus, not on depreciation in market value, but on cost of equivalent facilities or necessary measures to restore utility to property. *City of Tulsa v. Min-*

*go School Dist. No. 16*, Okl.App., 559 P.2d 487 (1976).

Substitute facility doctrine was most appropriate method of measuring just compensation for partial taking of small strip of school district property on which functioning elementary school was located for purpose of constructing important four-lane highway, where lightly traveled two-lane highway had been, and district was entitled to recover all reasonable expenses necessary to restore building to its former usefulness, including cost of soundproofing and air conditioning. *City of Tulsa v. Mingo School Dist. No. 16*, Okl.App., 559 P.2d 487 (1976).

Damages are not recoverable for incidental inconvenience or consequential injury resulting from taking property for public use under Const. Art. 2, § 24, governing taking or damaging of private property for private use; however, where special damage results from injury which is different from that suffered by the community in general, as where ingress or egress is cut off, or materially affected, action in nature of damages for reverse condemnation may be maintained. *Petition of Grand River Dam Authority*, Okl., 484 P.2d 505 (1971).

Where, in expressing belief that defendant in eminent domain proceeding would suffer some detriment by virtue of city's taking a permanent easement across his property, in that he would have to continue to pay taxes on entire property, counsel and witnesses for defendant were referring to general ad valorem taxes, as opposed to taxes in nature of special assessments for public improvements, rule that special assessments for public improvements to be made in the future as a result of taking may not be considered in determining damages in an eminent domain proceeding was not applicable. *Del City v. Moore*, Okl., 483 P.2d 324 (1971).

The extent of the range of inquiry to be permitted regarding the value of the property taken or damaged in eminent domain proceedings is largely in the discretion of the trial court, and the action of the trial court in admitting or excluding evidence as to value will not be disturbed unless there has been an abuse of such discretion. *Owens v. Oklahoma Turnpike Authority*, Okl., 283 P.2d 827

## 27 § 5

### Note 18

(1955) appeal dismissed 76 S.Ct. 155, 350 U.S. 893, 100 L.Ed. 785, rehearing denied 76 S.Ct. 300, 350 U.S. 943, 100 L.Ed. 823.

Where city condemned part of a ranch with other land for an airport, and leased land to United States which constructed and operated airport, city was liable in condemnation proceedings for damages caused by federal government's proper construction and operation of airport, and evidence of government's acts in diverting water across owner's land not taken in constructing airport, and in startling owner's cattle so as to depreciate in value part of ranch not taken and farm improvements thereon, was admissible. *State ex rel. City of Ardmore v. Mock*, 195 Okl. 246, 156 P.2d 802 (1945).

Where city condemned land with other land for an airport and leased it to United States, which constructed and operated airport, in condemnation proceedings city was liable for damages caused by federal government's proper construction and operation of airport, and evidence that one runway ended near home on part of an owner's land not taken, and that airplanes taking off and landing disturbed owner's sleep, impairing value of land not taken, was admissible. *State ex rel. City of Ardmore v. Winters*, 195 Okl. 243, 156 P.2d 798 (1945).

The measure of damages for taking a part of a tract of land under eminent domain is fair cash market value of land taken at time it is taken, together with such depreciation in market value of land not taken as may be reasonably anticipated from the taking and proper construction and operation of project for which land was condemned. *State ex rel. City of Ardmore v. Winters*, 195 Okl. 243, 156 P.2d 798 (1945).

## § 6. Private person or corporation—Eminent domain by

Any private person, firm or corporation shall have power to exercise the right of eminent domain in like manner as railroad companies for private ways of necessity or for agriculture, mining and sanitary purposes.

R.L.1910, § 3189.

## EMINENT DOMAIN

### 19. Reverse condemnation proceedings

If authorized construction of electric transmission line within boundaries of city streets should result in injury to abutting property owners different from that suffered by general public, or such owners' ingress or egress to property is destroyed, or materially impaired, owners' remedy is by action in nature of reverse condemnation and not by injunction. *Petition of Grand River Dam Authority*, Okl., 484 P.2d 505 (1971).

For negligent injuries to land not condemned in construction of public improvement, remedy of landowner is action for damages and not reverse condemnation. *Elk City v. Rice*, Okl., 286 P.2d 275 (1955).

Where farmland adjacent to river was eroded by river water because city, repairing water pipe which passed under river, had erected a temporary dike to divert river waters but upon completion of work had left dike standing, but neither the dike nor the pipe line touched, traversed, or encroached upon eroded farmland, owner had only action against city for damages in tort and did not have action in reverse condemnation. *Id.*

Town, in reverse condemnation proceedings, was not precluded from attacking title of plaintiff to property taken for public use on the ground that town had no interest in property at time of tax sale under which plaintiff allegedly acquired title. *Incorporated Town of Pittsburg v. Cochrane*, 200 Okl. 497, 197 P.2d 287 (1948).

Where plaintiff in reverse condemnation proceeding against town claimed, by reason of a tax deed, ownership of a water works taken by town, town could question validity of tax deed. *Id.*

**Historical and Statutory Notes**

**Source:** Comp.St.1921, § 6322.  
Laws 1907-08, p. 261. St.1931, § 10052.  
Comp.Laws 1909, § 3331.

**Cross References**

Foreign corporations, restrictions on exercise of right of eminent domain, see Const. Art. 9, § 31.  
Railroad companies, power of eminent domain, see title 66, § 51 et seq., 161.  
Telephone and telegraph companies, right to condemn railroad property or right-of-way, see title 18, § 601.

**Law Review Commentaries**

Eminent domain: Constitutional problems in taking of church lands. Richard C. Howard. 31 Okl.L.Rev. 191 (1978).  
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**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

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**Way of necessity 1**

Blankenship v. Bone, Okl.App., 530 P.2d 578 (1974).

Failure to object to report of appraisers on ground that there was no right to condemn an easement by necessity constitutes waiver of the right to a hearing on the necessity of the taking. Id.

**1. Way of necessity**

Landlocked landowners were entitled to condemn a right-of-way by necessity along a section line even though the requirements were not met for common-law way of necessity by implied grant. Franks v. Tyler, Okl.App., 531 P.2d 1067 (1974).

Where petition was filed to condemn an easement by necessity, appraisers filed report on assessment of damages, and defendants filed written objections to the report which complained of the inadequacy of the damages and the incompleteness of the description of the property, such objections were preserved for trial, but other objections, such as a challenge to the right of condemnation on constitutional grounds, were waived.

**2. Injunction**

Under circumstances of case, trial court could not issue sweeping and permanent injunction prohibiting action of landowner seeking a way of necessity or right to prosecute such an action. Smith v. Bovaird Supply Co., Okl., 616 P.2d 1157 (1980).

**3. Evidence**

Evidence was sufficient to support trial court's determination that dirt road or trail along section line was never opened as a public road. Franks v. Tyler, Okl. App., 531 P.2d 1067 (1974).

**4. Damages**

No consideration for easement by necessity is paid if the trial court finds that

an easement in necessity is to be implied in the original conveyance by the common grantor and establishes a way and issues an injunction against interference with that right-of-way by the owner of the servient estate; but fair compensation is required if a right-of-way by necessity is condemned. *Franks v. Tyler*, Okl.App., 531 P.2d 1067 (1974).

#### 5. Review

Decision of district court in condemnation proceedings adjudicating the question of right to condemn an ease-

ment by necessity is a final order from which an appeal will lie. *Blankenship v. Bone*, Okl.App., 530 P.2d 578 (1974).

Denial of motion to vacate district court order condemning an easement by necessity, which motion challenged the constitutionality of a private taking of private property, was appealable. *Id.*

Denial of a motion to vacate an order of the district court in condemnation proceedings adjudicating question of the right to condemn an easement by necessity is appealable. *Id.*

### § 7. Light, heat or power by electricity or gas—Eminent domain same as railroads

Any person, firm or corporation organized under the laws of this state, or authorized to do business in this state, to furnish light, heat or power by electricity or gas, or any other person, association or firm engaged in furnishing lights, heat or power by electricity or gas shall have and exercise the right of eminent domain in the same manner and by like proceedings as provided for railroad corporations by laws of this state.

Laws 1917, c. 230, § 3, emerg. eff. March 5, 1917.

#### Historical and Statutory Notes

##### Source:

Comp.St.1921, § 6328.  
St.1931, § 10058.

#### Cross References

Gas pipelines, eminent domain, see title 52, §§ 3, 22, 27.  
Railroad companies, power of eminent domain, see title 66, §§ 51 et seq., 161.

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## WESTLAW Electronic Research

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## 1. In general

Pipeline company and its predecessor in title had right of eminent domain over property when, in 1932, predecessor in title buried pipeline across property, where predecessor in title had complied with title 52, § 58 and had filed plat showing where trunk lines were proposed to be constructed and where corporation commission entered order finding that predecessor in title was entitled to exercise right of eminent domain within state. *Cox Enterprises, Ltd. v. Phillips Petroleum Co.*, Okl., 550 P.2d 1324 (1976).

A trust created for the transportation and sale of natural gas is given the power to exercise the right of eminent domain. *State ex rel. Williamson v. Garrison*, Okl., 363 P.2d 285 (1961).

Landowner has separate and distinct cause of action, such as trespass, for injury to land due to willful or negligent construction or operation of public service for which land is taken by condemnation proceeding. *Oklahoma Gas & Electric Co. v. Miller Bros.*, 101 Ranch Trust, 173 Okl. 101, 46 P.2d 570 (1935).

## 2. Estoppel

Subsequent purchaser of property who had no knowledge that corporation having right of eminent domain had previously secretly laid pipe line across property was not estopped to claim compensation on discovery of line, where owner of line thereupon commenced action to condemn subsequent purchaser's inter-

est. *Consolidated Gas Service Co. v. Tyler*, 178 Okl. 325, 63 P.2d 88 (1937).

## 3. Admissibility of evidence

In action by gas company to obtain, under power of eminent domain, an easement for a gas pipeline across land owned by defendants, evidence of prior right-of-way grants by defendants for pipelines was not admissible to show value of right-of-way sought, where uncontradicted testimony of one defendant was that he signed right-of-way grants because he believed grantee would condemn them in court. *Cities Service Gas Co. v. Beck*, Okl.App., 534 P.2d 27 (1975).

Admission in evidence of plat showing possible subdivision of part of land in proceeding by pipeline company to condemn easement for pipeline across land was not abuse of discretion, though plat was not produced at pre-trial conference, where plat was not prepared until after pre-trial conference. *Cherokee Pipe Line Co. v. Jury*, Okl., 393 P.2d 503 (1964).

In action to condemn right of way for gas pipe line previously installed across one of defendant's lots, admission of testimony of witness as to value of adjoining lot of defendant to witness was improper, since value to be considered was market value. *Consolidated Gas Service Co. v. Tyler*, 178 Okl. 325, 63 P.2d 88 (1937).

In action to condemn right of way for gas pipe line previously installed, admission of testimony as to value of other property in city said to be desirable as industrial site as compared to premises in question was improper, since immaterial. *Id.*

In action to condemn right of way for previously installed gas pipe line after report of commissioners appointed by court, admission of evidence of offer to lease premises for stipulated rental, for purpose of determining value of premises, was error. *Id.*

In action to condemn right of way for gas pipe line previously installed, admission of testimony, on question of dam-



ages, that parties who had offered to lease part of premises refused to lease when they learned of gas line was not error. *Id.*

Evidence condemner strung electric wires so close to house as to make destruction thereof possible from breaking of wires was admissible. *Public Service Co. of Oklahoma v. Raburn*, 162 Okl. 81, 19 P.2d 167 (1933).

#### 4. Instructions

In pipe line condemnation proceeding, instruction permitting jury, in estimating damages, to exercise their independent judgments as to values upon subjects within their knowledge acquired through experience and observation did not mislead jury. *Cities Service Gas Co. v. Williams*, 200 Okl. 525, 198 P.2d 204 (1948).

In pipe line condemnation proceeding, instruction properly defining just compensation for the taking and instruction relating to pipe line company's rights of ingress and egress to inspect, maintain and repair pipe line, and to right to cultivate over right of way subject to such rights of company, and to revert in case of abandonment, were not conflicting. *Id.*

An instruction that jury in condemnation proceeding should consider inconvenience and annoyance likely to arise in orderly exercise of conduct of enterprise, a high pressure gas line, which interferes with proper enjoyment of property and which sensibly impairs its value, was proper. *Id.*

In pipe line condemnation proceeding, instruction leaving to good judgment of jury the question of whether building and maintaining line would cause depreciation in market value of land was proper. *Id.*

In pipe line condemnation proceeding, instruction that experts' opinions as to value of property involved was not binding on jury and that jury could reach its own conclusions from all the evidence and entirely disregard experts' opinions was not error. *Cities Service Gas Co. v. Huebner*, 200 Okl. 521, 197 P.2d 985 (1948).

#### 5. Damages or compensation—In general

In condemnation proceeding in which the works were completed prior to trial, court and jury could consider the facts then existing in order to determine value of land immediately before and after appropriation and resulting depreciation, and under such circumstances, condemner could not urge its own negligence and trespass to mitigate damages and thus require condemnee to commence tort action to recover for portion of damages caused by negligence of condemner or its independent contractor, where such wrongful acts and resultant damages were incidental to construction of works. *Cities Service Gas Co. v. Williams*, 200 Okl. 525, 198 P.2d 204 (1948).

#### 6. — Measure of damages

Measure of damages in condemnation proceedings is market value of property actually taken, when so taken, and for impairment or depreciation of value done to remainder. *Oklahoma Gas & Electric Co. v. Kelly*, 177 Okl. 206, 58 P.2d 328 (1936).

#### 7. — Matters to be considered, damages or compensation

Where complaint against pipeline company contained no allegation that pipeline company or its predecessor in title was willful or wanton in placing pipeline across landowner's property, landowner could not sue in trespass, but was limited to remedy of inverse condemnation. *Cox Enterprises, Ltd. v. Phillips Petroleum Co.*, Okl., 550 P.2d 1324 (1976).

Admission in evidence of plat showing possible subdivision of part of land in proceeding by pipeline company to condemn easement for pipeline across land was not error on ground that jury was allowed to consider damages as of date subsequent to taking of easement because plat was not in existence at time of effective date of taking of easement. *Cherokee Pipe Line Co. v. Jury*, Okl., 393 P.2d 503 (1964).

In condemnation proceeding in which the works were completed prior to trial, court and jury could consider facts then existing in order to determine value of land immediately before and after appropriation and resulting depreciation,

and under such circumstances, condemner could not urge its own negligence and trespass to mitigate damages and thus require condemnee to commence tort action to recover for portion of damages caused by negligence of condemner or its independent contractor, where such wrongful acts and resultant damages were incidental to construction of works. *Cities Service Gas Co. v. Huebner*, 200 Okl. 521, 197 P.2d 985 (1948).

Institution of condemnation proceeding by Grand River Dam Authority to acquire premises which had been subject of written contract of sale between condemnee and condemner, at stipulated consideration, constituted an "abandonment" of the contract by the condemner, and in matter of damages condemnee was not "estopped" by the contract to receive greater award than consideration recited in contract. *Grand River Dam Authority v. Simpson*, 192 Okl. 338, 136 P.2d 879 (1914).

In condemnation proceedings, inconvenience and annoyance likely to arise in orderly exercise or conduct of enterprise, which interferes with use and proper enjoyment of property by owner and which sensibly impairs its value, may be considered. *Oklahoma Gas & Electric Co. v. Kelly*, 177 Okl. 206, 58 P.2d 328 (1936).

In proceedings to condemn right of way for high-voltage electric transmission line running near farmhouse and outbuildings, danger from greater likelihood of lightning could be considered as affecting market value of land. *Id.*

Elements of damages for property taken or damaged for electric transmission line include loss resulting merely from interference with owner's right to use property. *Public Service Co. of Oklahoma v. Raburn*, 162 Okl. 81, 19 P.2d 167 (1933).

#### 8. Interest

Where trial court instructed jury to assess amount of recovery in condemnation proceeding at difference in value of land immediately before and immediately after appropriation, and question of interest on award was not mentioned and nothing else was said in instructions from which jury could conclude that it should include interest in amount of verdict, court properly added interest on amount of judgment not paid into court accruing from date of appropriation to date of judgment. *Cities Service Gas Co. v. Williams*, 200 Okl. 525, 198 P.2d 204 (1948).

#### 9. Inverse condemnation

Notwithstanding general rule that the owner of property at time pipeline is placed thereon is the only one who has a cause of action for damages in inverse condemnation, where oil pipeline was buried in property in 1932 and was not discovered by landowner or his predecessors in title until 1971, after landowner acquired land, action in inverse condemnation brought by landowner against pipeline company, which was using pipeline to transport oil but which was the pipeline company which had originally appropriated the right-of-way was not precluded. *Cox Enterprises, Ltd. v. Phillips Petroleum Co.*, Okl., 550 P.2d 1324 (1976).

### § 7.1. Coal pipelines—Licenses and permits—Limitations on eminent domain—Compensation

Any pipeline company proposing to transport coal by pipeline in or through this state must first be licensed to operate by the Oklahoma Corporation Commission and no such license shall be granted until the Commission has, after a public hearing, determined a public need and necessity and a showing of economic feasibility for the proposed pipeline. All licenses granted under this act by the Oklahoma Corporation Commission shall include a requirement that the utility purchaser of coal shall not pass through to the consumer, nor include in its capital base, any rate or charge for transportation of coal higher than the lowest cost available by

common carrier. The Corporation Commission shall not issue or consider a license until such applicant shall have produced legal proof that adequate supplies of water have been acquired to conduct transportation of coal by pipeline during the life of the contract. Provided further, that the Commission shall not issue a permit, certificate, or any authority to any applicant whose rates and charges are not regulated by government authority, either state or federal, and that such state or federal regulations insure to the public and to the ultimate electric consumer that the contracts, rates and charges shall be just and reasonable, nondiscriminatory and offering no preference or advantage to any person, corporation, entity or group.

Foreign corporations organized under the laws of any other state or territory, or of the United States, and doing or proposing to do business in this state, and which shall have become a body corporate pursuant to or in accordance with the laws of this state, shall receive all the benefits provided by this act. The power of eminent domain shall not include the right to take water. Any time the power of eminent domain is exercised pursuant to this act, the property owner shall be compensated for all damages associated with the taking of the land including costs of moving a dwelling or equipment or any loss of present or future business or other associated damages personal to property owners.

Laws 1977, c. 25, § 1, eff. Oct. 1, 1977.

### Historical and Statutory Notes

Section 12 of Laws 1977, c. 25 directs codification.

#### Severability clauses, repeal of conflicting laws and effective/operative dates

Section 13 of Laws 1977, c. 25, provides for an effective date.

#### Title of Act:

An Act relating to coal pipelines; authorizing companies operating pipelines in Oklahoma to transport coal by pipeline; granting the right of eminent domain and prescribing the procedures; authorizing the Corporation Commission

to determine the width and route of right-of-way, when in dispute, for pipeline and providing appeal procedures; empowering the Oklahoma Corporation Commission to make rules and regulations for the design, rights-of-way, construction, maintenance and operation of such pipelines; prohibiting the use of Oklahoma water; declaring every such pipeline to be a common carrier subject to all Laws and regulations relating thereto and providing additional restrictions; providing for codification; and providing an effective date. Laws 1977, c. 25.

### Library References

Carriers ⇐8.

Eminent Domain ⇐10(1), 17, 69 et seq.

WESTLAW Topic Nos. 70, 148.

C.J.S. Carriers § 20.

C.J.S. Eminent Domain §§ 24, 64, 96.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## Notes of Decisions

Construction and application 2  
 Economic feasibility 3  
 Validity 1

power and privileges not possessed by individuals. Missouri-Kansas-Texas R. Co. v. State, Okl., 712 P.2d 40 (1985).

## 1. Validity

Regulation of coal pipelines by corporation commission under authority of this section and §§ 7.2 to 7.11 of this title was not preempted by federal transportation policy as set forth in Revised Interstate Commerce Act, 49 U.S.C.A. § 10101 et seq. Missouri-Kansas-Texas R. Co. v. State, Okl., 712 P.2d 40 (1985).

## 2. Construction and application

Joint venture formed to operate coal pipeline was a "company" upon which right of eminent domain could be conferred under this section, as it was an association comprised of parties having

## 3. Economic feasibility

Corporation commission, in considering whether to grant coal pipeline eminent domain authority under this section, did not err in its finding that to satisfy statutory requirement of "a showing of economic feasibility" for the proposed coal slurry pipeline, pipeline applicant had to demonstrate that it was capable of attracting sufficient capital to construct coal slurry pipeline within state with reasonable assurance of success and capable of indemnifying public at large during construction and start-up periods. Missouri-Kansas-Texas R. Co. v. State, Okl., 712 P.2d 40 (1985).

## § 7.2. Coal pipelines—Eminent domain same as railroads

All companies authorized to operate under Section 1 of this act<sup>1</sup> shall have the power to exercise the right of eminent domain in the same manner and by like proceedings as provided for railroad corporations by the laws of this state provided that said companies first comply with all requirements and restrictions of this act. Laws 1977, c. 25, § 2, eff. Oct. 1, 1977.

<sup>1</sup> Section 7.1 of this title.

## Library References

Eminent Domain ⇨10(1).  
 WESTLAW Topic No. 148.  
 C.J.S. Eminent Domain § 24.

## § 7.3. Right-of-way of coal pipelines—Filing acceptance and plat

Before any pipeline company shall acquire any right-of-way through an exercise of the right of eminent domain hereunder, it shall file in the office of the Corporation Commission a proper and explicit authorized acceptance of the provisions of this act and the Constitution of this state, and a plat showing the route along which its pipeline is proposed to be constructed within this state and the intended size and capacity thereof.

Laws 1977, c. 25, § 3, eff. Oct. 1, 1977.

## Library References

Eminent Domain ⇐166 et seq., 169.  
WESTLAW Topic No. 148.

C.J.S. Eminent Domain §§ 209, 222 et seq.

## § 7.4. Right-of-way—Width and route of coal pipelines

The right-of-way requirements under this act shall be strictly limited to such width and route as is actually necessary and reasonable for the construction and maintenance of said line. The Corporation Commission shall determine, in event of dispute, the width and route of right-of-way as is actually necessary and reasonable to accomplish the purpose of this act with right of appeal by parties in interest to the Supreme Court of Oklahoma.

Laws 1977, c. 25, § 4, eff. Oct. 1, 1977.

## Library References

Eminent Domain ⇐10(1).  
WESTLAW Topic No. 148.  
C.J.S. Eminent Domain § 24.

## § 7.5. Rules and regulations

The Corporation Commission is hereby authorized and empowered to promulgate, adopt and enforce reasonable rules and regulations relating to the design, rights-of-way, construction, maintenance and operation of all coal pipelines in this state.

Laws 1977, c. 25, § 5, eff. Oct. 1, 1977.

## Library References

Carriers ⇐1.  
WESTLAW Topic No. 70.  
C.J.S. Carriers § 15 et seq.

## WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## Notes of Decisions

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## 1. Validity

Regulation of coal pipelines by state Corporation Commission under authority of 27 O.S.1981, §§ 7.1 to 7.11 was not preempted by federal transportation policy as set forth in Revised Interstate Commerce Act, 49 U.S.C.A. § 10101 et seq. Missouri-Kansas-Texas R. Co. v. State, Okl., 712 P.2d 40 (1985).

State statutes, 27 O.S.1981, §§ 7.1 to 7.11 providing for regulation of coal

pipelines by state Corporation Commission were not unconstitutional as a violation of the Revised Interstate Commerce Act, 49 U.S.C.A. § 10101 et seq.; statutes regulated traditional state power of right to exercise eminent domain and were complementary to effectuation of pipeline to be constructed. Missouri-Kansas-Texas R. Co. v. State, Okl., 712 P.2d 40 (1985).

## 2. Construction and application

Joint venture formed to operate coal pipeline was a "company" upon which

right of eminent domain could be conferred under statute, 27 O.S.1981, §§ 7.1 to 7.11, as it was an association comprised of parties having power and privi-

leges not possessed by individuals. Missouri-Kansas-Texas R. Co. v. State, Okl., 712 P.2d 40 (1985).

### § 7.6. Water supply

No Oklahoma water from any source shall be used in connection with the transportation, maintenance or operation of a coal slurry pipeline within or through the State of Oklahoma.

Laws 1977, c. 25, § 6, eff. Oct. 1, 1977.

#### Library References

Carriers ↩1.  
WESTLAW Topic No. 70.  
C.J.S. Carriers § 15 et seq.

#### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

#### Notes of Decisions

##### Construction and application 2 Validity 1

##### 1. Validity

Regulation of coal pipelines by state Corporation Commission under authority of 27 O.S.1981, §§ 7.1 to 7.11 was not preempted by federal transportation policy as set forth in Revised Interstate Commerce Act, 49 U.S.C.A. § 10101 et seq. Missouri-Kansas-Texas R. Co. v. State, Okl., 712 P.2d 40 (1985).

State statutes, 27 O.S.1981, §§ 7.1 to 7.11 providing for regulation of coal pipelines by state Corporation Commission were not unconstitutional as a violation of the Revised Interstate Com-

merce Act, 49 U.S.C.A. § 10101 et seq.; statutes regulated traditional state power of right to exercise eminent domain and were complementary to effectuation of pipeline to be constructed. Missouri-Kansas-Texas R. Co. v. State, Okl., 712 P.2d 40 (1985).

##### 2. Construction and application

Joint venture formed to operate coal pipeline was a "company" upon which right of eminent domain could be conferred under statute, 27 O.S.1981, §§ 7.1 to 7.11, as it was an association comprised of parties having power and privileges not possessed by individuals. Missouri-Kansas-Texas R. Co. v. State, Okl., 712 P.2d 40 (1985).

### § 7.7. Waste water disposal

The Corporation Commission shall seek and act upon the recommendation of the Oklahoma Water Resources Board or its successor of the state responsible for refuse water and pollution control and shall specify the proper use and disposal of any nondischargeable water.

Laws 1977, c. 25, § 7, eff. Oct. 1, 1977.

#### Library References

Carriers ↩1. WESTLAW Topic Nos. 70, 199.  
Health and Environment ↩6, 28.

C.J.S. Carriers § 15 et seq.  
 C.J.S. Health and Environment §§ 13,  
 91 to 113, 126 to 155.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

#### Notes of Decisions

##### Construction and application 2 Validity 1

###### 1. Validity

Regulation of coal pipelines by state Corporation Commission under authority of 27 O.S.1981, §§ 7.1 to 7.11 was not preempted by federal transportation policy as set forth in Revised Interstate Commerce Act, 49 U.S.C.A. § 10101 et seq. Missouri-Kansas-Texas R. Co. v. State, Okl., 712 P.2d 40 (1985).

State statutes, 27 O.S.1981, §§ 7.1 to 7.11 providing for regulation of coal pipelines by state Corporation Commission were not unconstitutional as a violation of the Revised Interstate Com-

merce Act, 49 U.S.C.A. § 10101 et seq.; statutes regulated traditional state power of right to exercise eminent domain and were complementary to effectuation of pipeline to be constructed. Missouri-Kansas-Texas R. Co. v. State, Okl., 712 P.2d 40 (1985).

###### 2. Construction and application

Joint venture formed to operate coal pipeline was a "company" upon which right of eminent domain could be conferred under statute, 27 O.S.1981, §§ 7.1 to 7.11, as it was an association comprised of parties having power and privileges not possessed by individuals. Missouri-Kansas-Texas R. Co. v. State, Okl., 712 P.2d 40 (1985).

## § 7.8. Designation of coal pipelines as common carriers

Every pipeline authorized hereunder shall be a common carrier and subject to all laws and regulations relating thereto.

Laws 1977, c. 25, § 8, eff. Oct. 1, 1977.

#### Library References

Carriers ⇨3.  
 WESTLAW Topic No. 70.  
 C.J.S. Carriers § 1 et seq.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

#### Notes of Decisions

##### Construction and application 2 Validity 1

###### 1. Validity

Regulation of coal pipelines by state Corporation Commission under authority of 27 O.S.1981, §§ 7.1 to 7.11 was not preempted by federal transportation policy as set forth in Revised Interstate Commerce Act, 49 U.S.C.A. § 10101 et

seq. Missouri-Kansas-Texas R. Co. v. State, Okl., 712 P.2d 40 (1985).

State statutes, 27 O.S.1981, §§ 7.1 to 7.11 providing for regulation of coal pipelines by state Corporation Commission were not unconstitutional as a violation of the Revised Interstate Commerce Act, 49 U.S.C.A. § 10101 et seq.; statutes regulated traditional state power of right to exercise eminent domain and were complementary to effectuation of

pipeline to be constructed. Missouri-Kansas-Texas R. Co. v. State, Okl., 712 P.2d 40 (1985).

## 2. Construction and application

Joint venture formed to operate coal pipeline was a "company" upon which

right of eminent domain could be conferred under statute, 27 O.S.1981, §§ 7.1 to 7.11, as it was an association comprised of parties having power and privileges not possessed by individuals. Missouri-Kansas-Texas R. Co. v. State, Okl., 712 P.2d 40 (1985).

## § 7.9. Contracts—Rates and charges of coal pipeline companies

When the owner or owners of any interstate pipeline constructed under this act enter into a contract to provide its product or service to any person, firm or corporation in the State of Oklahoma, such contract shall set rates for such product or service at the lowest unit charge, based on the distance from the point or<sup>1</sup> origin to the point of delivery, which it charges any other users of its product or service in any other state.

Laws 1977, c. 25, § 9, eff. Oct. 1, 1977.

<sup>1</sup> Probably should read "of".

### Library References

Carriers §12 (1) to (11).  
WESTLAW Topic No. 70.

C.J.S. Carriers §§ 275 to 299, 304 et seq., 315, 396, 567, 578 to 583.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### Notes of Decisions

#### Construction and application 2 Validity 1

##### 1. Validity

Regulation of coal pipelines by state Corporation Commission under authority of 27 O.S.1981, §§ 7.1 to 7.11 was not preempted by federal transportation policy as set forth in Revised Interstate Commerce Act, 49 U.S.C.A. § 10101 et seq. Missouri-Kansas-Texas R. Co. v. State, Okl., 712 P.2d 40 (1985).

State statutes, 27 O.S.1981, §§ 7.1 to 7.11 providing for regulation of coal pipelines by state Corporation Commission were not unconstitutional as a violation of the Revised Interstate Com-

merce Act, 49 U.S.C.A. § 10101 et seq.; statutes regulated traditional state power of right to exercise eminent domain and were complementary to effectuation of pipeline to be constructed. Missouri-Kansas-Texas R. Co. v. State, Okl., 712 P.2d 40 (1985).

##### 2. Construction and application

Joint venture formed to operate coal pipeline was a "company" upon which right of eminent domain could be conferred under statute, 27 O.S.1981, §§ 7.1 to 7.11, as it was an association comprised of parties having power and privileges not possessed by individuals. Missouri-Kansas-Texas R. Co. v. State, Okl., 712 P.2d 40 (1985).

## § 7.10. Public utility lines—Relocating, rerouting, construction changes, etc.—Expenses and expenditures

Provided that in the event such common carrier pipeline, in the exercise of the power of eminent domain, or any other power



granted hereunder, makes necessary the relocation, raising, lowering, rerouting, or changing the grade of, or altering the construction of any electric transmission, telegraph or telephone lines, railroads, properties and facilities, or pipeline, all such relocation, raising, lowering, rerouting, changing of grade or alteration of construction shall be accomplished at the sole expense of such common carrier pipeline. The term "sole expense" shall mean the actual cost of such relocation, raising, lowering, rerouting, or change in grade or alteration of construction in providing comparable replacement without enhancement of such facilities, after deducting therefrom the net salvage value derived from the old facility.

Laws 1977, c. 25, § 10, eff. Oct. 1, 1977.

### Library References

Eminent Domain ¶69 et seq.  
WESTLAW Topic No. 148.  
C.J.S. Eminent Domain § 96.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### Notes of Decisions

#### Construction and application 2 Validity 1

##### 1. Validity

Regulation of coal pipelines by state Corporation Commission under authority of 27 O.S.1981, §§ 7.1 to 7.11 was not preempted by federal transportation policy as set forth in Revised Interstate Commerce Act, 49 U.S.C.A. § 10101 et seq. Missouri-Kansas-Texas R. Co. v. State, Okl., 712 P.2d 40 (1985).

State statutes, 27 O.S.1981, §§ 7.1 to 7.11 providing for regulation of coal pipelines by state Corporation Commission were not unconstitutional as a violation of the Revised Interstate Com-

merce Act, 49 U.S.C.A. § 10101 et seq.; statutes regulated traditional state power of right to exercise eminent domain and were complementary to effectuation of pipeline to be constructed. Missouri-Kansas-Texas R. Co. v. State, Okl., 712 P.2d 40 (1985).

##### 2. Construction and application

Joint venture formed to operate coal pipeline was a "company" upon which right of eminent domain could be conferred under statute, 27 O.S.1981, §§ 7.1 to 7.11, as it was an association comprised of parties having power and privileges not possessed by individuals. Missouri-Kansas-Texas R. Co. v. State, Okl., 712 P.2d 40 (1985).

## § 7.11. Laws applicable

The common carrier created hereby shall be subject to the provisions of Sections 5 through 5.2 and 309 of Title 52 of the Oklahoma Statutes. The operation of a coal slurry pipeline in this state shall be subject to the provisions of Sections 926.1 through 926.13 of Title 82 of the Oklahoma Statutes.

Laws 1977, c. 25, § 11, eff. Oct. 1, 1977.

## Library References

Carriers  $\Rightarrow$  1, 2.  
 WESTLAW Topic No. 70.  
 C.J.S. Carriers §§ 15 et seq., 348 et seq.

## WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## Notes of Decisions

Construction and application 2  
Validity 1

## 1. Validity

Regulation of coal pipelines by state Corporation Commission under authority of 27 O.S.1981, §§ 7.1 to 7.11 was not preempted by federal transportation policy as set forth in Revised Interstate Commerce Act, 49 U.S.C.A. § 10101 et seq. Missouri-Kansas-Texas R. Co. v. State, Okl., 712 P.2d 40 (1985).

State statutes, 27 O.S.1981, §§ 7.1 to 7.11 providing for regulation of coal pipelines by state Corporation Commission were not unconstitutional as a violation of the Revised Interstate Com-

merce Act, 49 U.S.C.A. § 10101 et seq.; statutes regulated traditional state power of right to exercise eminent domain and were complementary to effectuation of pipeline to be constructed. Missouri-Kansas-Texas R. Co. v. State, Okl., 712 P.2d 40 (1985).

## 2. Construction and application

Joint venture formed to operate coal pipeline was a "company" upon which right of eminent domain could be conferred under statute, 27 O.S.1981, §§ 7.1 to 7.11, as it was an association comprised of parties having power and privileges not possessed by individuals. Missouri-Kansas-Texas R. Co. v. State, Okl., 712 P.2d 40 (1985).

## § 8. Common carriers—Joint or union station or terminal

Any person, firm or corporation organized under the laws of this state, or authorized to do business in this state, to furnish transportation of persons as common carriers, with permission of the Corporation Commission, after hearing and showing that public necessity and convenience requires the establishment of a joint or union station or terminal at any point served, shall have and exercise the right of eminent domain to acquire joint user of any existing bus station or terminal property, in the same manner provided by law for the exercise of eminent domain by railroad corporations.

Laws 1951, p. 65, § 1.

## Cross References

Railroad stations and depots, establishment and maintenance, see title 66, § 7; Const. Art. 9, § 26.  
 Railroads, manner of exercising right of eminent domain, see title 66, § 51 et seq.

## Law Review Commentaries

Eminent domain: Constitutional problems in taking of church lands. Richard C. Howard. 31 Okl.L.Rev. 191 (1978).

**Library References**

Eminent Domain ⇐10(1), 17, 20(2).  
WESTLAW Topic No. 148.

C.J.S. Eminent Domain §§ 24, 37, 38,  
64.

**§ 9. Application**

The provisions of this act shall be applicable to the acquisition of real property under the laws of this state for public use in any project or program in which federal, state or local funds are used. Laws 1971, c. 355, § 1, eff. July 1, 1972.

**Historical and Statutory Notes**

Section 9 of Laws 1971, c. 355 provides for an effective date and § 10 provides for severability.

**Title of Act:**

An Act relating to the acquisition of real property; providing for expenses incidental to transfer of title, litigation ex-

penses and inverse condemnation proceedings; stating real property acquisition policies; providing for acquisition of buildings, structures and improvements on real property; repealing conflicting laws; providing for an effective date; and providing for severability. Laws 1971, c. 355.

**Cross References**

Municipalities, redevelopment trusts, power of eminent domain, see title 11 § 40-115.

**Law Review Commentaries**

Property: Condemnation-option to purchase held compensable. 1 Okl. City U.L.Rev. 203 (1976).

**Library References**

Eminent Domain ⇐166 et seq.  
WESTLAW Topic No. 148.  
C.J.S. Eminent Domain § 209.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions****Construction and application 1****1. Construction and application**

The Oklahoma Turnpike Authority is subject to the terms of §§ 9 to 15 of this

title, prescribing the policy for the acquisition and condemnation of land by the State, and that the provisions of title 69, §§ 1707 and 1708 are effective insofar as they are not in conflict with or contradictory to the terms of §§ 9 to 15. Op. Atty.Gen. No. 71-425.

**§ 10. Reimbursement of owner for expenses after acquisition**

Any person, agency or other entity acquiring real property for public use under the laws of this state shall, as soon as practicable

after the date of payment of the purchase price or the date of deposit into court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, reimburse the owner for expenses he necessarily incurred for:

1. Recording fees, transfer taxes and similar expenses incidental to conveying such real property;

2. Penalty costs for prepayment for any preexisting recorded mortgage entered into in good faith encumbering such real property; and

3. The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the acquiring entity, or the effective date of possession of such real property by the acquiring entity, whichever is the earlier.

Laws 1971, c. 355, § 2, eff. July 1, 1972.

#### Cross References

Real property subject to taxation, see title 68, §§ 2404, 2419.

Recording fees, see title 28, § 32.

Transfer tax, see title 68, § 802.

#### Law Review Commentaries

Annual Survey of Oklahoma Law:  
Condemnation and inverse condemnation.  
3 Okl. City U.L.Rev. 375 (1978).

#### Library References

Eminent Domain ⇨149(7).

WESTLAW Topic No. 148.

C.J.S. Eminent Domain §§ 163, 164.

#### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

#### Notes of Decisions

##### Attorney fees 1

##### 1. Attorney fees

Attorneys' fees and expenses are not embraced within just compensation for

land taken by eminent domain, although attorneys' fees may be properly awarded in inverse condemnation proceedings. *Gaylord v. State ex rel. Dept. of Highways*, Okl., 540 P.2d 558 (1975).

## § 11. Reimbursement of expenses when property not acquired

Where a condemnation proceeding is instituted by any person, agency or other entity to acquire real property for use as provided in Section 9 of this title and

1. The final judgment is that the real property cannot be acquired by condemnation;

2. The proceeding is abandoned; or
3. If the award of the jury exceeds the award of the court-appointed commissioners by at least ten percent (10%), the owner of any right, title or interest in such real property may be paid such sum as in the opinion of the court will reimburse such owner for his reasonable attorney, appraisal and engineering fees, actually incurred because of the condemnation proceedings. Such determination by the court shall be appealable to the Supreme Court in the same manner as any other final order. The final award of such sums will be paid by the person, agency or other entity which sought to condemn the property.

Laws 1971, c. 355, § 3, eff. July 1, 1972. Laws 1975, c. 354, § 1, eff. Oct. 1, 1975.

### Historical and Statutory Notes

The 1975 amendment, in the introductory clause, substituted "Section 9 of this title" for "Section 1", in paragraph 1, following "condemnation"; deleted "or";

in paragraph 2, added "or"; and inserted "3. If the award of the jury exceeds the award of the court appointed commissioners by at least ten percent (10%)".

### Cross References

Appeal of final order to Supreme Court, see title 12, §§ 952, 953.

### Law Review Commentaries

Annual Survey of Oklahoma Law:

Condemnation and inverse condemnation. 3 Okl. City U.L.Rev. 375 (1978).

Insurance—Retroactive application of attorney fee statutes: Analysis

of Cox v. American Fidelity Assurance Company. Gregory J. Graham. 4 Okl. City U.L.Rev. 256 (1979).

Legal profession—determining statutory attorney's fees. 6 Okl. City U.L.Rev. 238 (1981).

### Library References

Eminent Domain ¶149(7).

WESTLAW Topic No. 148.

C.J.S. Eminent Domain §§ 163, 164.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### Notes of Decisions

#### Construction and application 1

##### 1. Construction and application

Provisions of this section, and of § 12 of this title, providing for reimbursement of plaintiff for reasonable attorney fees incurred because of inverse con-

demnation proceedings, are not in conflict with or inconsistent with 11 Okl.St. Ann. § 1663 (repealed) which provided "if the verdict of the jury exceeds the award of the court appointed commissioners, the court may reward a reasonable attorney fee to the defendant or defendants which shall be paid by the condemner." McAlester Urban Renewal

Authority v. Hamilton, Okl., 521 P.2d 823 (1974).

Reimbursement expenses, awarded in eminent domain cases under this section

and § 12 of this title, are not part of the "judgment" so as to be subject to post-judgment interest under § 727 of title 12. Op.Atty.Gen. No. 84-176, Feb. 4, 1985.

## § 12. Inverse condemnation proceedings—Reimbursement of expenses

Where an inverse condemnation proceeding is instituted by the owner of any right, title or interest in real property because of use of his property in any public program or project described in Section 1 of this act,<sup>1</sup> the court, rendering a judgment for the plaintiff in such proceeding and awarding compensation for the taking of property, or the state's attorney effecting a settlement of any such proceeding, shall determine an award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will, in the opinion of the court or the acquiring entity's attorney, respectively, reimburse such plaintiff for his reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of such proceeding. A determination by the court shall be appealable to the Supreme Court in the same manner as any other final order.

Laws 1971, c. 355, § 4, eff. July 1, 1972.

<sup>1</sup> Section 9 of this title.

### Cross References

Appeal of final order to Supreme Court, see title 12, §§ 952, 953.

### Law Review Commentaries

Annual Survey of Oklahoma Law:  
Condemnation and inverse condemnation. 3 Okl. City U.L.Rev. 375 (1978).

Insurance—Retroactive application of attorney fee statutes: Analysis of Cox v. American Fidelity Assurance Company. 4 Okl. City U.L. Rev. 256 (1979).

Property—Eminent domain and police power. 2 Okl. City U.L.Rev. 403 (1977).

Decisions of interest pertaining to real property. R. Clark Musser. 50 Okl.B.J. 1616 (1979).

Landowners' remedies under Article II, Oklahoma Constitution, section 24. Floyd W. Taylor. 51 Okl.B.J. 2178 (1980).

1981 decisions of interest pertaining to real property. R. Clark Musser. 53 Okl. B.J. 501 (1982).

### Library References

Eminent Domain ⇐302, 316.

WESTLAW Topic No. 148.

C.J.S. Eminent Domain §§ 445, 446.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## Notes of Decisions

**Construction and application 1****1. Construction and application**

Provisions of § 11 of this title and this section, relating to the acquisition of real property for public use in any program or project in which federal, state or local funds are used, setting out certain circumstances wherein the property owner shall be paid for reasonable attorney fees incurred because of the condemnation proceeding, are not in conflict with or inconsistent with 11 Okl.St. Ann. § 1663 (repealed) which provided "if the

verdict of the jury exceeds the award of the court appointed commissioners, the court may reward a reasonable attorney fee to the defendant or defendants which shall be paid by the condemner." *McAlister Urban Renewal Authority v. Hamilton*, Okl., 521 P.2d 823 (1974).

Reimbursement expenses, awarded in eminent domain cases under § 11 of this title and this section, are not part of the "judgment" so as to be subject to post-judgment interest under § 727 of title 12. *Op. Atty. Gen. No. 84-176*, Feb. 4, 1985.

**§ 13. Policies**

Any person, acquiring agency or other entity acquiring real property for any public project or program described in Section 9 of this title shall comply with the following policies:

1. Every reasonable effort shall be made to acquire, expeditiously, real property by negotiation.

2. Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property, except that the head or governing body of the entity acquiring real property, if so mandated by federal law or regulation, may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value as such value is defined by federal law or regulation.

3. Before the initiation of negotiations for real property, an amount shall be established which is reasonably believed to be just compensation therefor and such amount shall be promptly offered for the property. In no event shall such amount be less than the approved appraisal of the fair market value of such real property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The owner of the real property to be acquired shall be provided with a written statement of, and summary of the basis for, the amount established as just compensation. Where appropriate,

the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

4. No owner shall be required to surrender possession of real property before the agreed purchase price is paid or deposited with the state court, in accordance with applicable law, for the benefit of the owner of an amount not less than the approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding of such property.

5. The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling, assuming a replacement dwelling, as required by the Oklahoma Relocation Assistance Act,<sup>1</sup> will be available, or to move his business or farm operation without at least ninety (90) days' written notice from the date by which such move is required.

6. If any owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

7. In no event shall the time of condemnation be advanced, on negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other coercive action be taken to compel an agreement on the price to be paid for the property.

8. If an interest in real property is to be acquired by exercise of power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring authority shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

9. If the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire that remnant shall be made. For the purposes of this section, an uneconomic remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of the property of the owner which has little or no value or utility to the owner.

10. A person whose real property is being acquired in accordance with this title may, after the person has been fully informed of his right to receive just compensation for such property, donate such property, any part thereof, any interest therein, or any compensation paid therefor, as such person shall determine.



## 11. As used in this section:

- a. "Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information; and
- b. "Acquiring agency" means:
  - (1) a state agency which has the authority to acquire property by eminent domain pursuant to state law, and
  - (2) a state agency or person which does not have such authority, to the extent provided by regulation.

Laws 1971, c. 355, § 5, eff. July 1, 1972. Laws 1988, c. 315, § 2, emerg. eff. July 6, 1988.

<sup>1</sup> Section 1085 et seq. of title 63.

### Historical and Statutory Notes

The 1988 amendment, in the introductory clause, inserted "acquiring" preceding "agency" and substituted "Section 9 of this title" for "Section 1 of this act"; in paragraph 2, added the exception; in

paragraph 9, in the first sentence, substituted "that remnant" for "the entire property" and added the second sentence; and added paragraphs 10 and 11.

### Cross References

Public projects and programs using federal, state or local funds with power of eminent domain pursuant to policies of this section, easements, see title 64, § 1.4.

Tender of money alleged in pleading, deposit in court, see title 12, § 309.

### Law Review Commentaries

Eminent domain: Constitutional problems in taking of church lands. Richard C. Howard. 31 Okl.L.Rev. 191 (1978).

### Library References

Eminent Domain ⇨167(1).

WESTLAW Topic No. 148.

C.J.S. Eminent Domain § 210 et seq.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### Notes of Decisions

#### Construction and application 1

##### 1. Construction and application

Condemnor which received federal funds was not required to comply with this section, which is statement of policy only, as condition precedent to exercising

its rights of eminent domain where landowners failed to show they were forced to vacate their property for easement. Western Farmers Elec. Co-op. v. Willard, Okl.App., 726 P.2d 361 (1986).

The Oklahoma Turnpike Authority is subject to the terms of §§ 9 to 15 of this title, prescribing the policy for the acqui-

sition and condemnation of land by the State, and that the provisions of title 69, §§ 1707 and 1708 are effective insofar as

they are not in conflict with or contradictory to the terms of §§ 9 to 15. Op. Atty.Gen. No. 71-425.

### § 14. Buildings, structures and other improvements—Taking with real property

A. Where any interest in real property is acquired, an equal interest shall be acquired in all buildings, structures or other improvements located upon the real property which are required, by the head of the acquiring entity, to be removed from such real property or which he determines to be adversely affected by the use to which such real property will be put.

B. For the purpose of determining the just compensation to be paid for any building, structure or other improvement required to be acquired as by subsection A of this section, such building, structure or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure or improvement at the expiration of his term, and the fair market value which such building, structure or improvement contributes to the fair market value of the real property to be acquired or the fair market value of such building, structure or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

C. Payment under this section shall not result in duplication of any payments otherwise authorized by law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer and release to the acquiring entity all his right, title and interest in and to such improvements. Nothing in this section shall be construed to deprive the tenant of any rights to reject payment under this section and to obtain payment for such property interests in accordance with applicable law other than this section.

Laws 1971, c. 355, § 6, eff. July 1, 1972.

#### Cross References.

Outdoor advertising signs, acquisition by Department of Highways, condemnation, see title 69, §§ 1279, 1280.

#### Library References

Eminent Domain ⇐133.

WESTLAW Topic No. 148.

C.J.S. Eminent Domain §§ 138, 175.

**§ 15. Effect of statement of policies**

The provisions of Section 5<sup>1</sup> create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

Laws 1971, c. 355, § 7, eff. July 1, 1972.

<sup>1</sup> Section 13 of this title.

**CONDEMNATION PROCEDURE ACT****§§ 21 to 37. Expired July 1, 1943****Historical and Statutory Notes**

The expired sections, derived from Laws 1941, p. 104, §§ 1 to 17, enacted the Condemnation Procedure Act.

Section 18 of Laws 1941, p. 104, provided:

"All acts or parts of acts in conflict herewith are hereby expressly repealed; provided however that the provisions of this act shall not be operative or in effect after July 1, 1943."

# TITLE 28

## FEEES

Chapter	Section
1. Fees of County Officers, Jurors and Witnesses .....	1
2. Fees of Secretary of State .....	111
3. Fees for Public Printing .....	121
4. Court Costs and Filing Fees .....	151

### Cross References

- Abstracters, fees of, see title 74, § 227.28.  
Application for certificate of authority, fee, see title 74, § 227.14.  
Alcohol dependency, treatment facility license, see title 43A, § 3-418.  
Attorneys' fees, contingent fee, limitation, see title 5, § 7.  
Bingo, license fees, see title 21, §§ 995.3 to 995.5.  
Building permits, see title 74, § 324.11.  
Cemetery plats, fees for recording, see title 8, § 4.  
Depositions, fees, taxing costs, see title 12, § 3230.  
Depository for fees received, county treasurer as, see title 19, § 681.  
Election contests, salary paid in fees, liability of defeated incumbent, see title 51, § 5.  
Financing statements, fees, see title 12A, §§ 9-401A, 9-403 to 9-407.  
Foreign judgment, filing fees, see title 12, § 724.  
Garbage disposal, see title 63, §§ 1-2412, 1-2413.  
Insurance agents and solicitors, examination and license fees, see title 36, § 321.  
Motor vehicles, license fees, see title 47, § 1132 et seq.  
Protest, payment of allegedly invalid fees under, see title 62, § 206.  
Real estate brokers and sales associates, examination and license fees, see title 59, §§ 858-302, 858-303.  
Recording certificates of animal breeding services, fee for, see title 4, § 197.  
Referee, fees of, see title 12, § 619.  
Salaries, see title 19, § 180.61 et seq.; title 74, and other specific heads.  
Sewer improvement districts, instruments and deeds filed and recorded without fee, see title 19, § 897.  
State mining board, applications for certificates from, fees, see title 45, § 5.  
Tax delinquency, notice of sale of property, publication fees, see title 68, § 24312.  
Vital statistics, fees for certified copies of records, see title 63, § 1-325.  
Water rights, appropriation permit, filing fee, see title 82, § 105.9.  
Weather modification and control, licenses and permits, see title 82, §§ 1087.9, 1087.15.

### United States Code Annotated

- Grain, federal standards, inspection fees, see 7 U.S.C.A. § 79.  
Oil and gas, subsurface storage, fees, see 30 U.S.C.A. § 226.

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## CHAPTER 1

### FEES OF COUNTY OFFICERS, JURORS AND WITNESSES

#### GENERAL PROVISIONS

##### Section

1. Statutory allowances exclusive.
2. Fees not collected during term.
3. Failure of officers to make reports—Failure to charge fees.
4. Repealed.
5. Penalty for charging fees on pensions.
6. Responsibility of county for fees.
7. Officers to post list of fees.
8. Fees to be itemized on process.
9. Officer to receipt for fees paid.
10. Charging for constructive mileage—Penalty.
11. Folio defined.
12. Fees due when service rendered—Deposit for anticipated costs.
13. Penalty for improper charges.

#### FEES OF PARTICULAR OFFICERS

31. Fees of court clerks.
  - 31.1. Clerk of district court—No fees in certain guardianship cases.
  - 31.2. Garnishment proceedings—Court clerk not to charge poundage in certain cases.
32. County clerk—Fees.
  - 32.1. Repealed.
  - 32.2. Expired.
33. Register to keep account of fees.
34. Repealed.
35. Clerk to keep account of fees.
36. Verification of signatures without fee.
37. Monthly accounting by county clerk and registrar of deeds.
- 38 to 42. Repealed.
43. Treasurer's fees.
44. Treasurer to keep account of fees.
45. Treasurer's quarterly report.
46. Fees of county surveyor.
47. Fees of notaries.

## OFFICERS, JURORS, WITNESSES

### Section

48. Fees of commissioner for partition.
49. Fees of appraisers.
- 49.1. Appraisers and commissioners, compensation of.
- 49.2. Expenses.
50. Fees of public weigher—Lien for fee.
- 51 to 54. Repealed.
55. Renumbered.
56. Marriage ceremony fees.

### FEEES OF WITNESSES AND JURORS

81. Witness fees.
82. Witnesses for state—Fees and mileage—Taxation as costs upon conviction.
83. Repealed.
84. Certificates to be issued to witnesses.
- 84.1. Employee of state or political subdivision testifying on matter pertaining to their employment—Witness fees—Other reimbursement.
85. Warrants for fees of jurors and witnesses for which county liable.
86. Jurors' fees—Parking.
87. Clerk's record of jurors and witnesses.
88. Statement to commissioners.
91. State Fire Marshal investigation—Expert witness fee.

### FEEES AS COSTS

101. Fees and costs in criminal cases part of penalty—Enforcement by imprisonment—Persons unable to pay.
102. Costs in civil proceeding to be proved by affidavit—Taxation and collection.
103. Bill of costs or fees.
104. Repealed.
105. Collection on execution.
106. Clerk to hold costs or fees for person entitled—Time for filing claims.

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## GENERAL PROVISIONS

## § 1. Statutory allowances exclusive

The officers and persons herein mentioned shall be entitled to receive for their services only the fees herein allowed, and no other, except as may be otherwise required by law.

R.L.1910, § 3193. Laws 1967, c. 122, § 1, eff. April 27, 1967.

## Historical and Statutory Notes

The 1967 amendment deleted "and compensation" following "fees".

## Source:

St.1893, § 2854.

Laws 1897, p. 160.

St.1903, § 2992.

Comp.Laws 1909, § 3366.

Comp.St.1921, § 6329.

St.1931, § 1033.

## Library References

Officers and Public Employees 99.  
WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees  
§§ 223 to 228, 237.

## WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## Notes of Decisions

Construction and application 1  
Right to compensation 2

## 1. Construction and application

Absent any statute authorizing assessment of expert witness fees as costs, successful parties were limited by this section and § 81 of this title, as applicable when case was tried, providing for payment of witness fees on per day and per mile basis. Sloan v. Owen, Okl., 579 P.2d 812 (1977).

Fees clearly include all compensation or charges received by a public officer by virtue of his office. Finley v. Territory ex rel. Keys, 12 Okl. 621, 73 P. 273 (1903).

## 2. Right to compensation

Pursuant to this section a deputy court clerk may not receive a separate fee for posting legal notices pertaining to probate matters from the attorney handling the probate except those fees statutorily provided by law. Op.Atty.Gen. No. 79-123 (June 14, 1979).

## § 2. Fees not collected during term

The fees of any officer earned but not collected during his term of office, shall be collected by his successor in office and paid into the county treasury, and all fees so collected shall be included in the report of the officer collecting the same.

R.L.1910, § 3206.

## Historical and Statutory Notes

## Source:

Laws 1897, p. 170.  
St.1903, § 3014.

Comp.Laws 1909, § 3388.

Comp.St.1921, § 6347.

St.1931, § 1039.

**Library References**

Officers and Public Employees ¶112.  
WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees  
§§ 214, 215.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions****Construction and application 1**

office which remain uncollected at the end of that term. *Downing v. Lynch*, Okl., 354 P.2d 394 (1960).

**1. Construction and application**

A justice of the peace did not forfeit all fees earned by him during his term of

**§ 3. Failure of officers to make reports—Failure to charge fees**

Any county, township and district officer who is required by law to make monthly or quarterly reports to the board of county commissioners who fails or refuses to make such reports, or who makes a false or fraudulent report, shall be deemed guilty of a misdemeanor and in addition to his punishment he shall forfeit his office; and when any such officer shall fail or refuse to account for or to pay over any money in his official capacity, he shall be deemed guilty of embezzlement, and in no case shall any county officer retain any perquisites of his office; and if any officer neglect or refuse to charge the fees provided by law, he shall forfeit double the amount thereof to be deducted from his salary, or to be collected by civil action against any such officer or his bondsmen. R.L.1910, § 3213.

**Historical and Statutory Notes****Source:**

Laws 1910, p. 136.

Comp.St.1921, § 6357.

St.1931, § 7466.

**Cross References**

Embezzlement,

County officers, see title 19, § 641.

Defined, see title 21, § 1451.

False accounts, public officers, see title 21, § 341.

Official misconduct, removal of public officers for, see title 51, §§ 91, 93.

Removal from office, failure of public officer to produce and account for public funds, see title 22, § 1181.

State officers, diversion of state funds, see title 21, § 1463.

**Library References**

Officers and Public Employees ¶112.  
WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees  
§§ 214, 215.



## WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## Notes of Decisions

Construction and application	2
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Prosecution and punishment	4
Validity	1

## 1. Validity

The act of which this section is a part was valid and not in conflict with Const. Art. 5, § 57, concerning defective titles of bills. *State ex rel. Reardon v. Harper*, 33 Okl. 572, 123 P. 1038 (1912); *Pottawatomie v. Reasor*, 29 Okl. 209, 116 P. 801 (1911); *Jefferson v. Toomer*, 28 Okl. 658, 115 P. 793 (1911).

## 2. Construction and application

A prosecution against a district court clerk for failing to pay fees into the county treasury is governed by the specific provisions of R.L.1910, § 3213 (now this section) rather than by the Penal Code. *McDaniel v. Brown*, 16 Okl.Cr. 149, 181 P. 156 (1919); *Warner v. Mathews*, 11 Okl.Cr. 122, 143 P. 516 (1914).

St.1931, §§ 7448, 7466 (§ 37 of this title and this section) were special embezzlement statutes, but are worded different from St.1931, § 7761 (§ 641 of this title). *Abernathy v. State*, 68 Okl.Cr. 142, 101 P.2d 634 (1940).

R.L.1910, § 3213 (now this section) is a specific statute, within the meaning of R.L.1910, § 2092 (§ 11 of title 21) providing that specific penal statutes shall govern as against general provisions of the Penal Code comprehending the same offense. *State v. Bunch*, 23 Okl.Cr. 388, 214 P. 1093 (1923).

## 3. Embezzlement

A county clerk charged with the safekeeping and disbursement of public money may, by a series of personal appropriations of small sums of such public money, render himself liable to prosecution for embezzlement of a particular gross amount, constituting but one offense, under R.L.1910, § 3213 (now this section), prescribing fiscal duties of county clerks. *Griswold v. State*, 23 Okl.Cr. 136, 212 P. 1018 (1923).

Under proper averments, the definition of embezzlement as found in R.L. 1910, § 3213 (now this section) may be considered in aid of defining embezzlement under R.L.1910, § 7437 (§ 641 of title 19) both of which are specific in their nature, and not a part of the general Criminal Code. *Hays v. State*, 22 Okl.Cr. 99, 210 P. 728 (1923).

On failure or refusal of register of deeds to pay all fees into county treasury monthly, as required by R.L.1910, § 3214 (§ 37 of this title), he was liable to separate prosecution for embezzlement, under R.L.1910, § 3213 (now this section) for each and every month in which he failed to do so. *Harris v. State*, 17 Okl.Cr. 69, 175 P. 627 (1918).

Failure or refusal of register of deeds to pay all fees into county treasury at end of each month, as required by § 37 of R.L.1910, § 3214 (§ 37 of this title), constituted embezzlement under R.L. 1910, § 3213 (now this section). *Id.*

Indictment against ex-treasurer of school district for violation of St.1931, § 7761 (§ 641 of title 19) penalizing misappropriation of funds by public officers was not duplicitous, although shortage included different items. *Casselman v. State*, 58 Okl.Cr. 371, 54 P.2d 678 (1936).

## 4. Prosecution and punishment

Embezzlement indictment against ex-treasurer of school district charged violation of St.1931, § 7761 (§ 641 of title 19) penalizing misappropriations by public officers, rather than violation of St.1931, § 7466 (this section), and was sufficient. *Id.*

**§ 4. Repealed by Laws 1941, p. 462, § 1****Historical and Statutory Notes**

The repealed section, relating to certain fees to be paid into a special salary fund, was derived from:

Laws 1897, p. 174.

St.1903, § 3029.  
Comp.Laws 1909, § 3403.  
R.L.1910, § 3219.  
Comp.St.1921, § 6417.  
St.1931, § 7446.

**§ 5. Penalty for charging fees on pensions**

No person authorized to administer oaths, shall be allowed to charge any discharged soldier or seaman, or widow, orphan or legal representative thereof, any fee for administering any oath or the giving of any certificate for the procuring of any pension, bounty, or back pay, nor for administering any oath or oaths and giving the certificate required upon any voucher for collection of periodical dues from the pension agent for any services rendered in perfecting any voucher; and any such officer who may charge any fee for any such services shall be deemed guilty of a misdemeanor, and fined in any sum not less than Ten Dollars (\$10.00) nor more than Twenty-five Dollars (\$25.00).

R.L.1910, § 3222.

**Historical and Statutory Notes****Source:**

Laws 1897, p. 174.

St.1903, §§ 3031, 3032.

Comp.Laws 1909, §§ 3405, 3406.

Comp.St.1921, § 6420.

St.1931, § 12050.

**Cross References**

Officers authorized to administer oaths, see title 51, § 21.

**Library References**

Officers and Public Employees ¶121.  
WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees  
§§ 255 to 259.

**§ 6. Responsibility of county for fees**

The county shall be responsible for the fees, salaries and expenses of county officers, unless otherwise provided by law.

R.L.1910, § 3229. Laws 1967, c. 122, § 2, eff. April 27, 1967.

**Historical and Statutory Notes**

The 1967 amendment rewrote the section, which prior thereto read:

"The county shall in no case be responsible for any fees, salaries or expenses for any county or subdivision officer unless expressly allowed by law."

**Source:**

Laws 1910, p. 133.

Comp.St.1921, § 6434.

St.1931, § 7888.

**Cross References**

Salaries, county officers, see title 19, § 180.61 et seq.

**Library References**

Counties ⇐133.  
 WESTLAW Topic No. 104.  
 C.J.S. Counties § 173.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions****Construction and application 1****1. Construction and application**

Person appointed to perform duties of county attorney when he was disqual-

ified is entitled to reasonable compensation by county for services rendered before R.L.1910, § 3229 (now this section) went into effect. Johnston v. Board of Com'rs of Murray County, 53 Okl. 693, 158 P. 164 (1916).

**§ 7. Officers to post list of fees**

Each officer herein named shall cause a list of fees allowed by law to be charged by him, to be posted in his office in some conspicuous place, under penalty of Five Dollars (\$5.00) for each day he shall neglect so to do.

R.L.1910, § 3239.

**Historical and Statutory Notes****Source:**

Laws 1897, p. 178.  
 St.1903, § 3044.

Comp.Laws 1909, § 3421.

Comp.St.1921, § 6444.

St.1931, § 1055.

**Library References**

Officers and Public Employees ⇐97.  
 WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees  
 §§ 224, 238 to 241.

**§ 8. Fees to be itemized on process**

No officer serving any process shall be entitled to any fees for the same, unless he return on such process the amount of his fees and the items thereof.

R.L.1910, § 3240.

**Historical and Statutory Notes****Source:**

Laws 1897, p. 178.  
 St.1903, § 3045.

Comp.Laws 1909, § 3422.

Comp.St.1921, § 6445.

St.1931, § 1056.

**Cross References**

Substitute for sheriff, fees for service of process, see title 12, § 52.  
 Summons and return, form, see title 12, § 2004.

**Library References**

Sheriffs and Constables ⇨33.  
 WESTLAW Topic No. 353.  
 C.J.S. Sheriffs and Constables § 226.

**§ 9. Officer to receipt for fees paid**

Every officer charging fees shall give a receipt therefor.  
 R.L.1910, § 3243. Laws 1967, c. 122, § 3, eff. April 27, 1967.

**Historical and Statutory Notes**

The 1967 amendment rewrote the section, which prior thereto read:

"Every officer charging fees shall, if required by the person paying them, give him a receipt therefor, setting forth the items and the date of each."

**Source:**

Laws 1897, p. 178.  
 St.1903, § 3048.  
 Comp.Laws 1909, § 3425.  
 Comp.St.1921, § 6448.  
 St.1931, § 1059.

**Cross References**

County treasurer, receipts for money received, see title 19, § 624.  
 Municipal courts, receipts for fees paid into, see title 11, § 27-112.

**Library References**

Officers and Public Employees ⇨97. C.J.S. Officers and Public Employees  
 WESTLAW Topic No. 283. §§ 224, 238 to 241.

**§ 10. Charging for constructive mileage—Penalty**

Any county, township or district officer who shall knowingly charge, receive or collect any fees for constructive service or mileage shall be deemed guilty of a misdemeanor, and in addition to his punishment shall forfeit his office and thereafter be forever barred from holding any office of honor, trust or profit in this state.  
 R.L.1910, § 3247.

**Historical and Statutory Notes****Source:**

Comp.Laws 1909, § 3429.  
 Laws 1910, p. 137.

Comp.St.1921, § 6452.  
 St.1931, § 1062.

**Cross References**

Forfeiture of public office, effect of omission in criminal statutes, see title 21, § 132.  
 Removal of public officers for official misconduct, see title 51, §§ 91, 93.

**Library References**

Officers and Public Employees ⇨121. C.J.S. Officers and Public Employees  
 WESTLAW Topic No. 283. §§ 255 to 259.

**§ 11. Folio defined**

A folio shall consist of one page regardless of size.  
R.L.1910, § 3248. Laws 1967, c. 122, § 4, eff. April 27, 1967.

**Historical and Statutory Notes**

The 1967 amendment rewrote the section, which prior thereto read:

"A folio shall consist of one hundred words and two figures shall be counted as one word."

**Source:**

Laws 1897, p. 179.  
St.1903, § 3054.  
Comp.Laws 1909, § 3431.  
Comp.St.1921, § 6453.  
St.1931, § 1064.

**§ 12. Fees due when service rendered—Deposit for anticipated costs**

No fees allowed by law shall be due or demanded until the services for which such fees are chargeable shall have been performed, provided, however, that the court clerk may require a deposit for anticipated costs.

R.L.1910, § 3249. Laws 1967, c. 122, § 5, eff. April 27, 1967.

**Historical and Statutory Notes**

The 1967 amendment substituted "law" for "this act," and added the provision allowing the court clerk to require a deposit for anticipated costs.

St.1903, § 3055.  
Comp.Laws 1909, § 3432.  
Comp.St.1921, § 6454.  
St.1931, § 1063.

**Source:**

Laws 1897, p. 179.

**Library References**

Officers and Public Employees ¶97.  
WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees  
§§ 224, 238 to 241.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions****Construction and application 1****1. Construction and application**

The clerk of the Supreme Court may lawfully decline to render service in fil-

ing papers until his compensation is tendered therefor. *Bohart v. Anderson*, 24 Okl. 82, 103 P. 742, 20 Ann.Cas. 142 (1909).

**§ 13. Penalty for improper charges**

Any public officer who shall knowingly charge, demand or receive any fees not provided by law, or who shall charge, demand or receive any greater fees than are provided in this article<sup>1</sup> shall be deemed guilty of a misdemeanor, and shall, upon conviction, be

fined in any sum not less than Five Hundred Dollars (\$500.00) for each and every offense and shall forfeit his office and shall be barred from holding any office of trust in this state thereafter. R.L.1910, § 3252.

<sup>1</sup> R.L.1910, c. 31, art. 1, incorporated in this title and title 19.

### Historical and Statutory Notes

Source:

Laws 1910, p. 143.

Comp.St.1921, § 6457.

St.1931, § 1066.

### Cross References

Forfeiture of public office, effect of omission in criminal statutes, see title 21, § 132.

Removal from office for official misconduct, see title 51, §§ 91, 93.

Wilful overcharge of fees, removal of officer, see title 22, §§ 1181, 1181.1.

### Library References

Officers and Public Employees ¶121.

C.J.S. Officers and Public Employees

WESTLAW Topic No. 283.

§§ 255 to 259.

## FEEES OF PARTICULAR OFFICERS

### Law Review Commentaries

Oklahoma's new judicial system, cost and fees. George B. Fraser. 21 Okl.L. Rev. 373, 398 (Nov.1968).

### § 31. Fees of court clerks

The clerk of the district court, or the clerk of any other court of record, shall charge and collect the following fees for services by them respectively rendered and none others, except as otherwise provided by law:

Approving bond or undertaking, including certificate and seal .....	\$ 3.00
Making copy of an instrument of record or on file, first page .....	1.00
subsequent pages (each) .....	.50
Certifying to any instrument (each) .....	.50
Authentication of court records .....	5.00
Receiving and paying out money in pursuance of law or order of court .....	1%
provided, however, that such charge shall not exceed \$300.00.	

In any case which has been on file and pending without activity for a period of five (5) years and in which there is on hand, unexpended, a balance of deposits for costs, there shall be a charge annually thereafter for accounting, to be deducted from any such balance, and to the extent available therefor, an annual fee of .....

Application, issuing, entering return and recording marriage license .....	25.00
Conveyance of full-blood Indian heirs to interest in inherited lands, same to be accounted for as other fees .....	5.00
Storage and indexing of wills .....	5.00
Posting notice outside the courthouse .....	10.00
Mailing, by any type of mail, writs, warrants, orders, process, command or notice for each person .....	5.00
except ordinary mailing of first-class mail in probate cases, for each case .....	5.00
For the actual cost of all postage in each case in excess of...	\$ 5.00

Laws 1967, c. 122, § 6. Laws 1975, c. 293, § 1, eff. Oct. 1, 1975; Laws 1977, c. 207, § 4, eff. Oct. 1, 1977; Laws 1978, c. 212, § 8, eff. July 1, 1978; Laws 1979, c. 23, § 1, eff. July 1, 1979; Laws 1986, c. 242, § 1, emerg. eff. June 12, 1986; Laws 1987, c. 181, § 1, eff. July 1, 1987; Laws 1989, c. 205, § 5, eff. Nov. 1, 1989.

#### Flat Fees

*Laws 1968, c. 359, effective July 1, 1968 (Section 151 et seq. of this Title), relating to court costs and filing fees, provides in Section 4 (Section 154 of this Title) as follows: "The flat fees herein provided for shall be in lieu of the charges enumerated in 28 O.S.1961, § 31, as amended by Section 6, Chapter 122 O.S.L.1967, and the court clerks, from and after the effective date of this Act, shall no longer be required to list, itemize or charge pursuant to the schedule therein enumerated, except for proceedings after judgment, and except as herein specifically set out."*

#### Historical and Statutory Notes

Section 1 of Laws 1980, H.C.R. No. 1051, provides as follows:

"The Legislature declares that the intent of Section 31 of Title 28 is to require only changing the statutory amount for certification of copies of instruments already contained within the court files, and not require charges for certification of instruments which are certified at the same time as the filing of the original instrument."

The 1975 amendment increased various fees.

The 1977 amendment deleted "Filing, docketing laborer's or materialman's lien, including written or marginal release ..... 2.00".

The 1978 amendment rewrote the section, which prior thereto read:

"The clerk of the district court, or the clerk of any other court of record, shall

charge and collect the following fees for services by them respectively rendered and none others, except as otherwise provided by law:

Docket fees in each case, which shall include the entry of cause upon the appearance docket, indexing.....	\$ 2.00
Each entry of order, rule, motion, decree, return or verdict upon the appearance docket .....	.20
Swearing jurors and witnesses .....	.20
Issuing warrants, attachments, replevins, executions or orders of sale, each page .....	1.00
Issuing subpoena, including all names on one praecipe .....	.50
Issuing summons .....	.50
Approving bond or undertaking, including certificate and seal .....	2.50

Administering oath to each person in open court .....20

Swearing jury to try cause (each).....20

Commission to take deposition .....1.00

Docketing judgment (each).....50

Recording any instrument of record, first page .....1.00

subsequent pages (each) .....50

Making copy of an instrument of record or on file, first page.....1.00

subsequent pages (each) .....50

Certifying to any instrument (each).....25

Issuing or filing commitment in felony cases, including certified copies .....1.00

Issuing commitment in any other cases .....50

Issuing release .....50

Issuing any order, writ or process not otherwise provided for, per folio .....1.00

Receiving and paying out money in pursuance of law or order of court ..... 1%, provided, however, that such charge shall not exceed \$200.00.

In any case which has been on file and pending without activity for a period of five (5) years and in which there is on hand, unexpended, a balance of deposits for costs, there shall be a charge annually thereafter for accounting, to be deducted from any such balance, and to the extent available therefor, an annual fee of .....2.00

Application, issuing, entering return and recording marriage license .....7.50

Issuing Letters Testamentary, Administration or Guardianship.....1.00

Conveyance of full-blood Indian heirs to interest in inherited lands, same to be accounted for as other fees..... 5.00"

The 1979 amendment inserted "Authentication of court records ..... 5.00" and "Storage and indexing of wills ..... 1.00".

The 1986 amendment deleted the former first paragraph which read:

"Upon the entry being made on the docket in any case filed before July 1, 1968, which is still pending on July 1, 1978, there shall be a one-time charge of Five Dollars (\$5.00) such charge shall be in lieu of all subsequent court fees in said cases except fees incident to service of process."

; and added the last three paragraphs.

The 1987 amendment increased the fees relating to marriage licenses and wills.

The 1989 amendment increased the fee relating to mailing writs, etc. by any type of mail.

Former § 31 of this title, relating to fees of court clerks, was repealed by Laws 1967, c. 122, § 13, effective April 27, 1967. It was derived from R.L.1910, § 3194; Laws 1951, p. 66, § 1; Laws 1955, p. 212, § 1.

**Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 2 of Laws 1979, c. 23, provides for an effective date.

Section 11 of Laws 1987, c. 181 provides for an effective date.

**Source:**

- Laws 1910, p. 130.
- R.L.1910, § 3203.
- Comp.St.1921, § 6344.
- St.1931, § 1036.
- 28 O.S.1961, § 42.

**Cross References**

- Appeals in criminal prosecutions, preparing and transmitting record, see § 155.1 of this title.
- Consolidation of offices of clerk of the district court, clerk of the superior court and clerk of the county court, see title 19, § 221.
- Court opinions, written request for copy, fee, see title 20, § 73.5.
- Deposit of fees in court fund, see title 20, § 1301.
- Execution, see title 12, §§ 861, 862.
- Foreign judgments, filing and other fees, see title 12, § 724.



Law library fund, transfer of money to, see title 20, § 1202.  
 Marriage ceremony performed by judge, additional fees, see § 56 of this title.  
 Marriages, filing of authority to solemnize, see title 43, § 7.  
 Notary public, filing commission, oath, etc., see title 49, § 2.  
 Payment of judgment against county or other municipal subdivision, see title 62, § 365.5.  
 Recording affidavit of suspension of publication, see title 25, § 110.

### Law Review Commentaries

Symposium in the Oklahoma law of damages: costs of litigation. 6 Okl.L. Rev. 312 (Aug. 1953).

### Library References

Clerks of Courts § 11 et seq.  
 WESTLAW Topic No. 79.  
 C.J.S. Courts §§ 242, 244.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### United States Code Annotated

Federal courts, filing and docket fees, see 28 U.S.C.A. §§ 1914, 1923.

### Notes of Decisions

#### Construction and application 2 Validity 1

##### 1. Validity

The \$15 fee provided in former § 54 of this title for costs in misdemeanor cases covered costs only to date of judgment; for costs subsequent to date of judgment, resort could be had to this section; and to the extent which this section was inconsistent with former § 54 of this title, this section was repealed, since former § 54 of this title was the latest expression of legislative intent. Op. Atty. Gen. No. 69-352 (Jan. 22, 1970).

##### 2. Construction and application

Although judgment decreed that land purchase contract be cancelled unless within 30 days the purchasers paid all money due, modification of judgment to grant purchaser an additional four days was not an abuse of discretion where purchaser in fact made the payment to clerk of court on the fourth day and aside from inconvenience in escrow account being closed the vendor did not allege or show that she was harmed in any way; however, in the interest of equity, the statutory one percent fee for receiving and paying out money in pursuance of law or court order would be

taxed against purchaser. Jones v. Strain, Okl. App., 603 P.2d 353 (1979).

In divorce action, there was no abuse of discretion in ordering wife to pay the statutory fee of court clerk in processing temporary support payments and in charging wife's attorney for statutory fee of court clerk for collecting attorney fee. Stanford v. Stanford, Okl., 458 P.2d 645 (1969).

No provision in this or any other statute authorizes the court clerk to make any charge for filing a commitment or a release after date of judgment. Op. Atty. Gen. No. 69-352 (Jan. 22, 1970).

The provisions of this section that a court clerk shall charge a 1% fee up to a maximum of \$200 upon "receiving and paying out" money pursuant to law or order of the court authorize a 1% fee to be charged upon each process or transaction of receiving and paying out money pursuant to a law or order of the court. Op. Atty. Gen. No. 69-323 (Dec. 17, 1969).

Under § 515.1 of title 19 (repealed), which provided for service of process outside of county of its issuance, the court clerk of the foreign county may not deduct 1% poundage required by this section, relating to fees, but same may be deducted by court clerk of issuing county. Op. Atty. Gen. No. 68-149 (April 2, 1968).

### § 31.1. Clerk of district court—No fees in certain guardianship cases

The clerk of the district court shall charge and collect no fees in any proceeding for guardianship of a minor over the age of seventeen (17) years, where there shall be attached to the petition for the appointment of guardian an affidavit that the minor has applied for enlistment in the armed forces of the United States and that the sole purpose of the proceeding is to secure legal permission for such enlistment.

Laws 1951, p. 67, § 1.

#### Cross References

Costs, appointment of guardian to authorize entry into armed forces, see title 30, § 4-404.

#### Library References

Clerks of Courts ¶11.  
WESTLAW Topic No. 79.  
C.J.S. Courts §§ 242, 244.

### § 31.2. Garnishment proceedings—Court clerk not to charge poundage in certain cases

If the debtor prevails, the court clerk shall not charge poundage on any funds deposited under garnishment proceedings.

Laws 1986, c. 185, § 13, eff. Sept. 1, 1986.

### § 32. County clerk—Fees

All county clerks shall charge and collect the following flat fees to be uniform throughout the state regardless of the recording method used, and the county clerks shall not be required to itemize or charge these fees pursuant to any other schedule, except as specifically provided by law:

1. For recording the first page of deeds, mortgages and any other instruments ..... \$ 8.00
2. For recording each additional page of same instrument ..... \$ 2.00
3. For furnishing hard copies of microfilmed records to bonded abstractors only, per page ..... \$ 1.00
4. For furnishing photographic copies of photographic records, or of typewritten script or printed records, per page ..... \$ 1.00
5. For recording plat of one block or less ..... \$10.00
6. For recording plat of more than one block ..... \$25.00

- 7. For certifying to any copy per page ..... \$ 1.00
- 8. For recording an assignment of Tax Sale Certificate to be paid by the party purchasing ..... \$ 5.00
- 9. For recording of any mark or brand and giving certificate for same ..... \$ 5.00
- 10. For recording each certificate for estrays and forwarding description of same, as required by law ... \$ 1.00
- 11. a. For recording and filing of mechanics' or materialmen's liens which includes the release thereof ..... \$10.00
- b. For preparing and mailing notice of mechanics' or materialmen's lien ..... \$ 8.00
- c. For each additional page or exhibit ..... \$ 2.00
- 12. For recording and filing of fictitious name partnership certificates ..... \$ 5.00  
 To this fee shall be added the fees required by Sections 81 through 86 of Title 54 of the Oklahoma Statutes.
- 13. For filing and indexing an original financing statement or a continuation statement and for filing a termination statement and a statement of release therefor ..... \$10.00  
 (Section 9-403 of Title 12A)
- 14. For a filing pursuant to Section 9 of this act <sup>1</sup> ..... \$10.00

R.L.1910, § 3204. Laws 1947, p. 247, § 1; Laws 1949, p. 219, § 1; Laws 1967, c. 291, § 1, eff. May 8, 1967; Laws 1976, c. 162, § 1, emerg. eff. May 31, 1976; Laws 1977, c. 207, § 5, eff. Oct. 1, 1977; Laws 1978, c. 63, § 1, eff. Oct. 1, 1978; Laws 1979, c. 273, § 1, emerg. eff. June 5, 1979; Laws 1982, c. 43, § 1; Laws 1985, c. 166, § 1, operative July 1, 1985; Laws 1990, c. 273, § 14, eff. Sept. 1, 1990.

<sup>1</sup> Section 6-209 of title 12A.

**Historical and Statutory Notes**

As originally enacted this section read:	
"The register of deeds shall charge and collect the following fees, and none other:	
"For recording deeds, mortgages and other instruments, for the first folio ..... \$ .25	"For each additional 100 lots ..... 2.00
"For each additional folio ..... .10	"Filing and indexing chattel mortgage including certificate .... .25
"Certificate of filing and recording an instrument ..... .10	"Filing any instrument not otherwise provided for ..... .10
"Each entry on index, including description of property ..... .10	"For copy of each instrument or record already on file, per folio ..... .10
"Recording town plat of 100 lots or less ..... 5.00	"For certifying to any copy, including seal ..... .25
	"Making entry of release on margin of record ..... .25"
	The 1947 amendment rewrote the section to read:

"The County Clerk, as the register of deeds, shall charge and collect the following fees and none other, except as otherwise specifically provided by law:

"Where recording is done by photographic method and the County Clerk is the receiving officer:

"For first instrument—page of deeds, mortgages and other instruments on billhead paper (size 8½ inches by 14 inches,) per instrument ..... \$1.00

"For each additional page of the same size, per instrument ..... .50

"For recording contrasts or colors other than black, white, green or red, additional per page ..... .10

"For furnishing photographic copies of typewritten, script, photographic, or printed records, per page ..... .75

"For each entry exceeding one on each index (grantor, grantee, and numerical indexes) including description of property ..... .10

"For recording town plat for the first 119 square inches or fractional part thereof ..... 1.00

"For each additional 119 square inches ..... .50

"For certifying to each photographic copy, including seal .... .25

"Where recording is done by other than photographic method:

"For recording deeds, mortgages and other instruments, for the first folio (100 words being one folio) ..... .30

"For each additional folio ..... .10

"Certificate of filing and recording an instrument ..... .10

"Each entry on index, including description of property ..... .10

"Recording town plat of 100 lots or less ..... 5.00

"For each additional 100 lots, or fraction thereof ..... 2.00

"Filing and indexing chattel mortgage including certificate (no charge for entering and making release) ..... .50

"Filing any instrument not otherwise provided for ..... .10

"For copy of each instrument or record already on file, per folio ..... .10

"For certifying to any copy, including seal ..... .25"

The 1949 amendment rewrote the section to read:

"The County Clerk, as Register of Deeds, shall charge and collect the following fees and none other, except as otherwise specifically provided by law, to-wit:

"(a) The fees under this Sub-section shall be applicable only where photographic recording methods are used:—

"For first page of deeds, mortgages and other instruments on bill-head paper (bill-head being 8½ inches by 14 inches) or smaller, per first page of instrument ..... \$1.00

"For each additional page of same instrument ..... .50

"For recording contrasts or colors other than black, white, green or red, additional per page ..... .10

"For furnishing photographic copies of photographic records at same time as recording, per page ..... .50

"For furnishing photographic copies of photographic records at other times, or of typewritten script or printed records, per page ..... .75

"For recording town plat, for the first 119 square inches or fractional part thereof ..... 1.00

"For each additional 119 square inches or less ..... .50

"For certifying to each photographic copy, including seal .... .25

"(b) The fees under this Sub-section shall be applicable only where typewritten, or other manual recording methods are used:

"For recording deeds, mortgages and other instruments, for the first folio (100 words being one (1) folio) ..... .30

"For each additional folio ..... .10

"For recording town plat of 100 lots or less ..... 5.00

"For each additional 100 lots, or fraction thereof ..... 2.00

"For copy of each instrument or record already on file, per folio ..... .10

"For certifying to any copy; 10¢ per folio for proof-reading in comparison with original, plus, for certificate and seal .... .25

"(c) The fees under this Sub-section shall be applicable in all instances, regardless of method of recording used:

"For each entry on each index (grantor, grantee, numerical, miscellaneous, or reception) including description of property ..... .10

"For certificate of filing and recording an instrument ..... .10

"For filing and indexing chattel mortgage including certificate (no charge for entering and making release) ..... .50

"For filing and indexing any instrument not otherwise provided for ..... .25."

Section 2 of the Act of 1949 provided:

"Chapter 1 of Title 28, Session Laws 1943, [section 32.1 of this title] and all other laws and fee schedules irreconcilably in conflict herewith, save and except only those providing for recording or filing without fee, are hereby superseded, repealed and held for naught."

The 1967 amendment rewrote the section to read:

"The County Clerk, as Register of Deeds, shall charge and collect the following fees and none other, except as otherwise specifically provided by law, to-wit:

"(a) The fees under this Sub-section shall be applicable only where photographic recording methods are used:—

"For first page of deeds, mortgages and other instruments on bill-head paper (bill-head being 8½ inches by 14 inches) or smaller, per first page of instrument ..... \$1.50

"For each additional page of same instrument ..... .50

"For furnishing hard copies of microfilmed records to bonded abstractors only, per page .... .25

"For furnishing photographic copies of photographic records, or of typewritten script or printed records, per page ..... 1.00

"For recording plat ..... 5.00

"For certifying to each photographic copy, including seal .... .25

"(b) The fees under this Sub-section shall be applicable only where typewritten, or other manual recording methods are used:

"For recording deeds, mortgages and other instruments, for the first page ..... 1.50

"For each additional page ..... 1.00

"For recording town plat of 50 lots or less ..... 5.00

"For each additional 50 lots, or fraction thereof ..... 5.00

"For copy of each instrument or record already on file, per page ..... 1.00

"For certifying to any copy per page ..... 1.00

"For proof-reading in comparison with original, plus, for certificate and seal ..... .25

"(c) The fees under this Sub-section shall be applicable in all instances, regardless of method of recording used:

"For each entry on each index (grantor, grantee, numerical, miscellaneous, or reception) including description of property ..... .10

"For certificate of filing and recording an instrument ..... .10

"For filing and indexing any instrument not otherwise provided for ..... .50

"Assignment of Tax Sale Certificate to be paid by the party purchasing ..... 1.00

"For recording of any mark or brand and giving certificate for same ..... 1.00

"For recording each certificate for estrays and forwarding description of same, as required by law ..... .50."

The 1976 amendment, in subsection (a), in the fifth paragraph inserted "of one block or less" and inserted the sixth paragraph, which read:

"For recording plat of more than one block ... \$25.00"

; in subsection (b), rewrote the third and fourth paragraphs to read:

"For recording plat of one block or less ... \$5.00"

"For recording plat of more than one block ... \$25.00"

; and inserted "per page" in the last paragraph; and increased various fees.

The 1977 amendment, in subsection (c) added the last paragraph, which read:

"Provided that, the fee for the recording and filing of mechanics' or materialmen's liens shall be the same as for deeds."

The 1978 amendment rewrote the section to read:

"All county clerks shall charge and collect the following flat fees to be uniform throughout the state regardless of the recording method used, and the county clerks shall not be required to itemize or charge these fees pursuant to any other schedule, except as specifically provided by law, to wit:

- " 1. For recording the first page of deeds, mortgages and any other instruments ..... \$ 5.00
- " 2. For recording each additional page of same instrument ..... \$ 1.00
- " 3. For furnishing hard copies of microfilmed records to bonded abstractors only, per page ... \$ 1.00
- " 4. For furnishing photographic copies of photographic records, or of typewritten script or printed records, per page ..... \$ 1.00
- " 5. For recording plat of one block or less ..... \$ 5.00
- " 6. For recording plat of more than one block .... \$25.00
- " 7. For certifying to any copy per page ..... \$ 1.00
- " 8. For recording an assignment of Tax Sale Certif-

- icate to be paid by the party purchasing ..... \$ 5.00
- " 9. For recording of any mark or brand and giving certificate for same ... \$ 5.00
- "10. For recording each certificate for estrays and forwarding description of same, as required by law ..... \$ 1.00
- "11. For the recording and filing of mechanics' or materialmen's liens and the release thereof ..... \$ 5.00
- "12. For filing, indexing and furnishing filing data for an original or a continuation financing statement pursuant to the Uniform Commercial Code ..... \$ 5.00
- "13. For filing, indexing and furnishing filing data for an assignment pursuant to the Uniform Commercial Code ..... \$ 5.00."

The 1979 amendment deleted former paragraphs 12 and 13.

The 1982 amendment increased the fee relating to mechanics' or materialmen's liens and added paragraph 12, which read:

"For recording and filing of fictitious name partnership certificates ... \$5.00".

The 1985 amendment rewrote paragraph 11; in paragraph 12 added the second paragraph; added paragraph 13; and increased various fees.

The 1990 amendment added paragraph 14.

**Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 2 of the act of 1947 repealed conflicting laws.

Section 2 of the 1967 act repealed § 34 of this title.

Section 4 of Laws 1978, c. 63, provides for an effective date.

Section 2 of Laws 1982, c. 43 provides for an effective date.

Section 6 of Laws 1985, c. 166 provides for an operative date.

**Source:**

Comp.Laws 1909, § 3382.  
Laws 1910, p. 131.

Comp.St.1921, § 6345.  
St.1931, § 1037.

**Cross References**

Advance payment of fees, see title 19, § 292.  
Consolidation of offices of register of deeds and county clerk, see title 19, § 225.  
Corporations, filing fees, see title 18, § 1142.  
Fees for recording when photographic recording adopted, see title 67, § 94.  
Financing statements, fees of county clerk, see title 12A, §§ 9-401A, 9-403 et seq.  
Marketable record title notices, recording fees, see title 16, § 75.  
Plats of towns or additions, recording fees, see title 11, § 41-107.  
Re-recording instruments following destruction of county records, see title 67, § 12.  
Sewer improvement districts, instruments and deeds filed and recorded without fee, see title 19, § 897.

**Library References**

Registers of Deeds ¶3.  
WESTLAW Topic No. 330.  
C.J.S. Register of Deeds §§ 13 to 15.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

**Certification of documents** 5  
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**1. Construction and application**

In a suit for fees for transfer of Indian Territory records under Comp.Laws 1909, §§ 1738, 1741, 1742, 1743, it was not necessary to determine whether Comp.Laws 1909, § 3382 repealed said sections. *Morrow v. McIntosh County*, 31 Okl. 636, 122 P. 168 (1912).

The county clerk is required to collect filing fees on all instruments presented for filing or recording by an instrumentality of the United States Government unless there is a specific exemption for that particular instrument. *Op.Atty.Gen. No. 69-307* (Nov. 20, 1969).

**2. Prior law**

Former § 34 of this title (repealed; see, now, this section), fixing fees allowed county clerks; did not contain a provision defining services for making a certified copy of claim or provide for

any compensation therefor, and such was not allowable. *Broadwell v. Board of Com'rs of Sequoyah County*, 86 Okl. 164, 207 P. 296 (1922).

**3. Mechanic's or materialman's lien**

This title authorizes the county clerk to charge a lien claimant a flat Ten Dollar (\$10.00) fee for the combined acts of filing, recording and releasing a mechanics' or materialmen's lien. This fee also covers the charge for processing all parts and pages of a single mechanics' or materialmen's lien instrument. *Op.Atty.Gen. No. 83-89* (May 18, 1983).

Under the provisions of this section, the five dollar fee imposed covers both the recording and filing, as well as the release of the lien. *Op.Atty.Gen. No. 80-110* (May 27, 1980).

**4. Real property instruments**

County clerks are without authority to charge a filing or recording fee of Five Dollars (\$5.00) per tract of real property when such tracts are included in a single multitract instrument. County clerks are only authorized to charge the "per page" filing fee specifically set out in this section. *Op.Atty.Gen. No. 83-77* (April 27, 1983).

**5. Certification of documents**

Under this section, county clerks are without authority to refuse to certify a copy of a legal instrument in their custody solely on the grounds that the copy presented for certification was not furnished by the county clerk's office. Op. Atty.Gen. No. 83-26 (September 30, 1983).

**6. Proofreading documents**

Under subsection A of this section, county clerks cannot charge an addition-

al ten cents for proofreading the original of a copy presented to him by a customer for certification and seal. Op. Atty. Gen. No. 68-117 (May 23, 1968).

**7. Postage**

County clerks are not authorized to charge postage to persons who tender instruments for filing or reporting and request return of same. Op. Atty. Gen. No. 76-169 (April 7, 1976).

**§ 32.1. Repealed by Laws 1949, p. 220, § 2****Historical and Statutory Notes**

The repealed section, derived from Laws 1943, p. 100, § 1, provided for fees for copies of instruments or records

where copy is furnished by party requesting.

**§ 32.2. Expired****Historical and Statutory Notes**

This section, Laws 1949, p. 149, § 1, authorized the county clerk in any county in this state to record and index, at actual cost, easements and right-of-way grants to associations, co-operatives, corporations, stock companies, or other organizations serving rural areas as utilities for dispensing, dispersion or sale of electric current for light and power, wa-

ter, communication, etc., where not less than one hundred (100) such easements across, through or along farm lands for utility distribution lines were offered for recording and indexing at one time.

Under the express terms of § 2, the Act of 1949 expired at the end of two years from May 2, 1949.

**§ 33. Register to keep account of fees**

He shall keep an account of said fees in a book provided for that purpose, showing the amount charged and the amount received, from whom and for what purpose, and the date thereof. The footings for each month shall, at the close thereof, be legibly and correctly entered in said book, opposite the month during which the same have been collected or charged, showing the amount charged, the amount received, and the amount remaining due and unpaid. R.L.1910, § 3205.

**Historical and Statutory Notes****Source:**

Laws 1897, p. 168.  
St.1903, § 3009.

Comp.Laws 1909, § 3383.

Comp.St.1921, § 6346.

St.1931, § 1038.

**Cross References**

County clerk, record of county receipts and expenditures, see title 19, § 250.  
Failure to account for public funds, removal from office, see title 22, § 1181.



## 28 § 33

## FEES

False accounts, forfeiture of office, see title 21, § 341.  
Place books and records to be kept, see title 51, § 7.

### Library References

Registers of Deeds ⇐3.  
WESTLAW Topic No. 330.  
C.J.S. Register of Deeds §§ 13 to 15.

## § 34. Repealed by Laws 1967, c. 291, § 2, eff. May 8, 1967

### Historical and Statutory Notes

The repealed section, which consisted of a listing of fees to be charged by the county clerk, was derived from:

Laws 1897, p. 170.  
Comp.Laws 1909, § 3389.  
Laws 1910, p. 131.  
R.L.1910, § 3207.

Comp.St.1921, § 6348.  
St.1931, § 1040.

Section 1 of the 1967 act which repealed this section amended § 32 of this title by, inter alia, adding most of the subject matter from the repealed section.

See § 32 of this title.

## § 35. Clerk to keep account of fees

He shall keep an account of said fees in a book to be provided for that purpose, showing the amount charged and the amount received, from whom, and for what purpose, and the date thereof. The footings for each month shall, at the close thereof, be legibly and correctly entered in said book opposite the month during which the same have been collected or charged, showing the amount charged, the amount received, and the amount remaining due and unpaid.

R.L.1910, § 3208.

### Historical and Statutory Notes

#### Source:

Laws 1897, p. 171.  
St.1903, § 3016.

Comp.Laws 1909, § 3390.  
Comp.St.1921, § 6349.  
St.1931, § 1041.

### Cross References

County clerk, record of county receipts and expenditures, see title 19, § 250.  
False accounts, felony, see title 21, § 341.  
Place books and records to be kept, see title 51, § 7.  
Removal from office for failure to account for public funds, see title 22, § 1181.

### Library References

Clerks of Courts ⇐69, 70.  
WESTLAW Topic No. 79.  
C.J.S. Courts §§ 252, 253, 257.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## Notes of Decisions

## Prior laws 1

## 1. Prior laws

Fees retained by county clerks for issuing hunting licenses under Laws 1909, c. 19, p. 303, art. 4, § 9, were required

accounted for by them; the duty of issuing such licenses being germane to the office, and the salary of county clerks being fixed by Laws 1905, c. 19, p. 257, § 1 (repealed), put in force by Const. Schedule, § 18. Board of County Com'rs of Creek County v. Bruce, 51 Okl. 541, 152 P. 125 (1915).

## § 36. Verification of signatures without fee

The county clerks of the respective counties of this state are hereby authorized to verify, free of charge, signatures to any forms required by law to be filed with the State of Oklahoma or the United States or their agencies.

Laws 1935, p. 177, § 1.

## Library References

Clerks of Courts ¶64.  
WESTLAW Topic No. 79.  
C.J.S. Courts §§ 249, 254.

## § 37. Monthly accounting by county clerk and registrar of deeds

At each monthly meeting of the board of county commissioners, or, if monthly meetings are not held, at each quarterly meeting, the county clerk and the registrar of deeds shall each file a verified report of the work of the preceding month or quarter showing the total fees charged and the total fees collected and shall pay all of such fees into the county treasury and file duplicate receipts therefor with the county clerk.

R.L.1910, § 3214. Laws 1968, c. 412, § 8, eff. May 17, 1968.

## Historical and Statutory Notes

The 1968 amendment deleted, following "meeting," "the clerk of the district court, the clerk of the superior court, the clerk of the county court," following "charged", "in each case", and following "collected", "in any case,".

## Source:

Laws 1910, p. 133.  
Comp.St.1921, § 6358.  
St.1931, § 7448.

## Cross References

Consolidation of offices of court clerks, see title 19, § 221, 225.

False accounts, see title 21, § 341.

Report by county clerk to Supreme Court, receipts and disbursements, see title 20, § 1307.

## Library References

Counties  $\Leftrightarrow$ 80(1).  
 WESTLAW Topic No. 104.  
 C.J.S. Counties § 134.

## WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## Notes of Decisions

Construction and application 2  
 Court clerks 3  
 Register of deeds 4  
 Validity 1

## 1. Validity

In construing Laws 1910, c. 69, § 9 (this section), it was held that the act, of which said section was a part, was not violative of Const. Art. 5, § 57, concerning titles of bills. State ex rel. Reardon v. Harper, 33 Okl. 572, 123 P. 1038 (1912).

## 2. Construction and application

R.L.1910, §§ 3213, 3214 (this section and § 3 of this title) are special embezzlement statutes, but are worded different from R.L.1910, § 2243 (title 21, § 531). Abernathy v. State, 69 Okl.Cr. 142, 101 P.2d 634 (1940).

## 3. Court clerks

The office of clerk of superior court is a county officer. Beaty v. State, 35 Okl. 677, 130 P. 956 (1913).

A court clerk is required to deposit the execution fee he collects when an application for a passport is executed in the court fund. Op.Atty.Gen. No. 78-156 (Dec. 28, 1978).

## 4. Register of deeds

On failure or refusal of register of deeds to pay all fees into county treasury monthly, as required by R.L.1910, §§ 3213, 3214 (now this section), he was liable to separate prosecution for embezzlement, for each and every month in which he failed to do so. Harris v. State, 17 Okl.Cr. 69, 175 P. 627 (1918).

Failure or refusal of register of deeds to pay all fees into county treasury to pay all each month, as required by R.L. 1910, §§ 3213, 3214 (now this section), constituted embezzlement. Id.

## § 38. Repealed by Laws 1968, c. 383, § 3, eff. Jan. 13, 1969

## Historical and Statutory Notes

The repealed section, which provided for the collection of certain county fees in criminal cases by court clerks and justices of the peace, was derived from:

R.L.1910, § 3195.  
 Laws 1910, p. 135.

Comp.St.1921, § 6331.  
 St.1931, § 1035.  
 Laws 1951, p. 67, § 1.  
 Laws 1967, c. 122, § 7.

See § 153 of this title.

## § 39. Repealed by Laws 1969, c. 214, § 5, operative July 1, 1969

## Historical and Statutory Notes

The repealed section, requiring sheriffs and constables to charge and collect certain fees for enumerated services, and provided further for allowance by the county of certain expenses of the sheriff, was derived from:

Laws 1910, p. 132.  
 R.L.1910, § 3197.

Laws 1919, c. 165, p. 237, § 1.  
 Comp.St.1921, § 6333.  
 St.1931, § 7846.  
 Laws 1957, p. 93, § 2.  
 Laws 1959, p. 126, § 1.

See, now, §§ 152.1, 152.2 of this title; title 12, § 861; title 19, § 180.43; title 57, §§ 52, 60, 95.

**§§ 39.1 to 39.3. Repealed by Laws 1971, c. 105, § 6, eff. Oct. 1, 1971**

**Historical and Statutory Notes**

The repealed sections, relating to flat fees for sheriffs, were derived from Laws 1969, c. 214, §§ 1 to 3, Laws 1970, c. 7, § 1.

See § 152.1 et seq. of this title.

**§§ 39.4 to 41. Repealed by Laws 1979, c. 221, § 18, emerg. eff. May 30, 1979**

**Historical and Statutory Notes**

Repealed § 39.4, providing mileage reimbursement for sheriffs and deputies was derived from Laws 1969, c. 214, § 4.

Repealed § 41, relating to the monthly report by the sheriff of fees earned and collected, was derived from:

Repealed § 40, relating to keeping of accounts by sheriffs, was derived from:

- Laws 1910, p. 134.
- R.L.1910, § 3200.
- Laws 1910-11, c. 12, § 1.
- Laws 1919, c. 165, § 2.
- Comp.St.1921, § 6336.
- St.1931, § 7854.
- Laws 1957, p. 94, § 3.

- Laws 1897, p. 164.
- St.1903, § 2996.
- Comp.Laws 1909.
- R.L.1910, § 3199.
- Comp.St.1921, § 6335.
- St.1931, § 7853.

See § 31 of this title.

**§ 42. Repealed by Laws 1967, c. 122, § 13, eff. April 27, 1967**

**Historical and Statutory Notes**

The repealed section, relating to the schedule of fees to be charged by the county judge and collected and accounted for by the clerk, was derived from:

- Comp.St.1921, § 6344.
- St.1931, § 1036.
- Laws 1953, p. 116, § 1.
- Laws 1959, p. 126, § 1.

- Laws 1910, p. 130.
- R.L.1910, § 3203.

See §§ 31, 151 et seq. of this title.

**§ 43. Treasurer's fees**

The county treasurer shall charge and collect the following fees and none other, unless otherwise specifically provided by law:

For issuing warrants for collection of delinquent taxes on personal property .....	\$10.00
For each certificate of sale of land .....	\$10.00
For each certificate of redemption .....	\$ 5.00
For making tax deed, for first tract, including acknowledgment .....	\$10.00
For each additional tract in the same deed .....	\$ 0.00

R.L.1910, § 3209. Laws 1990, c. 6, § 1.

**Historical and Statutory Notes**

The 1990 amendment deleted the former fourth paragraph, which read:

"For making out list of delinquent land, each tract..... .10"

; and made changes in the fee amounts.

**Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 2 of Laws 1990, c. 6, provides for an operative date of July 1, 1990, but

since it is not an emergency act and falls within ninety days of adjournment, it has no effect.

**Source:**

Comp.Laws 1909, § 3395.

Laws 1910, p. 131.

Comp.St.1921, § 6350.

St.1931, § 1042.

**Cross References**

Deed or certificate on tax sale, see title 68, § 24325.

Depository for fees and other public moneys, see title 19, § 681 et seq.

Redemption of land sold for taxes, release of claim, see title 68, § 24320.

**Library References**

Counties ⇐78(2).

WESTLAW Topic No. 104.

C.J.S. Counties § 109.

**§ 44. Treasurer to keep account of fees**

He shall keep an account of said fees in a book to be provided for that purpose, showing the amount charged and the amount received, from whom and for what purpose, and the date thereof. The footings of each month shall, at the close thereof, be legibly and correctly entered in said book, opposite the month during which the same have been collected or charged, showing the amount earned, the amount received, and the amount unpaid.

R.L.1910, § 3210.

**Historical and Statutory Notes****Source:**

Laws 1897, p. 172.

St.1903, § 3022.

Comp.Laws 1909, § 3396.

Comp.St.1921, § 6351.

St.1931, § 1043.

**Cross References**

Books and Records, where to be kept, see title 51, § 7.

Fraudulent accounts, punishment, see title 21, § 341.

**Library References**

Counties ⇐80(1).

WESTLAW Topic No. 104.

C.J.S. Counties § 134.

**§ 45. Treasurer's quarterly report**

He shall, on the first Monday of January and the first Monday after the first Tuesday of April, and the first Mondays of July and

October of each year, make out and present to the board of county commissioners a detailed statement of the amount of fees received by him during the preceding quarter, together with the amount of fees earned, which are due and unpaid, which report shall be made under oath and filed with the county clerk.

R.L.1910, § 3211.

**Historical and Statutory Notes**

**Source:**  
Laws 1897, p. 173.  
St.1903, § 3023.

Comp.Laws 1909, § 3397.  
Comp.St.1921, § 6352.  
St.1931, § 1044.

**Cross References**

Failure to account for public funds, see title 22, § 1181.

**Library References**

Counties ⇔80(1).  
WESTLAW Topic No. 104.  
C.J.S. Counties § 134.

**§ 46. Fees of county surveyor**

The county surveyor shall receive Five Dollars (\$5.00) per day for the time actually and necessarily employed in going to and making a survey and returning to his office. For copy of plat of land or certificate of survey, Two Dollars (\$2.00); making out complete report in all surveys made by authority for county or township, Two Dollars (\$2.00); for recording surveys, per folio, twenty cents (\$0.20).

R.L.1910, § 3220.

**Historical and Statutory Notes**

**Source:**  
Laws 1897, p. 174.  
St.1903, § 3030.

Comp.Laws 1909, § 3404.  
Comp.St.1921, § 6418.  
St.1931, § 7889.

**Library References**

Boundaries ⇔54(7).  
WESTLAW Topic No. 59.  
C.J.S. Boundaries § 89 et seq.

**§ 47. Fees of notaries**

Each notary public shall charge and collect the following fees:

For protest and record of same.....	\$0.50
For each notice of protest .....	0.10
For each certificate and seal:.....	0.25

Provided, that he may charge, receive and collect the fees provided in this article <sup>1</sup> for the clerks of the district court for like service and none other.

R.L.1910, § 3221.

<sup>1</sup> R.L.1910, c. 31, art. 1, incorporated in this title and title 19.

### Historical and Statutory Notes

<b>Source:</b>	Comp.St.1921, § 6419. St.1931, § 5904.
Laws 1910, p. 143.	

### Cross References

Motor license and tag agents, see title 47, § 1143.

State Board of Cosmetology, see title 59, § 199.14.

Tax sale certificates or deeds, acknowledgment, see title 68, § 24325.

### Library References

Notaries ⇐3.

WESTLAW Topic No. 276.

C.J.S. Notaries § 14.

## § 48. Fees of commissioner for partition

Each commissioner for the partition of real estate shall receive for each day, Two Dollars (\$2.00), traveling fees the same as are allowed to sheriffs; but this section shall not limit the right of parties to agree upon a higher rate of compensation for the commissioners in any case.

R.L.1910, § 3223.

### Historical and Statutory Notes

<b>Source:</b>	Comp.Laws 1909, § 3408. Comp.St.1921, § 6421. St.1931, § 1045.
Laws 1897, p. 175. St.1903, § 3034.	

### Cross References

Taxation of costs and fees, see title 12, § 1515.

### Law Review Commentaries

Amendment suggested by Bar Association committee. 23 Okl.B.J. 1741 (Oct. 1952).

### Library References

Partition ⇐114(3).

WESTLAW Topic No. 288.

C.J.S. Partition §§ 238 to 240.

**§ 49. Fees of appraisers**

Except in probate cases, each appraiser in civil actions may receive up to Seventy-five Dollars (\$75.00) for each day's service. R.L.1910, § 3224. Laws 1953, p. 116, § 1; Laws 1967, c. 59, § 1, eff. April 17, 1967; Laws 1985, c. 25, § 1, eff. Nov. 1, 1985.

**Historical and Statutory Notes**

The 1953 amendment substituted "may" for "shall" and "Five (\$5.00) Dollars" for "one dollar" and "two dollars", respectively.

The 1967 amendment substituted "Fifteen Dollars (\$15.00)" for "Five Dollars (\$5.00)" in two places.

The 1985 amendment rewrote the section, which prior thereto read:

"Each appraiser in civil actions may receive Fifteen Dollars (\$15.00) for the first day's services, and when required to

serve more than one day in any case Fifteen Dollars (\$15.00) for each day."

**Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 2 of Laws 1985, c. 25 provides for an effective date.

**Source:**

Laws 1897, p. 175.

St.1903, § 3035.

Comp.Laws 1909, § 3409.

Comp.St.1921, § 6422.

St.1931, § 1046.

**Cross References**

Appraisers, compensation of, see § 49.1 of this title.

Deposit, see § 155 of this title.

Inverse condemnation, reimbursement of owner, see title 27, § 12.

**Law Review Commentaries**

Amendment suggested by Bar Association committee. 23 Okl.B.J. 1742 (Oct. 1952).

**§ 49.1. Appraisers and commissioners, compensation of**

Any appraiser or commissioner appointed by the district court in condemnation or escheat cases shall be paid for services rendered and expense incurred an amount as determined by the district judge, before whom such proceedings<sup>1</sup> is pending.

Laws 1947, p. 247, § 1. Laws 1953, p. 116, § 2; Laws 1963, c. 39, § 1, eff. April 19, 1963; Laws 1975, c. 9, § 1, eff. Oct. 1, 1975.

<sup>1</sup> Probably should read "proceeding".

**Historical and Statutory Notes**

The 1953 amendment deleted "partition," preceding "condemnation" and substituted "shall receive not less than Five (\$5.00) Dollars nor more than Fifteen (\$15.00) Dollars" for "may receive Five Dollars (\$5.00)".

The 1963 amendment substituted "shall be paid for services rendered and

expense incurred an amount as determined by the District Judge, before whom such proceedings is pending" for a comma.

The 1975 amendment rewrote the section, which prior thereto read:

"Any appraiser or commissioner appointed by the District Court in condem-



nation or escheat cases shall be paid for services rendered and expense incurred an amount as determined by the District Judge, before whom such proceedings is pending and appraisers appointed by the County Court in all probate cases where the appraised value of the estate exceeds Twenty Thousand (\$20,000.00) Dollars, exclusive of the homestead shall receive not less than Five (\$5.00) Dollars nor more than Fifteen (\$15.00) Dollars for

each day or portion thereof, necessarily, and actually devoted to making said appraisal or partition upon written order of the court to this effect."

**Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 3 of Laws 1947, p. 247 provides for repeal of conflicting laws.

Section 3 of Laws 1975, c. 9 provides for an effective date.

**Cross References**

Condemnation proceeding terminating without acquisition and inverse condemnation, reimbursement of owner for appraisal fees, see title 27, §§ 11, 12. Railroads, commissioners appointed in condemnation proceedings, see title 66, § 58.

**Law Review Commentaries**

Repealer suggested by Bar Association committee. 23 Okl.B.J. 1742 (Oct.1952).

**Library References**

Eminent Domain ⇐230.  
WESTLAW Topic No. 148.  
C.J.S. Eminent Domain § 305.

**§ 49.2. Expenses**

In addition to the fee provided in Section 1 of this act,<sup>1</sup> any person so appointed shall be entitled to receive compensation for expenses incurred by such person in making any such appraisal or partition as now provided by law.

Laws 1947, p. 247, § 2.

<sup>1</sup> Section 49.1 of this title.

**Cross References**

Partition action, taxation of expenses, costs, and fees, see title 12, § 1515.

**§ 50. Fees of public weigher—Lien for fee**

A public weigher, or any deputy weigher, shall receive for his services in weighing any article, the following schedule of fees: ten cents (\$0.10) for each load or draft weighed separately: Provided, that such public weigher shall not be allowed compensation for any extra weighing which may be essential in determining the net weight of any article or load. The public weigher, or any deputy weigher, shall be allowed and is hereby granted a lien upon any article or product weighed for the fees above mentioned, and such fee shall attach to and follow such article into the hands of the purchaser, and shall not be barred or canceled by any sale or

transfer of such article during the day upon which the article is weighed: Provided, that deputy weighers shall be allowed to retain as their compensation the sum of eight cents (\$0.08) for each load or draft weighed separately; the residue of the price allowed hereunder shall be paid by the deputies to the county weigher at the close of the month.

R.L.1910, § 3226.

#### Historical and Statutory Notes

<b>Source:</b>	Comp.Laws 1909, § 1834.
Laws 1907-08, p. 765.	Comp.St.1921, § 6431.
Laws 1909, p. 157.	St.1931, § 7887.

#### Library References

Weights and Measures ↔8.  
WESTLAW Topic No. 407.  
C.J.S. Weights and Measures § 6.

**§§ 51 to 53. Repealed by Laws 1968, c. 295, § 6, eff. Jan. 13, 1969; Laws 1968, c. 383, § 3, eff. Jan. 13, 1969**

#### Historical and Statutory Notes

Repealed § 51, which consisted of a schedule of fees to be charged and collected by justices of the peace, was derived from:

Laws 1907-08, p. 457.  
Comp.Laws 1909, § 3411.  
Laws 1910, p. 142.  
R.L.1910, § 32227.  
Comp.St.1921, § 6432.  
St.1931, § 4155.  
Laws 1941, p. 107, § 1.  
Laws 1955, p. 214, § 1.

Repealed § 52, which prohibited justices of the peace from collecting fee for administering the oath of office, was derived from:

St.1893, § 6038.

St.1903, § 6688.  
R.L.1910, § 3228.  
Comp.St.1921, § 6433.  
St.1931, § 4156.

Repealed § 53, which allowed for fees of justices of the peace and constables in criminal causes to be paid by the county where not paid by defendant or complaining witness, was derived from:

Laws 1910, p. 142.  
R.L.1910, § 3230.  
Laws 1921, c. 22, p. 29, § 1.  
Comp.St.1921, § 6435.  
St.1931, § 4160.  
Laws 1949, p. 220, § 1.  
Laws 1957, p. 202, § 1.

**§ 54. Repealed by Laws 1971, c. 105, § 6, eff. Oct. 1, 1971**

#### Historical and Statutory Notes

The repealed section, relating to fees to be collected in case of conviction, was derived from Laws 1968, c. 383, § 3.

See § 153 of this title.

§ 55. Renumbered as section 155.1 of this title on authority of Laws 1971, c. 105, § 7, eff. Oct. 1, 1971

§ 56. Marriage ceremony fees

When a marriage is to be performed by any judge, the court clerk of the county where the marriage is performed shall collect a fee of Ten Dollars (\$10.00), in addition to the fee provided for in Section 31 of this title for every marriage ceremony so performed, which fee shall be deposited in the court fund. No judge shall perform a marriage ceremony without proof of the payment of this fee. Laws 1969, c. 256, § 2, eff. April 24, 1969. Laws 1985, c. 41, § 1, eff. Nov. 1, 1985.

**Historical and Statutory Notes**

The 1985 amendment rewrote the section, which prior thereto read:

"When a marriage is to be performed by any judge, the court clerk of the county in which the license is issued shall collect an additional fee of Five Dollars (\$5.00) for every marriage ceremony to be performed, to be deposited

in the Court Fund, and no judge shall perform a marriage ceremony without proof of such payment of fee being first made."

**Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 2 of Laws 1985, c. 41 provides for an effective date.

**Cross References**

Marriage license fee, see § 31 of this title.

**Library References**

Marriage ¶26.  
WESTLAW Topic No. 253.  
C.J.S. Marriage § 28 et seq.

**FEES OF WITNESSES AND JURORS**

§ 81. Witness fees

Witnesses when subpoenaed, including witnesses who appear before a grand jury in obedience to a subpoena, shall receive the following fees:

1. For attending any court, before any judge, or commissioner of courts of record, less than sixty (60) miles from his residence, per day, Five Dollars (\$5.00);
2. For attending any court, before any judge, or commissioner of courts of record, more than sixty (60) miles from his residence, per day, Twelve Dollars (\$12.00); and
3. For any witness each mile actually and necessarily traveled in going to and returning from the place of attendance, fifteen cents

(\$0.15); provided, that no mileage shall be allowed where the distance is less than one (1) mile.

No witness shall receive per diem or mileage in more than one case covering the same period of time, or the same travel, and each witness shall be required to make oath that the fees claimed have not been claimed or received in any other case, and no juror shall receive pay as a witness while serving as such juror.

R.L.1910, § 3231. Laws 1967, c. 122, § 8, eff. April 27, 1967; Laws 1977, c. 253, § 1, eff. Oct. 1, 1978; Laws 1989, c. 70, § 1, eff. Nov. 1, 1989.

### Historical and Statutory Notes

The 1967 amendment substituted "Two Dollars (\$2.00)" for "one dollar".

The 1977 amendment rewrote the first sentence which prior thereto read:

"Witnesses shall receive the following fees: For attending before any court, or before any judge, or commissioner, per day, Two Dollars (\$2.00); for each mile actually and necessarily traveled in going to and returning from the place of attendance, five cents (5¢); provided, that no mileage shall be allowed where the distance is less than one mile."

The 1989 amendment, in the introductory paragraph, inserted ", including witnesses who appear before a grand jury in obedience to a subpoena,"; and in-

serted the designations of paragraphs 1 to 3.

#### Severability clauses, repeal of conflicting laws and effective/operative dates

Section 3 of Laws 1976, c. 253 provided an effective date.

Section 3 of Laws 1989, c. 70 provides for an effective date.

#### Source:

Laws 1897, p. 177.  
St.1903, § 3039.  
Comp.Laws 1909, § 3412.  
Comp.St.1921, § 6436.  
St.1931, § 1047.

### Cross References

Criminal proceeding, witnesses subpoenaed by defendant, see title 22, § 718.  
Demand for fees, failure to pay, see title 12, § 400.  
Election recount, mileage and per diem, see title 26, § 8-117.  
Human Rights Commission proceedings, see title 25, § 1508.  
Insurance commissioner proceedings, see title 36, § 317.  
Supreme Court, attendance in, see title 20, § 12.  
Workers' compensation proceedings, see title 85, § 81.

### Law Review Commentaries

Service of process under Oklahoma Pleading Code. Charles W. Adams. 20 Tulsa L.J. 137 (1984).

Symposium in the Oklahoma law of damages: costs of litigation. 6 Okl.L. Rev. 312 (Aug.1953).

### Library References

Witnesses ⇄27, 29.  
WESTLAW Topic No. 410.  
C.J.S. Witnesses §§ 41, 43.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## Notes of Decisions

Construction and application 1  
 Interpreters 4  
 Liability of county 2  
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witness fees, either expressly or by implication. Board of Com'rs of Greer County v. Watson, 7 Okl. 174, 54 P. 441 (1898).

## 1. Construction and application

Mileage fees may not be retained by a state employee who has made use of a state car to attend district court proceedings brought by his own department. Op. Atty.Gen. No. 83-114 (July 6, 1983).

A state employee responding to a subpoena in a state district court proceeding brought by his own department may retain witness fees even though he was receiving his regular salary. Id.

## 2. Liability of county

Laws 1897, c. 15, § 47 (now this section) did not authorize county to pay

## 3. Liability of state agencies

Since no funds are appropriated to the State Personnel Board for the payment of witness fees and mileage to individuals served by the board with a subpoena, the board is not required to pay such witness fees and mileage. Op. Atty.Gen. No. 69-317 (Jan. 15, 1970).

## 4. Interpreters

Interpreter was "witness" within meaning of §§ 82, 110 of this title and this section and requiring fees and mileage of witnesses to be adjudged as part of penalty and to be taxed as costs. Dies v. State, Okl.Cr., 762 P.2d 273 (1988).

## § 82. Witnesses for state—Fees and mileage—Taxation as costs upon conviction

All witnesses on behalf of the state appearing in obedience to a subpoena or order at any stage of a criminal case or proceeding and in any civil case or proceeding brought by the State of Oklahoma directly or on relation of the district attorney, or by the board of county commissioners on behalf of the county, shall be paid out of the court fund in such county the fees and mileage as provided in Section 81 of this title. Upon conviction, such fees and mileage shall be taxed as costs in the case and collected as other costs in the case.

R.L.1910, § 3232. Laws 1925, c. 134, p. 199, § 1; Laws 1935, p. 5, § 1; Laws 1965, c. 488, § 1, eff. July 15, 1965; Laws 1970, c. 156, § 1, eff. July 1, 1970; Laws 1975, c. 227, § 1, eff. Oct. 1, 1975; Laws 1977, c. 253, § 2, eff. Oct. 1, 1978.

### Historical and Statutory Notes

The 1925 amendment rewrote the section, which prior thereto read:

"Witnesses on behalf of the State who attend before the district court, either pursuant to an undertaking or in obedience to a subpoena, upon the trial of a felony, shall be paid the fees and mileage provided for by law by the county in which the prosecution is instituted. In the event such fees and mileage are recovered from and paid by the defendant,

the clerk of said court shall pay same into the court fund of said county."

The 1935 amendment inserted ", and in civil cases brought by the State of Oklahoma on relation of the County Attorney, or by the Board of County Commissioners on behalf of the County" and "or action".

The 1965 amendment rewrote the section, which prior thereto read:

"Witnesses on behalf of the State who attend before the District, County, or any

other court pursuant to an undertaking or in obedience to a subpoena, in any criminal case or proceeding, and in civil cases brought by the State of Oklahoma on relation of the County Attorney, or by the Board of County Commissioners on behalf of the County, shall be paid the fees and mileage provided for by law by the County in which the prosecution or action is instituted, and in the event such fees and mileage and recovered from and paid by the defendant, the clerk or judge of such courts shall pay the same into the court fund of said county."

The 1970 amendment rewrote the first sentence, which prior thereto read:

"All witnesses on behalf of the State who attend before the district, county, or any other court pursuant to an undertaking or in obedience to a subpoena, in any criminal case or proceeding, or attending a preliminary examination or any other examination pursuant to a subpoena before any magistrate, and in civil cases brought by the State of Oklahoma on relation of the county attorney, or by the board of county commissioners on behalf of the county, shall be paid the fees and mileage provided for by law by the county in which the prosecution or action is instituted from funds duly appropriated therefor from the county general fund, including but not limited to witnesses before justices of the peace in preliminary hearings; provided in counties of less than four hundred thousand (400,000) population, according to the last Federal Decennial Census, such fees may be paid from the court fund of such county if no county funds are ap-

propriated therefor; provided further, that no witness fees in preliminary hearings before justices of the peace shall be paid from the court fund of any county."

The 1975 amendment rewrote the section, which prior thereto read:

"All witnesses on behalf of the state who attend before the district or any other court, pursuant to an undertaking or in obedience to a subpoena, in any criminal case or proceeding, or attending a preliminary examination or any other examination pursuant to a subpoena before any magistrate, and in civil cases brought by the State of Oklahoma on relation of the District Attorney, or by the board of county commissioners on behalf of the county, shall be paid the fees and mileage provided for by law from the court fund of such county. In the event such fees and mileage are recovered from and paid by the defendant, the clerk or judge of such court shall pay the same into the court fund of such county from which said fees were paid."

The 1977 amendment, in the first sentence, substituted "as provided in Section 81 of this title" for "at the rate prescribed by law".

#### **Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 2 of Laws 1925, c. 134 provides for repeal of conflicting laws.

#### **Source:**

Laws 1905, p. 262.  
Comp.Laws 1909, § 3413.  
St.1931, § 1049.

#### **Cross References**

Another state, witnesses summoned to testify in, see title 22, § 722.  
Juvenile dependency and delinquency proceedings, see title 10, § 1124.  
Municipal court prosecutions, see title 11, §§ 27-121, 27-126.

#### **Law Review Commentaries**

Symposium in the Oklahoma law of damages: costs of litigation. 6 Okl.L. Rev. 312 (Aug.1953).

#### **Library References**

Witnesses ¶29.  
WESTLAW Topic No. 410.  
C.J.S. Witnesses § 43.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions****Construction and application 1  
Interpreters 2****1. Construction and application**

A state witness may receive a fee from the court fund when said witness appears pursuant to a subpoena issued by the district attorney, provided the expenditure is approved as prescribed by title 20, § 1304(b). Op.Atty.Gen. No. 74-115 (May 31, 1974).

This section allows the payment of fees and mileage to expert witnesses subpoenaed by the State in a criminal action, but only to the extent and amount that is allowed any other witness pursuant to the provisions of § 81 of this title as such constitutes a lawful expense and thereby a valid claim against the Court Fund pursuant to title 20, § 1304. Op. Atty.Gen. No. 71-236 (April 29, 1971).

A witness for the state in a criminal action is entitled to be paid his mileage fee at the conclusion of each day in which his attendance is required. Op. Atty.Gen. No. 70-221 (July 9, 1970).

A witness for the state in a criminal action extending over a period of more than one day is entitled to be paid a mileage fee for each mile actually and

necessarily traveled in going to and returning from place of attendance, and this includes a situation where a witness has to testify for more than one day and is required to make a new trip each day. Id.

Under provisions of this section in effect in 1969, witness fees and mileage in criminal actions brought by the State on relation of the district attorney, or by the Board of County Commissioners on behalf of the county, could not be paid from the court fund of Oklahoma County, but were required to be paid from funds duly appropriated therefor from the county general fund, as Oklahoma County had a population over 400,000 and under this statute such fees could be paid from the court fund of a county if no county funds were appropriated therefor only in counties of less than 400,000 population. Op.Atty.Gen. No. 69-196 (May 16, 1969).

**2. Interpreters**

Interpreter was "witness" within meaning of §§ 81, 101 of this title and this section requiring fees and mileage of witnesses to be adjudged as part of penalty and to be taxed as costs. *Dies v. State*, Okl.Cr., 762 P.2d 273 (1988).

**§ 83. Repealed by Laws 1989, c. 70, § 2, eff. Nov. 1, 1989****Historical and Statutory Notes**

The repealed section, relating to fees of grand jury witnesses, was derived from:

Laws 1905, p. 263.

Comp.Laws 1909, § 3414.  
R.L.1910, § 3233.  
Comp.St.1921, § 6438.  
St.1931, § 1048.  
Laws 1975, c. 237, § 1.

**§ 84. Certificates to be issued to witnesses**

The clerk of the district court shall, upon proof of claim, issue to witnesses, mentioned in the two preceding sections,<sup>1</sup> certificates showing the names of witnesses, number of days' attendance, distance traveled and the amount of such fees and mileage; such clerks shall keep a record of the certificates so issued.  
R.L.1910, § 3234.

<sup>1</sup> Sections 82, 83 of this title.

**Historical and Statutory Notes**

**Source:** Comp.St.1921, § 6439.  
 Laws 1905, p. 263. St.1931, § 1050.  
 Comp.Laws 1909, § 3415.

**Cross References**

Destruction of obsolete certificates, see title 20, § 1007.

**Library References**

Witnesses ⇨32.  
 WESTLAW Topic No. 410.  
 C.J.S. Witnesses § 44.

**§ 84.1. Employee of state or political subdivision testifying on matter pertaining to their employment—Witness fees—Other reimbursement**

Any employee of the state or any political subdivision thereof who is subpoenaed as a witness to testify on any matter pertaining to their employment, including any investigation conducted by the employee as a duty of said employment for which he is fully compensated, shall not be entitled to receive the witness fee and reimbursement for mileage provided for in Section 81 of Title 28 of the Oklahoma Statutes. However, if the employee is required by the subpoena to testify in a county other than his county of residence or employment, he shall be entitled to receive reimbursement pursuant to the State Travel Reimbursement Act<sup>1</sup> and the rules of the Supreme Court, payable from the court fund of the county where the prosecution is pending. No such witness shall receive such reimbursement in more than one case covering the same period of time or the same travel. Each such witness shall be required to make oath that the amounts claimed for reimbursement have not been claimed or received in any other case or from any other source.

Laws 1984, c. 92, § 1, eff. July 1, 1984. Laws 1985, c. 166, § 5, operative July 1, 1985.

<sup>1</sup> Section 500.1 et seq. of title 74.

**Historical and Statutory Notes**

The 1985 amendment substituted the second to fourth sentences for the former second sentence which prior thereto read: "The provisions of this section shall not be construed to prohibit the subpoenaed employee from receiving any reimbursement to which he may be entitled pursuant to the provisions of the State Travel Reimbursement Act or other applicable statute, or by local ordinance."

**Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 2 of Laws 1984, c. 92 provides for severability and § 3 provides for an effective date.

**Title of Act:**

An Act relating to fees; prohibiting certain employees from receiving certain



fees and reimbursements; authorizing reimbursement in certain manner; providing for codification; providing for severability; and providing an effective date. Laws 1984, c. 92.

### Library References

Witnesses ⇨23 to 34.  
WESTLAW Topic No. 410.  
C.J.S. Witnesses §§ 35 to 47.

## § 85. Warrants for fees of jurors and witnesses for which county liable

The county clerk of each county of this state, on demand, shall issue warrants to jurors and witnesses in payment for jury and witness fees, in all criminal cases in which the county is liable, on presentation of a certificate of attendance, issued by the clerk of the district court, or the clerk of the county court, showing the name of the witness or juror, the number of days in attendance, the distance traveled and the amount of such fees and mileage. The warrant so issued shall be signed by the county clerk and shall show on the face thereof the purpose for which the same was issued.

R.L.1910, § 3235. Laws 1913, c. 27, p. 50, § 1.

### Historical and Statutory Notes

The 1913 amendment rewrote the section, which prior thereto read: warrants to be issued in payment of same."

"The board of county commissioners of the county liable, at their first regular session after receiving the certificate of the district clerk showing the fees and mileage claimed hereunder, shall cause

#### Source:

Laws 1905, p. 263.  
Comp.Laws 1909, § 3416.  
Comp.St.1921, § 6440.  
St.1931, § 1052.

### Cross References

Issuance of warrants, see title 62, §§ 472, 474, 475.

### Library References

Counties ⇨137.  
WESTLAW Topic No. 104.  
C.J.S. Counties §§ 175 to 178.

## § 86. Jurors' fees—Parking

Jurors shall be paid the following fees out of the court cash fund: For each day's attendance before any court of record, Twelve Dollars and fifty cents (\$12.50); for each mile necessarily traveled in going to or returning from the place of attendance, twenty-two cents (\$0.22), and such mileage shall be allowed each day that said mileage is incurred.

The court fund board of the district court may contract for or provide reimbursement for parking for district court jurors to be

paid from the court fund. Parking so provided to jurors shall be in lieu of any reimbursement to jurors for parking fees.

R.L.1910, § 3236. Laws 1923, c. 6, p. 5, § 1; Laws 1947, p. 248, § 1; Laws 1963, c. 79, § 1; Laws 1967, c. 122, § 9, eff. April 27, 1967; Laws 1968, c. 199, § 1, eff. Jan. 13, 1969; Laws 1977, c. 189, § 1, eff. Oct. 1, 1977; Laws 1981, c. 217, § 1.

### Historical and Statutory Notes

The 1923 amendment substituted "District Court" for "court of record", and "three dollars" for "two dollars", and inserted "for each day's attendance before any other court of record three dollars;".

The 1947 amendment substituted "Court Cash Fund" for "county treasury", Five Dollars (\$5.00) for "three dollars" in two places, and made other non-substantive changes.

The 1963 amendment substituted "Seven Dollars and fifty cents (\$7.50)" for "Five Dollars (\$5.00)" in two places.

The 1967 amendment substituted "court of record" for "District Court", following "(\$7.50);" deleted "for each day's attendance before any other court of record, Seven Dollars and fifty cents (\$7.50);", following "(5¢)" inserted ", except such travel payment shall be allowed only once in each week", and following "each week;" deleted "each juror or witness sworn before any coroner or justice of the peace, or any inquest taken by him, One Dollar and fifty cents (\$1.50);".

The 1968 amendment rewrote the section, which prior thereto read:

"Jurors shall be paid the following fees out of the Court Cash Fund: For each day's attendance before any court of record, Seven Dollars and fifty cents (\$7.50); for each mile necessarily traveled in going to or returning from the place of attendance, five cents (5¢), except such travel payment shall be allowed only once in each week; each juror, for attendance in any justice of the peace court, to be advanced by the party demanding the same, at the time of such demand, and taxed to the party

adjudged to pay the cost, fifty cents (50¢); and fifty cents (50¢) for each additional day he shall attend the same."

The 1977 amendment substituted "Twelve Dollars and fifty cents (\$12.50)" for "Seven Dollars and fifty cents (\$7.50)", following "traveled" deleted "outside the corporate limits of the municipality where the court meets," substituted "each day that said mileage is incurred" for "only once in each week", and added the second sentence.

The 1981 amendment rewrote the section, which prior thereto read:

"Jurors shall be paid the following fees out of the Court Cash Fund: For each day's attendance before any court of record, Twelve Dollars and fifty cents (\$12.50); for each mile necessarily traveled in going to or returning from the place of attendance, ten cents (\$0.10), and such mileage shall be allowed each day that said mileage is incurred. Jurors shall be reimbursed for parking fees actually incurred not to exceed One Dollar (\$1.00) per day."

### Severability clauses, repeal of conflicting laws and effective/operative dates

Section 2 of Laws 1977, c. 189, provides for an effective date.

Section 2 of Laws 1981, c. 217 provides for an effective date.

### Source:

Laws 1897, p. 177.

St.1903, § 3040.

Laws 1903, p. 163.

Comp.Laws 1909, § 3417.

Comp.St.1921, § 6441.

St.1931, § 1051.

### Cross References

Multicounty grand jurors, see title 22, § 363.

Payment from court fund, see title 20, § 1304.

Supreme Court, see title 20, § 12.

### Library References

Jury ⇐77(1), (2).  
WESTLAW Topic No. 230.  
C.J.S. Juries § 207.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### Notes of Decisions

#### Right to jurors' fees, in general 1

##### 1. Right to jurors' fees, in general

In an action against a county for services rendered as a juror, it is no defense that at the time the claim was filed and presented to the board of county commissioners the court fund upon which said claim was to be allowed had been exhausted, where at the time the services were performed there was sufficient

money in the fund, not otherwise appropriated, to pay plaintiff's claim, since, under Laws 1895, c. 25, p. 141, art. 1, § 47, which provides that jurors shall be paid certain fees for services from the county treasury, the liability of the county arises at the time the services are rendered, and not at the date of the filing of the claim for allowance with the board of county commissioners. *Hudleston v. Board of Com'rs of Noble County*, 8 Okl. 614, 58 P. 749 (1899).

## § 87. Clerk's record of jurors and witnesses

The clerk of the district court shall keep a record of the attendance of jurors at each term, and of the attendance and fees of witnesses when claimed during the term.

R.L.1910, § 3237.

### Historical and Statutory Notes

#### Source:

Laws 1897, p. 178.  
St.1903, § 3042.

Comp.Laws 1909, § 3419.  
Comp.St.1921, § 6442.  
St.1931, § 1053.

### Cross References

Destruction or sale of obsolete records, see title 20, § 1007.

### Library References

Jury ⇐77(1).  
WESTLAW Topic No. 230.  
C.J.S. Juries § 207.

## § 88. Statement to commissioners

Within ten (10) days after the close of each term of a court of record, the clerk thereof shall return to the board of county commissioners a statement of the attendance of jurors at such term and their mileage as taken by him, together with a statement of the attendance and mileage of witnesses in all criminal cases claimed, and for which the county is liable.

R.L.1910, § 3238.

**Historical and Statutory Notes****Source:**

Laws 1897, p. 178.  
St.1903, § 3043.

Comp.Laws 1909, § 3420.  
Comp.St.1921, § 6443.  
St.1931, § 1054.

**Library References**

Jury §=77(2).  
WESTLAW Topic No. 230.  
C.J.S. Juries § 207.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions****In general 1****1. In general**

Laws 1897, c. 15 (see, now, this section) did not create liability against a

county for witness fees before grand jury, and such fees are due only where provided by statute. Board of Com'rs of Greer County v. Watson, 7 Okl. 174, 54 P. 441 (1898).

**§§ 89, 90. [Blank]****§ 91. State Fire Marshal investigation—Expert witness fee**

In civil cases in which the state is not a party, if the State Fire Marshal or an employee of the Office of State Fire Marshal is subpoenaed as a witness to testify on any matter pertaining to a fire investigation conducted by the Office of State Fire Marshal, the party causing the subpoena to be issued shall pay an expert witness fee to be set by the State Fire Marshal. Said fee shall be paid to the court clerk before the witness is required to testify. The court clerk shall remit the fee to the State Treasurer to be deposited to the General Revenue Fund of the State.

Notice of receipt of the required fee shall be transmitted by the court clerk to the State Fire Marshal or employee who has been subpoenaed. If the expert witness fee is not received before the witness is required to testify, the witness shall not be compelled to obey the subpoena.

If the expert witness fee is paid and, for any reason, the witness fails to obey the subpoena, said fee shall be returned to the party causing the subpoena to be issued.

Laws 1987, c. 205, § 32, operative July 1, 1987.

**FEES AS COSTS****Cross References**

Partition, action for, taxation of costs, see title 12, § 1515.  
Taxation by court clerk, see title 12, § 933.

**§ 101. Fees and costs in criminal cases part of penalty—Enforcement by imprisonment—Persons unable to pay**

The fees herein provided for the clerk of the district court and the sheriff, as provided in this act, and all costs in the prosecution of all criminal actions shall, in case of conviction of the defendant, be adjudged a part of the penalty of the offense of which the defendant may be convicted, whether the punishment for such offense be either imprisonment, or fine, or both, and fixed either by the verdict of the jury, or judgment of the court, trying the case, and if the defendant shall refuse to pay the fine, fees or costs, the payment of such fees and costs, in addition to the payment of the fine assessed, shall be enforced by imprisonment until the same shall be satisfied at a rate of Five Dollars (\$5.00) per day of such fees and costs, or fine, or both, whether the defendant shall perform labor on the public road or highway, or remain in prison. If the defendant is without means to pay the fine, fees or costs, the total amount owed shall be entered upon the judgment docket and thereupon the same remedies shall be available for the enforcement of said judgment as are available to any other judgment creditor.

The term "all costs in the prosecution of all criminal actions," as used in this section, shall include only the following taxable items:

1. Court clerk's costs and fees authorized by statute;
2. Sheriffs' fees;
3. Fees and mileage of witnesses; and
4. Cost deposits in the appellate court, whether on appeal, in an original proceeding or in any post-conviction challenge, if waived on the basis of a pauper's affidavit.

R.L.1910, § 3196. Laws 1913, c. 112, p. 203, § 1; Laws 1968, c. 383, § 1, eff. Jan. 13, 1969; Laws 1969, c. 202, § 3, eff. April 18, 1969; Laws 1971, c. 341, § 1, eff. June 24, 1971; Laws 1973, c. 147, § 1, eff. May 14, 1973.

**Historical and Statutory Notes**

As originally enacted, the section read:

"The fees herein provided for the clerk of the district court, the clerk of the superior court, and the clerk of the county court, the sheriff and the county attorney, and all costs in the prosecution whether of the grade of misdemeanor or felony, shall in case of conviction be taxed as costs in the case and a judgment rendered against the defendant therefor; and execution may issue for the collection of the same as in civil actions."

The 1913 amendment rewrote the section to read:

"The fees herein provided for the clerk of the district court, the clerk of the superior court, the clerk of the county court, the sheriff, the county attorney, the constable, and the justice of the peace, as provided in this act, and all costs in the prosecution of all criminal actions shall in case of conviction of the defendant be adjudged a part of the penalty of the offense of which the defendant may be convicted, whether the punishment for such offense be either imprisonment, or fine, or both, and fixed either by the verdict of the jury, or judgment of the court, trying the case, and

the payment of such fees and costs in addition to the payment of the fine assessed, shall be enforced by imprisonment until the same shall be satisfied, at a rate of one dollar per day of such fees and costs, or fine, or both, whether the defendant shall perform labor on the public road or highway, or remain in prison."

The 1968 amendment, following "district court," deleted "the clerk of the superior court, the clerk of the county court," substituted "and the District Attorney" for "the county attorney", and following "District Attorney", deleted ", the constable, and the justice of the peace".

The 1969 amendment substituted "and the sheriff" for ", the sheriff, and the District Attorney" and "Five Dollars (\$5.00)" for "One Dollar (\$1.00)".

The 1971 amendment added the second sentence (now the second sentence of the first paragraph).

The 1973 amendment added the second paragraph.

#### **Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 5 of the Act of 1913, repealed St.1893, §§ 2607 and 5290, and Laws 1909, c. 32, art. 1, §§ 41 and 42 (R.L. 1910, §§ 2842, 5958, 7591 and 7592). Section 6 repealed Comp.Laws 1909, §§ 885, 6917, 6918, 6921, 6922, 7068 and

7793 (R.L.1910, §§ 731, 4611, 5958, 5959, 5962, 5963, 7591).

#### **Source:**

Laws 1910, p. 140.  
Comp.St.1921, § 6332.  
St.1931, § 3166.

#### **Local and Special Acts:**

An Act to pay Greer county jurors for an illegal term of the county court, Greer county, Oklahoma, and declaring an emergency. Laws 1910-11, c. 67, § 151.

An Act providing for fees in criminal cases for Justices of the Peace and Constables of Seminole County, to be paid by said county, and declaring an emergency. (Laws 1929, c. 346, p. 477. Repealed by Laws 1931, p. 26, § 1.)

An Act amending § 6331, of the 1921 Compiled Oklahoma Statutes [former § 38 of this title], relating to the office of County Attorney of Pottawatomie County, State of Oklahoma, repealing all Acts and parts of Acts in conflict herewith, and declaring an emergency. (Laws 1927, c. 132, p. 193. Repealed by Laws 1931, p. 165, § 1.)

Laws 1923, c. 246, p. 441, fixing fees in justice court in counties of 17,510 to 17,520; Laws 1925, c. 57, p. 89, fixing fees in justice court in Cherokee County; and Laws 1935, p. 33, fixing fees in justice court in counties of 24,200 to 24,400 were repealed by Laws 1941, p. 108, § 2.

#### **Cross References**

Ability to pay costs, judicial determination, installment payments, see title 22, § 983.  
Criminal appeals in cases less than felonies, see title 20, § 45.  
Juveniles, dependency and delinquency proceedings, see title 10, § 1124.  
Prosecution of offenses committed by inmates of penal institutions, habeas corpus proceedings, see title 22, § 1277.

#### **Library References**

Costs ⇨292, 322.  
WESTLAW Topic No. 102.  
C.J.S. Criminal Law §§ 1740, 1743.

#### **WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

#### **United States Code Annotated**

Discharge of federal indigent prisoner confined for nonpayment of fine and costs, see 28 U.S.C.A. § 3569.

Federal criminal prosecutions, payment of costs by defendant, see 28 U.S.C.A. § 1918.  
 Forma pauperis, proceedings in federal court, see 28 U.S.C.A. § 1915.

### Notes of Decisions

**Construction and application 2**  
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### 3. Enforcement of payment—In general

It was duty of authorities under this section to place a detainer on state penitentiary inmate who had not satisfied costs of case so that the inmate could be returned to county jail in county from which he was committed in order to satisfy costs. *Galcatcher v. Page*, Okl. Cr., 437 P.2d 284 (1968).

Only the county where costs were incurred in criminal trial is authorized to collect costs from defendant, and warden of penitentiary is not authorized to enforce payment of court costs. *Id.*

Dismissal of hold order filed with state penitentiary by county for purpose of satisfying court costs was matter concerning internal administration of state penitentiary and was for proper authorities of department of corrections rather than the courts. *Id.*

Under this section, payment of fine and costs is the punishment, and commitment until such are paid or satisfied is merely mode of enforcing such payment and constitutes no part of the punishment. *Ex parte Autry*, 58 Okl. Cr. 88, 50 P.2d 239 (1935).

### 4. — Imprisonment, enforcement of payment

No statute authorizes imprisonment for failure to pay costs of prosecution. *Austin v. State*, 6 Okl. Cr. 177, 117 P. 1098; *Ex parte Steed*, 6 Okl. Cr. 183, 117 P. 887 (1911).

Where it appeared that conviction was proper but that judgment of conviction was erroneous in that it committed defendant to penitentiary to satisfy judgment for fine and costs, cause was remanded with instructions to correct judgment and sentence by directing that defendant be imprisoned in county jail until fine and costs were satisfied. *Lee v. State*, Okl. Cr., 404 P.2d 43 (1964).

A person may not be committed to state penitentiary to satisfy a judgment for a fine and costs, but such payment should be enforced by imprisonment in county jail until it shall be satisfied. *Id.*

### 1. Validity

This section is constitutional. *Young v. State*, Cr.App., 275 P.2d 358 (1954).

Detention of convicted felon in penitentiary to serve one day for each dollar of fine and costs was within state's authority. *Ex parte Eurick*, 143 Okl. 280, 288 P. 467 (1930).

Though the Legislature could provide as part of the penalty for violation of law payment of costs and enforcement by imprisonment, until authorized, the court cannot imprison for nonpayment of costs. *Ex parte Bowes*, 8 Okl. Cr. 201, 127 P. 20 (1912).

### 2. Construction and application

"Imprisonment" means imprisonment in the county jail unless expressed to be in the penitentiary. *Ex parte Cain*, 1 Okl. Cr. 7, 20 Okl. 125, 93 P. 974 (1908).

Imprisonment of defendant in state penitentiary to enforce payment of fine and costs was unlawful and contrary to due process of law, since such imprisonment, being an infamous punishment, constituted an unauthorized additional and separate punishment. *Ex parte Austry*, 58 Okl.Cr. 88, 50 P.2d 239 (1935).

Under St.1931, § 3166 (now this section), power of court to order commitment was not confined to cases where fine only is imposed, but also extends to cases where both imprisonment and fine are imposed as punishment. *Id.*

Where a defendant's punishment is assessed at a fine and imprisonment, payment of the fine may be enforced by imprisonment. *Files v. State*, 9 Okl.Cr. 512, 132 P. 509 (1913).

The power to punish by fine and imprisonment until the fine is paid does not give power to add to such fine the costs of prosecution, to be satisfied by imprisonment as part of the fine. *Ex parte Bowes*, 8 Okl.Cr. 201, 127 P. 20 (1912).

**5. — Necessity to recite in judgment or decree, enforcement of payment**

The provisions of this section requiring enforcement of payment of fine and costs by imprisonment, and specifically repealing prior statutes making such fine and costs a civil liability, automatically become part of every criminal judgment imposing fine or imprisonment or both, and failure to recite in judgment that defendant shall be held until fine and costs are satisfied will not relieve him from satisfying them in manner designated by this section. *Young v. State*, Cr.App., 275 P.2d 358 (1954).

Failure to recite in judgment, imposing sentence of fine and imprisonment on conviction of crime, that person convicted be held until fine and costs were satisfied, did not relieve him from satisfying them by payment thereof in money or further imprisonment as provided by this section. *Ex parte Barnes*, 67 Okl.Cr. 235, 93 P.2d 765 (1939).

Notwithstanding contention that jail sentence had already been served and trial court could not thereafter change sentence, the trial court could change sentence of fine and imprisonment, im-

posed by him on person convicted of crime, by nunc pro tunc order adding provision for holding such person in jail after expiration of his term if fine was not paid, as there was only one judgment, which was not served until fine was paid. *Id.*

Costs assessed against convicted defendant must be satisfied by imprisonment, if not paid, notwithstanding judgment does not specifically so declare. *Ex parte Gilmore*, 56 Okl.Cr. 201, 36 P.2d 304 (1934).

Failure of judgment to provide for confinement for nonpayment of costs did not entitle defendant to release on serving imprisonment only. *Ex parte Lyles*, 52 Okl.Cr. 167, 3 P.2d 912 (1931).

Where defendant is sentenced to prison and to pay a fine and costs, failure of the judgment to recite that he shall be confined for nonpayment does not entitle him to be released, on serving the term of imprisonment named, in view of St.1921, § 6332 (now this section); such statutory provision automatically becomes a part of every criminal judgment imposing a fine or imprisonment or both. *Ex parte Clemmons*, 27 Okl.Cr. 50, 225 P. 184 (1924).

Defendant cannot be imprisoned under order assessing a fine without an order that he be committed until fine is paid. *Ex parte Roller*, 3 Okl.Cr. 384, 106 P. 548 (1910).

**6. — Costs of prosecution, enforcement of payment**

Only the county where costs were incurred in criminal trial is authorized to collect costs from defendant, and warden of penitentiary is not authorized to enforce payment of court costs. *Whaley v. District Court of Mayes County*, Okl. Cr., 422 P.2d 227 (1966).

Costs of prosecution for indecent exposure were properly added to punishment inflicted. *McGowan v. State*, Okl. Cr., 380 P.2d 274. (1963).

The compensation allowed an indigent's appointed counsel in a criminal action under the provisions of 22 Okl. Stats. Ann. § 1271, which provides that the court direct that the counsel be paid by the county in which the trial is had, is not a part of, and cannot be included in, the costs of prosecution, so that if the



## Note 6

indigent is convicted he is not liable for the compensation under this section. Op. Atty. Gen. No. 69-173 (April 30, 1969).

**7. — Costs assessed as part of penalty, enforcement of payment**

Where convict is sentenced to pay fine and costs, punishment or penalty is payment of fine and costs, and commitment until fine and costs are paid or satisfied is not part of punishment, but is mode of executing sentence or enforcing payment of fine and costs. *Harry v. State*, 59 Okl. Cr. 302, 58 P.2d 340 (1936); *Ex parte Wagner*, 58 Okl. Cr. 161, 50 P.2d 1135 (1935).

Imposition of court costs and assessment to victims compensation fund was not error, though defendant claimed indigence, where fines were well within statutory limits and were to be paid within six months after defendant's release from penitentiary; court had no way of knowing defendant's financial status at time fines were due to be paid. *Armstrong v. State*, Okl. Cr., 742 P.2d 565 (1987).

Trip, whereby prisoner was taken by sheriff to state prison after conviction, was authorized, and prisoner was liable for costs of trip and could be imprisoned to enforce payment thereof. *Smith v. State*, Okl. Cr., 379 P.2d 476 (1963).

Where accused upon conviction is given a fine and costs, such fine and costs are part of the punishment, but the commitment to jail until the fine and costs are paid, or satisfied, is not part of the judgment, but merely a mode of executing the sentence. *Ex parte Arnett*, 93 Okl. Cr. 116, 225 P.2d 381 (1951).

Where an accused is convicted of an offense which carries with it imprisonment in county jail and payment of costs, the payment of costs of the prosecution is made a part of the punishment, and payment will be enforced by imprisonment in county jail until it shall be satisfied. *Ex parte Banks*, 74 Okl. Cr. 1, 122 P.2d 181 (1942).

Court clerks do not tax sheriff's mileage as additional costs; defendants therefore are not required to pay or serve out mileage costs in addition to flat fee cost. Op. Atty. Gen. No. 69-298 (Dec. 15, 1969).

**8. — Further punishment to pay costs, enforcement of payment**

Costs assessed as part of penalty upon conviction become part of judgment and, if unpaid, must be satisfied by further imprisonment. *Ex parte Meyers*, 55 Okl. Cr. 75, 24 P.2d 1011 (1933); *Ex parte Alvarado*, 54 Okl. Cr. 127, 15 P.2d 147 (1932).

It was the duty of authorities under this section and § 15 of Title 57, relating to discharge of poor convict confined for nonpayment of fine or costs in criminal action, to place a detainer on state penitentiary inmate who had not satisfied costs of case in which he was convicted, so that the inmate could be returned to county jail of county from which he was committed in order to satisfy costs. *Whaley v. District Court of Mayes County*, Okl. Cr., 422 P.2d 227 (1966).

Where convict was sentenced to three-year penitentiary term and to pay fine and costs, penitentiary warden held without authority to retain convict in custody after expiration of term to enforce payment of fine and costs. *Ex parte Wagner*, 58 Okl. Cr. 161, 50 P.2d 1135 (1935).

Fine and costs assessed as part of penalty for criminal offense become part of judgment, and must be satisfied by further imprisonment, if unpaid. *Ex parte Meyers*, 55 Okl. Cr. 75, 24 P.2d 1011 (1933).

Fine and costs required in addition to penitentiary confinement may be imposed by further imprisonment until paid, at termination of confinement specified. *Ex parte McCoy*, 45 Okl. Cr. 52, 281 P. 813 (1929).

No statute requires state convict to remain in penitentiary, after serving term, until he has satisfied costs at \$1 per day. *Ex parte Dunnavant*, 41 Okl. Cr. 113, 271 P. 861 (1928).

Restraint of convict after expiration of term by state penitentiary warden for payment of costs is unlawful. *Id.*

Further period of imprisonment must be added to satisfy fine and costs, unless they are actually paid. *Ex parte Smith*, 33 Okl. Cr. 175, 242 P. 284 (1926).

**9. — Credit received for imprisonment, enforcement of payment**

Under this section, construed in connection with city ordinance of Hugo, a person serving out a fine and costs for violation of city ordinance levying a garbage collection and DDT spraying fee is entitled to a credit of one dollar per day when not working, but when required to work, he is entitled to a credit of two dollars per day for each day's work, under 11 Okl.St. Ann. § 74 (repealed), which prevails over city ordinance. Ex parte Small, 92 Okl. Cr. 101, 221 P.2d 669 (1950).

Where judgment and sentence on second or subsequent conviction runs concurrently with prior judgment and sentence, fine and costs in subsequent judgment and sentence are discharged by imprisonment under prior sentence in same manner as judgment of imprisonment is discharged. Ex parte Bell, 34 Okl. Cr. 354, 246 P. 893 (1926).

Before Laws 1913, c. 112, p. 203, § 1 (which amended this section) went into effect, a defendant was allowed credit on his fine if laid out in jail in accordance with Revised Laws 1910. Smith v. State, 12 Okl. Cr. 513, 159 P. 941 (1916).

**10. Repeals**

Comp. St. 1921, § 6332 (now this section) superseded R. L. 1910, § 5958 (repealed) and earlier statutory provisions, especially Comp. Laws 1909, § 6917 (repealed). Ex parte Walker, 31 Okl. Cr. 36, 236 P. 919 (1925).

**11. Witness fees and mileage**

Interpreter was "witness" within meaning of this section and §§ 81, 82 of this title requiring fees and mileage of witnesses to be adjudged as part of penalty and to be taxed as costs. Dies v. State, Okl. Cr., 762 P.2d 273 (1988).

**§ 102. Costs in civil proceeding to be proved by affidavit—Taxation and collection**

All fees and sums paid by either party for fees of witnesses and other necessary expenses, in any civil action or proceeding, shall be proved by affidavit of the party or of some person knowing the same to have been paid; and all such fees shall be taxed and collected from the party ordered or adjudged to pay the costs. R. L. 1910, § 3241.

**Historical and Statutory Notes****Source:**

Laws 1897, p. 178.  
St. 1903, § 3046.

Comp. Laws 1909, § 3423.  
Comp. St. 1921, § 6446.  
St. 1931, § 1057.

**Cross References**

Allowance and taxation of costs, see title 12, § 926 et seq.  
Depositions, taxing costs of, see title 12, § 3230.  
Taking of affidavit, see title 12, § 432.

**Library References**

Costs ⇨ 174, 208.  
WESTLAW Topic No. 102.  
C.J.S. Costs §§ 118, 150.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

## United States Code Annotated

United States courts, taxation of costs, see 28 U.S.C.A. § 1920.

## Notes of Decisions

Costs, in general 1  
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property be restored to defendants—it was not error to tax plaintiff with the costs of the receivership. *Bellamy v. Washita Valley Telephone Co.*, 25 Okl. 18, 105 P. 340 (1910).

## 1. Costs, in general

Where execution was levied upon growing wheat crop, expense of harvesting and hauling wheat to market was chargeable as costs. *Smart v. Vehmeyer*, 162 Okl. 300, 21 P.2d 504 (1933).

## 2. Independent actions to tax costs

Costs must be taxed in action in which they are incurred and by court before which they are incurred, and independent action will not lie for costs. *Rand v. Nash*, 174 Okl. 525, 51 P.2d 296 (1936).

## 3. Receivership expenses as costs

Where on final hearing the court decrees that plaintiff take nothing, that the appointment of a receiver was wrongful, that plaintiff be discharged, and that the

A court has no authority, upon dismissing an action wherein a receiver has been appointed, to tax, as costs against plaintiffs, expenses of running the business placed in the receiver's hands, or for clerk hire, rent, or for any unpaid allowance to the receiver; these items must be recovered, if at all, in an action for that purpose. *Walton v. Williams*, 5 Okl. 642, 49 P. 1022 (1897).

## 4. Expert witnesses

Personal injury plaintiff was not entitled upon defendant's confession of judgment to taxation as costs against defendant of plaintiff's expert witness fees beyond attendance and travel fees for plaintiff's own expert witnesses. *Dulan v. Johnston*, Okl., 687 P.2d 1045 (1984).

## § 103. Bill of costs or fees

Any person liable for any costs or fees shall be entitled to receive, on demand, a certified bill of the same, in which the items of service and the charge therefor shall be specially stated.

R.L.1910, § 3242.

## Historical and Statutory Notes

## Source:

Laws 1897, p. 178.  
 St.1903, § 3047.

Comp.Laws 1909, § 3424.  
 Comp.St.1921, § 6447.  
 St.1931, § 1058.

## Cross References

Court of Criminal Appeals, bill of costs, see title 20, § 45.

## Library References

Costs ⇐203.  
 WESTLAW Topic No. 102.  
 C.J.S. Costs § 148.

**§ 104. Repealed by Laws 1968, c. 295, § 6, eff. Jan. 13, 1969****Historical and Statutory Notes**

The repealed section, which required justices of the peace to tax costs of criminal examinations and to certify those costs to the board of county commissioners in all cases in which the county was liable, was derived from:

Laws 1897, p. 178.  
St.1903, § 3049.  
Comp.Laws 1909, § 3426.  
R.L.1910, § 3244.  
Comp.St.1921, § 6449.  
St.1931, § 4157.

**§ 105. Collection on execution**

It shall be the duty of the sheriff or other officer collecting costs on executions, in this state, to pay the costs collected to the clerk of the court from which the execution issued, or to the justice, and take a receipt therefor.

R.L.1910, § 3245. Laws 1967, c. 122, § 10, eff. April 27, 1967.

**Historical and Statutory Notes**

The 1967 amendment deleted, following "State," "after retaining his own fees," and following "pay," "the residue of such".

St.1903, § 3050.  
Comp.Laws 1909, § 3427.  
Comp.St.1921, § 6450.  
St.1931, § 1060.

**Source:**

Laws 1897, p. 179.

**Cross References**

Compensation of sheriff and others for services in aid of execution, taxation as costs, see title 12, § 861.

**Library References**

Costs ⇐279.  
WESTLAW Topic No. 102.  
C.J.S. Costs § 202.

**§ 106. Clerk to hold costs or fees for person entitled—Time for filing claims**

It shall be the duty of the court clerk receiving any costs or fees belonging to any other person, to deposit the same in the court fund subject to the order of the person entitled thereto, and to pay the same over on request; and if such costs or fees shall not be claimed within three (3) years after having been received, except in all cases where jurisdiction is continuing, and three (3) years after final judgment, they shall become the property of the court fund, provided that any unexpended court costs or money belonging to litigants shall be mailed by the court clerk to the proper attorney of record.

R.L.1910, § 3246. Laws 1949, p. 219, § 1; Laws 1967, c. 122, § 11, eff. April 27, 1967; Laws 1969, c. 211, § 1, eff. April 18, 1969.

### Historical and Statutory Notes

The 1949 amendment substituted "two (2) years" for "one year" and added a second sentence.

The 1967 amendment, in the first sentence, added ", except the court clerk shall transfer such sums as are held by him into the court fund", and in the second sentence, inserted "as are paid to him".

The 1969 amendment rewrote the section, which prior thereto read:

"It shall be the duty of the clerk of the court or justice, receiving any costs belonging to any other person, to hold the same, subject to the order of the person entitled thereto, and to pay the same over on request; and if such fees shall not be called for within two (2) years

after having been received, the officer shall pay the same into the county treasury, and take a receipt therefor, except the court clerk shall transfer such sums as are held by him into the court fund. The treasurer shall hold said sum or sums as are paid to him for the benefit of the owner for a period of one (1) year, and, if not claimed within that time, he shall apportion the amount thereof to the general fund of the county as other miscellaneous revenue."

#### Source:

Laws 1897, p. 179.  
St.1903, § 3051.  
Comp.Laws 1909, § 3428.  
Comp.St.1921, § 6451.  
St.1931, § 1061.

### Cross References

Claims against court fund, see title 20, § 1304.

Presumption of abandonment, property held for owner by courts or public officers, see title 60, § 657.

### Library References

Clerks of Courts ⇔70.  
WESTLAW Topic No. 79.  
C.J.S. Courts §§ 253, 257.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### Notes of Decisions

#### Accounting for costs 2 Construction and application 1 Limitation of actions 3

##### 1. Construction and application

It is not duty of court clerk to pay into State Tax Commission all unclaimed balances representing court cost deposits belonging to the litigants and unclaimed by such litigants for more than three years under general provisions of Uniform Disposition of Unclaimed Property Act, but such unclaimed costs are transferred under specific provisions of this section. Op.Atty.Gen. No. 68-102 (Feb. 15, 1968).

##### 2. Accounting for costs

In view of R.L.1910, §§ 4681, 4683 (repealed; see, now, § 2017 of title 12), the

state, on relation of county attorney, is a proper party plaintiff in an action on official bond of a county judge to recover unearned part of deposits received by him in civil and probate cases which have not been properly accounted for by him. *Frear v. State*, 76 Okl. 213, 184 P. 771 (1919).

##### 3. Limitation of actions

Assignee's action against county commissioners for unearned balances of cost deposits which had been held by court clerk for one year subject to order of depositors and paid over to county treasury pursuant to St.1931, § 1061 (now this section), where they were expended for governmental purposes, were barred, where not brought within three years

**OFFICERS, JURORS, WITNESSES**

**28 § 106**

**Note 3**

from date of payment into county treasury. Simmons v. Board of Com'rs of Osage County, 176 Okl. 618, 56 P.2d 1166 (1936).

## CHAPTER 2

### FEES OF SECRETARY OF STATE

#### Section

111. Fees chargeable by Secretary of State.
112. Secretary to keep record of all fees.
113. Repealed.
114. Fees to be paid into the Treasury.
115. Repealed.

#### § 111. Fees chargeable by Secretary of State

A. The Secretary of State shall collect the following fees:

1. For affixing the certificate of the Secretary and the seal of the State of Oklahoma, Five Dollars (\$5.00).

2. For recording any instrument required to be recorded in the Secretary's office, Three Dollars (\$3.00) per page.

3. For copy of any paper or document to be paid for by the person demanding the same, One Dollar (\$1.00) per page, provided the minimum charge shall not be less than Two Dollars (\$2.00).

4. For filing an effective financing statement in the office of the Secretary of State pursuant to Section 9-307.6 of Title 12A of the Oklahoma Statutes, Ten Dollars (\$10.00).

5. For filing a continuation statement, partial release, assignment of or amendment to an effective financing statement filed in the office of the Secretary of State pursuant to Section 9-307.6 of Title 12A of the Oklahoma Statutes, Ten Dollars (\$10.00).

6. For filing a termination statement for an effective financing statement filed in the office of the Secretary of State pursuant to Section 9-307.6 of Title 12A of the Oklahoma Statutes, Ten Dollars (\$10.00).

7. For registering a buyer of farm products, commission merchant or selling agent as provided for in Section 9-307.6 of Title 12A of the Oklahoma Statutes, Fifty Dollars (\$50.00) per year.

8. For distributing a copy of the master list or portions thereof to buyers of farm products, commission merchants, and selling agents, as provided for in Section 9-307.6 of Title 12A of the Oklahoma Statutes, or for providing a copy of such master list or portions thereof to other interested parties, in accordance with the following fee schedule. Such fees may be paid annually or semiannually:

a. For information requested for five (5) or less counties:

	Number of Farm Products	Photostatic Reproduction	Microfiche
(1)	1 to 5 products . . . . .	\$150 per year . . . . .	\$ 25 per year
(2)	6 to 10 products . . . . .	\$200 per year . . . . .	\$ 50 per year
(3)	11 to 20 products . . . . .	\$250 per year . . . . .	\$ 75 per year
(4)	over 20 products . . . . .	\$300 per year . . . . .	\$100 per year

b. For information requested for six (6) to twenty-five (25) counties:

	Number of Farm Products	Photostatic Reproduction	Microfiche
(1)	1 to 10 products . . . . .	\$200 per year . . . . .	\$ 50 per year
(2)	11 to 20 products . . . . .	\$250 per year . . . . .	\$ 75 per year
(3)	over 20 products . . . . .	\$300 per year . . . . .	\$100 per year

c. For information requested for twenty-six (26) to fifty (50) counties:

	Number of Farm Products	Photostatic Reproduction	Microfiche
(1)	1 to 10 products . . . . .	\$250 per year . . . . .	\$ 75 per year
(2)	11 to 20 products . . . . .	\$300 per year . . . . .	\$100 per year
(3)	over 20 products . . . . .	\$350 per year . . . . .	\$125 per year

d. For information requested for over fifty (50) counties:

	Number of Farm Products	Photostatic Reproduction	Microfiche
(1)	1 to 10 products . . . . .	\$300 per year . . . . .	\$100 per year
(2)	11 to 20 products . . . . .	\$350 per year . . . . .	\$125 per year
(3)	over 20 products . . . . .	\$400 per year . . . . .	\$150 per year

9. a. The Secretary of State is authorized to provide for the distribution of the master list or portions thereof to those persons specified in paragraph 8 of this subsection through electronic data or machine readable equipment or other communication media in such form and manner as is specified by the Secretary of State.

b. The Secretary of State is authorized to establish a fee system for such transfer of information pursuant to this paragraph. Such fee shall not exceed the amount necessary to cover the costs of the Secretary of State in providing such transfer of information.



- c. In providing for the transfer of the information specified by this paragraph, the Secretary of State shall ensure the integrity of confidential information within the office of the Secretary of State through data security measures, internal controls and appropriate data base management.

10. For issuing a written confirmation of the existence or nonexistence of any effective financing statement on file in the office of the Secretary of State, Six Dollars (\$6.00).

11. For each service rendered and not specified in this section, such fees as are allowed for similar services in other cases.

B. All of said fees shall be properly accounted for and shall be paid into the State Treasury monthly. The fees generated by paragraphs 1, 2, 3 and 11 of subsection A of this section shall be deposited to the credit of the Revolving Fund for the Office of the Secretary of State created pursuant to Section 276.1 of Title 62 of the Oklahoma Statutes. The fees generated by paragraphs 4 through 10 of subsection A of this section shall be deposited to the credit of the Central Filing System Revolving Fund created pursuant to Section 276.3 of this title.

R.L.1910, § 3253. Laws 1917, c. 144, p. 230, § 1; Laws 1972, c. 126, § 1, eff. April 7, 1972; Laws 1979, c. 259, § 7; Laws 1984, c. 229, § 13, operative July 1, 1984; Laws 1987, c. 69, § 11; Laws 1987, c. 208, § 118, operative July 1, 1987; Laws 1987, c. 236, § 106, emerg. eff. July 20, 1987; Laws 1988, c. 206, § 11, operative July 1, 1988; Laws 1989, c. 91, § 1, operative July 1, 1989.

### Historical and Statutory Notes

As originally enacted, the section read:

"The secretary of state shall collect the following fees, viz.:

"For filing articles of incorporation and issuing certificates of incorporation, one-tenth of one per cent of the authorized capital stock of such corporations: Provided, that the minimum fee for any such service shall be three dollars; Provided, further, that corporations organizing for religious or charitable purposes exclusively shall only be required to pay a fee of two dollars.

"For issuing license to a foreign corporation to do business in this State and filing a copy of charter, the same fee as required of domestic corporations for filing articles of incorporation and issuing certificates therefor.

"For affixing the certificate of the secretary and the seal of the State of Oklahoma, one dollar.

"For each commissioner issued by the governor and attested by the secretary, one dollar.

"For recording any instrument required to be recorded in the secretary's office, per folio, twenty-five cents.

"For copy of any paper or document to be paid for by the person demanding the same, for each one hundred words, ten cents.

"For each commission issued to the commissioner of deeds in a foreign state or territory, five dollars.

"For each service rendered and not specified in this article, such fees as are allowed for similar services in other cases.

"All of said fees shall be properly accounted for and be paid into the state treasury, quarterly."

The 1917 amendment rewrote the section to read:

"The Secretary of State shall collect the following fees, viz:

"(a) For filing articles of incorporation and issuing certificates of incorporation, one-tenth of one per cent of the authorized capital stock of such corporation; provided, that the minimum fee for any such service shall be three dollars; provided further, that corporations organizing for religious or charitable purposes exclusively shall only be required to pay a fee of two dollars.

"(b) For issuing a license to a foreign corporation to do business in this State, and filing a copy of its charter, a fee of one-tenth of one per cent of the maximum amount of capital invested by such corporation in the State at any time during the fiscal year such license is issued to any such foreign corporation. Every such foreign corporation shall, upon making application for license to do business in the State, cause to be filed with the Secretary of State, an affidavit of its president, vice president, or other general managing officer, stating the maximum amount of capital such corporation intends and expects to invest in the State at any time during the current fiscal year, and shall, at the same time, pay to the Secretary of State, one-tenth of one per cent on said amount of capital which such corporation expects or intends to invest in the State during the current fiscal year as shown by said affidavit, but the amount so paid as a fee to the Secretary of State by such corporation shall, in no instance be less than ten dollars.

"Every such corporation shall, between the first day of July and the first day of August, each year, cause to be filed with the Secretary of State an affidavit of its President, Vice President, or other managing officers, in which shall be stated and shown the maximum amount of capital any such company had invested in the State at any time subsequent to the issuance to it of such license and the amount of authorized capital stock previously paid upon, and if such amount of capital so invested as shown by said affidavit shall exceed the amount formerly paid upon, then such corporation shall, at the time of filing said affidavit, pay to the Secretary of

State an additional fee equal to one-tenth of one per cent of the amount of such excess capital so invested by such corporation in the State; provided, that no such corporation shall be required to pay a charter fee on an amount in excess of its authorized capital, or to file the affidavit provided for herein after it shall have paid a charter fee on its total authorized capitalization.

"Provided, that the foregoing provisions relative to the payment of incorporation fees by foreign corporations is not intended and shall not be construed to relieve such corporations, where applicable, of the payment of the annual license tax to the corporation commission as provided in Article 18, Chapter 72, Revised Laws, 1910.

"If any such corporation shall fail to file or cause to be filed the second aforesaid affidavit as herein provided, or shall fail to pay as herein provided, to the Secretary of State any additional fee shown to be due by aforesaid affidavit, such corporation shall be subject to a penalty and shall forfeit to the State for each day it so fails to do, the sum of twenty-five dollars per day, which may be recovered in a suit brought therefor by the attorney general, in the name of the State, against such corporation, in any District Court of the State.

"(c) For affixing the certificate of the Secretary and the seal of the State of Oklahoma, one dollar.

"(d) For each commission issued by the Governor and attested by the Secretary of State, one dollar.

"(e) For recording any instrument required to be recorded in the Secretary's office, per folio, twenty-five cents.

"(f) For copy of any paper or document to be paid for by the person demanding the same, for each one hundred words, ten cents.

"(g) For each commission issued to the Commissioner of Deeds in a foreign state or territory, five dollars.

"(h) For each service rendered and not specified in this article such fees as are allowed for similar services in other cases.

"All of said fees shall be properly accounted for and shall be paid into the State Treasury, quarterly."

The 1972 amendment, in paragraph (b), in the third paragraph, substituted "corporate franchise tax to the Oklahoma Tax Commission" for "license tax to the corporation commission as provided in Article 18, Chapter 72, Revised Laws, 1910"; and rewrote paragraph (f) to read:

"For copy of any paper or document to be paid for by the person demanding the same, fifty cents (\$0.50) per page, provided the minimum charge shall not be less than One Dollar (\$1.00)."

The 1979 amendment rewrote the section to read:

"The Secretary of State shall collect the following fees:

"(a) For affixing the certificate of the Secretary and the seal of the State of Oklahoma, One Dollar (\$1.00).

"(b) for recording any instrument required to be recorded in the Secretary's office, One Dollar (\$1.00) per page.

"(c) For copy of any paper or document to be paid for by the person demanding the same, fifty cents (\$0.50) per page, provided the minimum charge shall not be less than One Dollar (\$1.00).

"(d) For each service rendered and not specified in this article, such fees as are allowed for similar services in other cases.

"All of said fees shall be properly accounted for and shall be paid into the State Treasury, monthly."

The 1984 amendment redesignated paragraphs (a) to (d) as A to D, respectively; in the last paragraph, substituted "section" for "article"; and increased the fees.

Laws 1987, c. 69, § 11 rewrote the section to read:

"A. The Secretary of State shall collect the following fees:

"1. For affixing the certificate of the Secretary and the seal of the State of Oklahoma, Five Dollars (\$5.00).

"2. For recording any instrument required to be recorded in the Secretary's office, Three Dollars (\$3.00) per page.

"3. For copy of any paper or document to be paid for by the person demanding the same, One Dollar (\$1.00) per page, provided the minimum charge shall not be less the Two Dollars (\$2.00).

"4. For filing an effective financing statement in the office of the Secretary of State pursuant to Section 6 of this act, Ten Dollars (\$10.00).

"5. For filing a continuation statement, partial release, assignment of or amendment to an effective financing statement filed in the office of the Secretary of State pursuant to Section 6 of this act, Ten Dollars (\$10.00).

"6. For filing a termination statement for an effective financing statement filed in the office of the Secretary of State pursuant to Section 6 of this act, Ten Dollars (\$10.00).

"7. For registering a buyer of farm products, commission merchant or selling agent as provided for in Section 6 of this act, Fifty Dollars (\$50.00) per year.

"8. For distributing a copy of the master list or portions thereof to buyers of farm products, commission merchants, and selling agents, as provided for in Section 6 of this act, or for providing a copy of such master list or portions thereof to other interested parties, in accordance with the following fee schedule. Such fees may be paid annually or semi-annually:

"a. For information requested for five (5) or less counties:

Number of Farm Products	Photostatic Reproduction	Microfiche
"(1) 1 to 5 products .....	\$150 per year .....	\$25 per year
"(2) 6 to 10 products .....	\$200 per year .....	\$50 per year
"(3) 11 to 20 products .....	\$250 per year .....	\$75 per year
"(4) over 20 products .....	\$300 per year .....	\$100 per year

"b. For information requested for six (6) to twenty-five (25) counties:

Number of Farm Products	Photostatic Reproduction	Microfiche
"(1) 1 to 10 products .....	\$200 per year .....	\$50 per year
"(2) 11 to 20 products .....	\$250 per year .....	\$75 per year

Number of Farm Products	Photostatic Reproduction	Microfiche
"(3) over 20 products .....	\$300 per year .....	\$100 per year
"c. For information requested for twenty-six (26) to fifty (50) counties:		
Number of Farm Products	Photostatic Reproduction	Microfiche
"(1) 1 to 10 products .....	\$250 per year .....	\$75 per year
"(2) 11 to 20 products .....	\$300 per year .....	\$100 per year
"(3) over 20 products .....	\$350 per year .....	\$125 per year
"d. For information requested for over fifty (50) counties:		
Number of Farm Products	Photostatic Reproduction	Microfiche
"(1) 1 to 10 products .....	\$300 per year .....	\$100 per year
"(2) 11 to 20 products .....	\$350 per year .....	\$125 per year
"(3) over 20 products .....	\$400 per year .....	\$150 per year

"9. For issuing a written confirmation of the existence of any effective financing statement on file in the office of the Secretary of State, Six Dollars (\$6.00).

"10. For each service rendered and not specified in this section, such fees as are allowed for similar services in other cases.

"B. All of said fees shall be properly accounted for and shall be paid into the State Treasury monthly."

Laws 1987, c. 208, § 118, in subsection A, paragraph 9 (now subsection A, paragraph 10), inserted "or nonexistence"; and in subsection B added the last two sentences.

Laws 1987, c. 236, § 106, without reference to the amendment by Laws 1987, c. 208, § 118, substituted "Enrolled House Bill No. 1052 of the 1st Session of the 41st Oklahoma Legislature" for "this act" throughout the section and made other changes identical to those made by Laws 1987, c. 208, § 118.

The 1988 amendment substituted "9-307.6 of Title 12A of the Oklahoma

Statutes" for "6 of Enrolled House Bill no. 1052 of the 1st Session of the 41st Oklahoma Legislature" throughout the section; and in subsection B, in the last sentence, substituted "Central Filing System Revolving Fund created pursuant to Section 10 of this act" for "General Revenue Fund".

The 1989 amendment, in subsection A, inserted paragraph 9 and redesignated paragraphs 9 and 10 as paragraphs 10 and 11 respectively; and in subsection B, in the second sentence substituted "11" for "10" and in the last sentence substituted "10" for "9" and "276.3 of this title" for "10 of this act".

**Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 2 of Laws 1989, c. 91 provides for an operative date.

**Source:**

- Laws 1907-08, p. 194.
- Comp.Laws 1909, § 3437.
- Comp.St.1921, § 6476.
- St.1931, § 3749.

**Cross References**

- Business Corporation Act, filing and other service fees, see title 18, § 1142.
- Corporate franchise tax, see title 68, § 1201 et seq.
- Deposit of fees received in Revolving Fund for Secretary of State's office, see title 62, § 276.1.
- Notaries public, fee for recording commission, bonds and oaths of, see title 49, § 2.
- Rules and regulations of state agencies, certified copies, see title 75, § 254.
- Trademarks, registration, renewal, and assignment fees, see title 78, §§ 23, 25, 26.

### Law Review Commentaries

Creation of Oklahoma Tax Commission: Oklahoma tax procedure. J. D. Dunn, 7 Okl.L.Rev. 165 (May 1954).

### Library References

States ⇐60.4.  
WESTLAW Topic No. 360.  
C.J.S States §§ 104 to 108.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### Notes of Decisions

#### Corporation fees 1 Repeal 2

##### 1. Corporation fees

A corporation is required to pay to the Secretary of State, for filing articles of incorporation and issuing certificates of incorporation, the required fee of one-tenth of one percent of the authorized capital stock of such corporation, and when that fee is paid no further fee can be charged until the authorized capital stock is increased above the amount on which the fee has been paid. *Oklahoma Gas & Elec. Co. v. Cartwright*, 204 Okl. 261, 228 P.2d 1013 (1951).

Where corporation had previously paid license fee on certain amount of capital stock, and subsequently reduced capital stock, and still later increased capital stock, but increase did not exceed original capital stock authorized, the corporation was not required to pay any additional fee for filing of amended articles of incorporation increasing corporation's authorized capital stock until it had exceeded amount of original capital stock authorized. *Id.*

R.L.1910, § 1335 (repealed), which required foreign corporation to file with secretary of state certified copy of charter and pay required fees as condition precedent to right to transact business, applied to fees charged by secretary of state under R.L.1910, § 3253 (now this section), and not to corporation license tax under R.L.1910, §§ 7538 to 7549.

*Maston v. Glen Lumber Co.*, 65 Okl. 80, 163 P. 128 (1917).

Secretary of State may accept for filing articles of incorporation which authorize issuance of capital stock without par value by Oklahoma corporations, and Secretary shall treat shares without par value as having a par value of \$50 per share for purposes of computing fees to be collected thereon under former subsection (a) of this section. *Op.Atty. Gen. No. 69-102* (Jan. 23, 1969).

A domesticated corporation which has amended its articles to authorize the issuance of additional stock and to increase its authorized capital may apply against the additional fees required to be paid under this section a surplus of fees previously paid on the basis of capital invested in the state or on the basis of previous capitalization, as the case may be. *Op.Atty.Gen. No. 68-380* (Dec. 23, 1968).

##### 2. Repeal

Former provision of this section imposing penalties for a foreign corporation's failure to file an affidavit showing the maximum amount of capital invested in the state was repealed by substitution upon the adoption of the Business Corporation Act, 18 O.S.1951, § 1.1 et seq. (repealed; see, now, § 1001 et seq. of title 18), and was not re-enacted by its inclusion in the statute compilation which was adopted as a code. *State ex rel. Williamson v. Empire Oil Corp.*, Okl., 353 P.2d 130 (1960).



**28 § 115**  
**Repealed**

**FEEs**

Comp.St.1921, § 6480.  
St.1931, § 3753.

**Cross References**

Falsification of accounts or failure to pay money over to state, felony conviction and forfeiture of office, see title 21, § 341.  
Wilful neglect of duty, impeachment, see Const. Art. 8, § 1; title 51, § 51.

## CHAPTER 3

### FEES FOR PUBLIC PRINTING

#### Section

121. Fees for printing legal notices.

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#### § 121. Fees for printing legal notices

In all cases where publication of legal notices is required or allowed by law, the person or official desiring such publication shall be required to pay:

For all matters other than tabular matter, ten cents (\$0.10) per word for first insertion, and nine cents (\$0.09) per word for each subsequent insertion, with each separate group of numerals included in such matter to be counted as one word, regardless of the number of digits involved.

For all tabular matter, in not to exceed eight-point type, including but not limited to, lists of persons, firms and corporations whose personal property taxes are delinquent and lists of lands and town lots upon which taxes are delinquent, fifty-five cents (\$0.55) per line per newspaper column in width, for first insertion, and fifty cents (\$0.50) per line per newspaper column in width, for each subsequent insertion.

The county treasurer shall collect the cost of publication of lists of lands and town lots sold for delinquent taxes at original sale or resale from the individuals purchasing such lands and town lots at the sale or resale involved, and shall deposit all monies so collected to the credit of the general fund of the county, and the publisher of the notice involved shall be paid for the publication of any such



notice, from the general fund of the county, or, to the extent that proper appropriation be not available therefor at the time of publication, from the "Resale-Property Fund" of the county.

R.L.1910, § 3258. Laws 1919, c. 167, p. 241, § 1; Laws 1929, c. 248, p. 318, § 1; Laws 1953, p. 116, § 1; Laws 1967, c. 218, § 1, eff. May 1, 1967; Laws 1973, c. 31, § 1, eff. April 18, 1973; Laws 1977, c. 35, § 1; Laws 1979, c. 76, § 1, eff. July 1, 1979; Laws 1981, c. 31, § 1, emerg. eff. April 7, 1981; Laws 1982, c. 22, § 1; Laws 1988, c. 159, § 1, operative July 1, 1988.

### Historical and Statutory Notes

The 1919 amendment increased the fees and deleted the last sentence which read: "For publishing lists of town lots on which taxes are delinquent, each description, ten cents."

The 1929 amendment rewrote the section, which prior thereto read:

"Fees for printing legal notices in all cases where publication of legal notices is required or allowed by law, the person or officer desiring such publication shall be required to pay One Dollar (\$1.00) per square ten (10) lines of nonpareil type for the first insertion; each subsequent insertion, for each square of ten (10) lines, seventy-five cents (\$.75). Each legal advertisement under ten (10) lines shall be deemed a square and each fractional part of a square shall be counted as a full square. For publishing lists of lands upon which taxes are delinquent, each description, twenty-five cents (\$.25). For publishing lists of town lots on which taxes are delinquent, each description, fifteen cents (\$.15)."

The 1953 amendment rewrote the section, which prior thereto read:

"In all cases where publication of legal notices is required or allowed by law, the person or officer desiring such publication shall be required to pay One (\$1.00) Dollar, per square of ten (10) lines of nonpareil type for the first insertion; each subsequent insertion, for each square of ten (10) lines, seventy-five (\$.75c) cents; each legal advertisement under ten (10) lines shall be deemed a square and each fractional part of a square shall be counted as a full square. For publishing lists of lands upon which taxes are delinquent, each description, twenty-five (.25c) cents, for publishing lists of town lots on which taxes are delinquent, each description fifteen (.15c) cents. For publication costs on resale of real estate the county treasurer

shall charge and collect from the purchaser at such sale, and the printer shall be paid out of the general fund of the county as full compensation for publishing said resale list, in four regular issues as provided by law, the following amounts: twenty-five (.25c) cents for each year of delinquent taxes listed in the resale notices upon each tract of real property and fifteen (.15c) cents for each year of delinquent taxes listed in the resale notices on each town lot so advertised."

Section 2 of Laws 1953, p. 117, provides:

"Insofar as the provisions of Section 1 of this Act are in conflict with the provisions of Section 382 (now § 24312) or Section 432c (now § 24332) of Title 68, Oklahoma Statutes 1951, or any other prior legislative enactment, the provisions of Section 1 hereof shall prevail."

The 1967 amendment increased the fees.

The 1973 amendment increased the fees.

The 1977 amendment increased the fees.

The 1979 amendment increased the fees.

The 1981 amendment increased the fees.

The 1982 amendment increased the fees.

The 1988 amendment increased the fees.

### Severability clauses, repeal of conflicting laws and effective/operative dates

Section 2 of Laws 1929, c. 248, § 1, provides for repeal of conflicting laws.

Section 2 of Laws 1979, c. 76, provides for an operative date.

Section 2 of Laws 1982, c. 22, provided for an effective date of Oct. 1, 1982, but since it was not an emergency act it had no effect.

Section 2 of Laws 1988, c. 159, provides for an operative date.

**Source:**

St.1890, § 2919.  
St.1893, § 2901.  
St.1903, § 3060.  
Comp.Laws 1909, § 3443.  
Comp.St.1921, § 6481.  
St.1931, § 1065.

**Cross References**

Deposit to cover publication fee, see § 156 of this title.  
Frequency of publication of legal notices, see title 25, § 103.  
Taxation of costs, see title 12, § 934.

**Library References**

Newspapers ⇐5(2).  
WESTLAW Topic No. 274.  
C.J.S. Newspapers § 20.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

**Appropriations for fees 3**  
**Construction and application 1**  
**Repeals 2**

**1. Construction and application**

Where county treasurer, in conformity with St.1931, § 12741 (repealed; see, now, § 24312 of title 68), designated a newspaper for publishing notice of sale of realty for delinquent taxes, but there was no specific agreement as to amount of compensation, the publisher, after publication, was entitled to charge amount of compensation provided by St. 1931, § 1065 (this section). Board of Com'rs of Osage County v. Prentice, 183 Okl. 542, 83 P.2d 557 (1938).

The amount of a county's liability for publishing notices for resale of lands, as provided in R.L.1910, §§ 7409 to 7411 (repealed) was controlled by R.L.1910, § 3258 (now this section). Muskogee Times-Democrat v. Board of Com'rs of Muskogee County, 76 Okl. 188, 184 P. 591 (1919).

In all cases where the publication of legal notice is required or allowed by law, the payment of costs of same is governed by the provisions of this section and the respective counties are subject to the rates computable under this section relative to the fixing of fees for

printing legal notice. Op.Atty.Gen. No. 74-162 (Jan. 30, 1975).

**2. Repeals**

Comp.St.1921, § 9731 (repealed; see, now, § 24312 of title 68), as far as it referred to fees for publishing delinquent tax list, was repealed by Comp.St. 1921, § 6481 (now this section) by implication to extent of repugnancy therewith. Creek County v. Robinson, 114 Okl. 163, 245 P. 584 (1926).

R.L.1910, § 3258 (now this section) is a general statute, and R.L.1910, § 7397 (repealed; see, now, § 24312 of title 68), so far as relating to cost of publication, was a special statute referring only to publication of notices of sale of lands for delinquent taxes as provided therein, and hence the former section was not repealed by the latter. Muskogee Times-Democrat v. Board of Com'rs of Muskogee County, 76 Okl. 188, 184 P. 591 (1919).

St.1903, § 3060 (incorporated in this section), which provided that an officer whose duty it was to have the publication of a legal notice made would pay for publishing lists of land upon which taxes were delinquent, for each description 20 cents, and for publishing each description of town lots on which taxes were delinquent 10 cents, was repealed by St.1903, § 6021 (repealed; see, now,

## 28 § 121

### Note 2

§ 24312 of title 68) which provided that the county treasurer would charge and collect, in addition to the taxes and interest and penalty, the sum of 25 cents on each tract of real property, and 10 cents on each town lot advertised for sale, which sum would be paid into county treasury, and the county would pay the cost of publication, but that in no case would the county be liable for more than the amount charged to the delinquent lands for advertising. Stillwater Advance Printing & Publishing Co. v.

## FEES

Board of Com'rs of Payne County, 29 Okl. 859, 119 P. 1002 (1912).

### 3. Appropriations for fees

Where notice of sale of realty for delinquent taxes was published in accordance with St.1931, § 12741 (repealed; see, now, § 24312 of title 68), mandamus would lie against board of county commissioners and excise board to compel a supplemental appropriation of funds to pay the publication fee. Board of Com'rs of Osage County v. Prentice, 183 Okl. 542, 83 P.2d 557 (1938).

## CHAPTER 4

### COURT COSTS AND FILING FEES

#### Section

151. Establishment of exclusive fee schedule.
152. Flat fee schedule—Deposit in county Law Library Fund—Forma pauperis.
  - 152.1. Civil actions—Charges in addition to flat fee.
  - 152.2. Fee for posting notice.
  - 152.3. Poundage fee and court costs in condemnation proceedings.
  - 152.4. License fees.
153. Costs in criminal cases.
  - 153.1. Driving under influence of alcohol or other intoxicating substance within municipality—Costs.
  - 153.2. Sheriff's Service Fee.
154. Fees in lieu of other enumerated charges.
155. Additional deposits in certain cases.
- 155.1. Fee for preparing and transmitting record for appellate review.
156. Notice by publication—Deposit.
157. Charges not affected by this act.
- 158 to 161. Repealed.
162. Juvenile proceedings—Fees and costs.

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#### Library References

Clerks of Court §11 et seq.  
WESTLAW Topic No. 79.  
C.J.S. Courts §§ 242, 244.

#### § 151. Establishment of exclusive fee schedule

From and after the effective date of this act, it shall be the duty of the clerks of the district court and other trial courts of record of

this state to charge and collect the fees as herein provided, and none others, in all cases, except those wherein the defendant is charged with a misdemeanor or traffic violation, and except cases coming within the purview of the Small Claims Act.<sup>1</sup>

Laws 1968, c. 359, § 1, eff. July 1, 1968.

<sup>1</sup> Section 1751 et seq. of title 12.

#### Cross References

Inmate trust funds, money from accounts permitted to be used for any fees or costs incurred by inmates under this section, see title 57, § 549.

Small claims procedure, fees and costs, see title 12, §§ 1757, 1764, 1765, 1771.

### § 152. Flat fee schedule—Deposit in county Law Library Fund—Forma pauperis

A. In any civil case filed in district court, the court clerk shall collect, at the time of filing, the following flat fees, none of which shall ever be refundable, and which shall be the only charge for court costs, except as is otherwise specifically provided for by law:

1. Actions for divorce, alimony without divorce, separate maintenance, custody or support ..... \$62.00
2. Any ancillary proceeding to modify or vacate divorce decree or prior order providing for custody or support ..... \$30.00
3. Probate and guardianship ..... \$62.00
4. Annual guardianship report..... \$20.00
5. Any proceeding for sale or lease of real or personal property or mineral interest in probate or guardianship ..... \$30.00
6. Any proceeding to revoke the probate of a will ..... \$30.00
7. Judicial determination of death ..... \$35.00
8. Adoption..... \$62.00
9. Civil actions and condemnation..... \$62.00
10. Garnishment ..... \$10.00
11. Continuing wage garnishment ..... \$50.00
12. Any other proceeding after judgment..... \$20.00
13. All others, including but not limited to actions for forcible entry and detainer, judgments from all other courts, including the Workers' Compensation Court ..... \$62.00

B. Of the amount collected pursuant to subsection A of this section, the sum of Three Dollars (\$3.00) shall be deposited to the credit of the county Law Library Fund pursuant to Section 1201 et seq. of Title 20 of the Oklahoma Statutes.

C. In any case where the litigant claims he has a just cause of action, and that, by reason of poverty, he is unable to pay the fees and costs provided for in this section and financially unable to employ counsel, upon the filing of an affidavit in forma pauperis executed before any officer authorized by law to administer oaths by such litigant in such action to that effect and upon satisfactory showing to the court that said litigant has no means and is, therefore, unable to pay the applicable fees and costs and to employ counsel, no fees or costs shall be required. The opposing party or parties may in any event file with the court clerk of the court having jurisdiction of the cause an affidavit similarly executed contradicting the allegation of such poverty. In all such cases, the court shall promptly set for hearing the determination of the eligibility of the original affiant to litigate without payment of fees or costs. Until a final order determining the ineligibility of such affiant has been entered, the clerk shall permit such affiant to litigate without payment for fees or costs. Any litigant executing a false affidavit or counter affidavit pursuant to the provisions of this section shall be guilty of perjury.

Laws 1968, c. 359, § 2, eff. July 1, 1968. Laws 1969, c. 202, § 1, eff. April 18, 1968; Laws 1975, c. 293, § 2, eff. Oct. 1, 1975; Laws 1978, c. 212, § 9, eff. July 1, 1978; Laws 1983, c. 273, § 7, operative July 1, 1983; Laws 1987, c. 181, § 2, eff. July 1, 1987; Laws 1988, c. 329, § 128, eff. Nov. 1, 1988; Laws 1989, c. 236, § 4, eff. July 1, 1989; Laws 1990, c. 109, § 2, eff. Sept. 1, 1990.

**Historical and Statutory Notes**

The 1969 amendment, in the introductory paragraph, following "costs", deleted "up to and including the entry of judgment"; inserted the second, fourth and fifth items (now paragraphs 2, 5 and 6 of subsection A; and inserted a former ninth item which read:

"Any proceeding for post-judgment relief:

"For enforcement of judgment, including, but not limited to garnishment and attachment . . . 2.00

"For post-judgment receivership, or for vacating a judgment . . . . . 10.00"

; rewrote the last item, which prior thereto read:

"All others, including actions for forcible entry and detainer . . . . . 10.00"

; and reduced a fee.

The 1975 amendment, in the introductory paragraph, substituted "case" for "action"; in the eighth item (now paragraph 9 of subsection A) added "and condemnation"; in the last paragraph, last sentence, deleted from the end "; and provided further that the appeal bonds required by 39 O.S.1961, § 242, and 58 O.S.1961, § 726, shall stand in lieu, of the fees and costs specified in this Act, and the court clerk shall not require either cost bond or cost deposit in such appeal cases"; and increased the fees.

The 1978 amendment, in the introductory clause, substituted "July 1, 1968" for "the effective date of this act"; and increased certain fees.

The 1983 amendment rewrote the section, which prior thereto read:

"In any civil case filed in district court after July 1, 1968, the court clerk shall be required to collect, at the time of filing, the following flat fees, none of

which shall ever be refundable, and which shall be the only charge for court costs, except as is herein otherwise specifically provided:

"Actions for divorce, alimony without divorce, separate maintenance, custody or support . . .	\$35.00
"Any ancillary proceeding to modify or vacate divorce decree or prior order providing for custody or support . . . . .	10.00
"Probate and guardianship . . . . .	40.00
"Any proceeding for sale or lease of real or personal property or mineral interest in probate or guardianship . . . . .	10.00
"Any proceeding to revoke the probate of a will . . . . .	20.00
"Judicial Determination of Death	15.00
"Adoption . . . . .	25.00
"Civil Actions and condemnation	40.00
"Any proceeding for post-judgment relief:	
"For enforcement of judgment, including, but not limited to garnishment and attachment . . .	5.00
"For post-judgment receivership, or for vacating a judgment . . . . .	15.00
"All others, including, but not limited to, actions for forcible entry and detainer, judgments from all other courts, including the State Industrial Court . . . . .	25.00

except that in any case where the litigant claims he has a just cause of action, and that, by reason of poverty, he is unable to pay the fees and costs provided for in this act, upon the filing of an affidavit in forma pauperis executed before any officer authorized by law to administer oaths by such litigant in such action to

that effect no fees or costs shall be required; however, the opposing party or parties may in any event file with the court clerk of the court having jurisdiction of the cause an affidavit similarly executed contradicting the allegation of such poverty, and, upon the filing of such counter affidavit, the judge of such court shall promptly set for hearing the determination of the eligibility of the original affiant to litigate without payment of fees or costs, but until a final order determining the ineligibility of such affiant has been entered, the clerk shall permit such affiant to litigate without payment for fees or costs. Any litigant executing a false affidavit or counter affidavit hereunder shall be guilty of perjury."

The 1987 amendment substituted "1987" for "1983" in the introductory paragraph; and increased certain fees.

The 1988 amendment inserted the fourth item (now paragraph 4 of subsection A); and increased certain fees.

The 1989 amendment inserted the eleventh item (now paragraph 11 of subsection A).

The 1990 amendment designated the first paragraph as subsection A; in subsection A, in the introductory paragraph, deleted "after July 1, 1987" following "district court" and "be required to" following "clerk shall", and inserted the paragraph designations; inserted subsection A; and designated the last paragraph subsection C.

**Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 4 of Laws 1969, c. 202 repealed 12 O.S.1961, §§ 924, 925 and 932.

**Cross References**

- Affidavit in forma pauperis, form, see title 12, § 922.
- Guardianship proceedings, relief from filing fees as provided under this section, see title 30, § 3-106.
- Law library fund, transfer of funds to, see title 20, § 1202.
- Perjury, false swearing in making forma pauperis affidavit, see title 12, § 923.
- Quarterly transfer of funds credited under this section to county Law Library Fund, see title 20, § 1202.

**Law Review Commentaries**

New relief from costs of suit for low income litigants. Jon F. Gray. 41 Okl. B.J. 2065 (1970).

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**United States Code Annotated**

Forma pauperis proceedings in federal courts, see 28 U.S.C.A. § 1915.

**Notes of Decisions**

**Construction and application 1**  
**Divorce decrees 3**  
**Forma pauperis 5**  
**Other actions 4**  
**Purpose 2**

**4. Other actions**

Proceedings to determine heirs of restricted Indians as provided by title 84, § 251 et seq., are classified by the designation "all others" as provided in this section and, accordingly, the proper filing fee to be charged by the court clerk in such proceedings is \$10. Op.Atty.Gen. No. 69-113 (March 12, 1969).

Proceedings to approve deeds of restricted Indian heirs or devisees as provided by title 58, § 901 et seq. are classified by the designation "all others" as provided in this section and, accordingly, the proper filing fee to be charged by the court clerk in such proceedings is \$10. Id.

Proceedings to change the name of a person as provided in title 12, § 1631 et seq., are classified by the designation "all others" as provided in this section and, accordingly, the proper filing fee to be charged by the court clerk in such proceedings is \$10. Op.Atty.Gen. No. 69-113 (March 12, 1969).

Proceedings to confer rights of majority on a minor as provided by title 10, § 91 et seq., are classified by the designation "all others" as provided in this section and, accordingly, the proper filing fee to be charged by the court clerk in such proceedings is \$10. Id.

**5. Forma pauperis**

Where civil action is filed in forma pauperis, court may, on its own motion, subsequently inquire into party's ability to pay fees, despite fact that this section provides that opposing party may challenge an affidavit of poverty and omits any reference to right of trial court to challenge party's right to proceed without payment of fees. State ex rel.

**1. Construction and application**

A court clerk is not authorized to charge \$1 for the law library fund as provided in § 1202 of title 20 in addition to the flat fee provided for in §§ 151 to 167 of this title (repealed, in part); rather, the court clerk must, when appropriate, deduct and set aside the \$1 library fee provided for by § 1202 of title 20 from the flat fee, should set aside \$1 from all civil cases where a flat filing fee is provided for in this section and should not set aside \$1 for the law library fund from fees put up in criminal cases or cases where the litigant has filed an affidavit in forma pauperis which has not been successfully challenged. Op.Atty.Gen. No. 70-130 (March 12, 1970).

**2. Purpose**

Purpose of this section is to specify amount of court fees to be assessed in civil action and to provide for collection of such fees, with an exception for persons who have just causes of action and are unable to pay such fees by reason of poverty. State ex rel. McCalister v. Graham, Okl., 531 P.2d 1367 (1975).

**3. Divorce decrees**

A court Clerk should charge a \$2.00 filing fee for a motion, petition, or application for vacating, or modifying a divorce decree. Op.Atty.Gen. No. 74-165 (Aug. 22, 1974).



Note 5

McCalister v. Graham, Okl., 531 P.2d 1367 (1975).

Court clerk was required to file litigant's affidavit in forma pauperis, executed before any officer authorized by

law to administer oaths, without payment of court fees, despite fact that district court rule provided that litigant filing affidavit of poverty appear in person before the court. Id.

§ 152.1. Civil actions—Charges in addition to flat fee

In civil cases other than those in the small claims division, the court clerk shall collect and deposit in the court fund the following charges in addition to the flat fee:

- 1. For posting notices and filing certificates required by statute ..... \$20.00
- 2. For mailing by any type of mail writs, warrants, orders, process, command, or notice for each person ..... \$ 5.00  
except ordinary mailing of first-class mail in probate cases, for each case..... \$ 5.00
- 3. For the actual cost of all postage in each case in excess of ..... \$ 5.00
- 4. For serving or endeavoring to serve each writ, warrant, order, process, command, or notice for each person in one or more counties ..... \$20.00  
provided that if more than one person is served at the same address, one flat fee of Twenty Dollars (\$20.00) may be charged;
- 5. For sheriff's fees on court-ordered sales of real or personal property ..... \$50.00
- 6. When a jury is requested ..... \$50.00
- 7. For issuing each summons for each person ..... \$ 5.00
- 8. For services of a court reporter at each trial held in the case ..... \$20.00

The fees prescribed in paragraphs 4 and 5 of this section shall be paid by the court clerk into the Sheriff's Service Fee Account, created pursuant to the provisions of Section 514.1 of Title 19 of the Oklahoma Statutes, of the sheriff in the county where service is made or attempted or where the sheriff's sale occurs. All other fees shall be deposited into the local court fund in the county where collected.

Laws 1971, c. 105, § 1, eff. Oct. 1, 1971. Laws 1975, c. 293, § 3, eff. Oct. 1, 1975; Laws 1978, c. 212, § 10, eff. July 1, 1978; Laws 1978, c. 305, § 2, eff. July 1, 1978; Laws 1980, c. 18, § 1, eff. Oct. 1, 1980; Laws 1983, c. 273, § 8, operative July 1, 1983; Laws 1984, c. 268, § 3, eff. Nov. 1, 1984; Laws 1986, c. 61, § 1, eff. Nov. 1, 1986; Laws 1986, c. 223, § 19, operative July 1, 1986; Laws 1987, c. 181, § 3, eff. July 1, 1987; Laws 1988, c. 63, § 1, eff. Nov. 1, 1988; Laws 1988, c. 327, § 2, operative August 1, 1988; Laws 1989, c. 205, § 6, eff. Nov. 1, 1989.

**Historical and Statutory Notes**

The 1975 amendment, in the introductory clause, substituted "cases" for "actions"; and increased certain fees.

Laws 1978, c. 212, § 10, inserted paragraph (3); redesignated former paragraphs (3) to (5) as paragraphs (4) to (6), respectively; in paragraph (4), substituted "each writ, warrant, order, process, command or notice" for "writs, warrants, orders, process, commands or notices"; added paragraph (7); and in the last paragraph, substituted "(5) and (6)" for "(3) and (4)"; and increased the fees.

Laws 1978, c. 305, § 2, in the last paragraph, substituted "(4) and (5)" for "(5) and (6)".

Section 1 of Laws 1979, S.C.Res. No. 6 provides as follows:

"A fee of Seven Dollars (\$7.00) shall be charged for each attempt to serve or service of process and multiple service of process on the same person made at the same time shall constitute one attempt to serve or one service of process."

The 1980 amendment inserted the exception in paragraph (2).

The 1983 amendment, in paragraph (1), inserted "and filing certificates"; rewrote paragraph (4), which prior thereto read:

"(4) For serving or endeavoring to serve each writ, warrant, order, process, command or notice; 7.00  
but if more than five (5) persons are to be served in the case, for each person in excess of five (5) 3.00"

; deleted former paragraph 5, which read:

"(5) If service is sought in more than one county, the person requesting it shall be charged for each additional item of process to be served in a different county 7.00"

; redesignated paragraph (6) as paragraph (5); deleted former paragraph (7), which read:

"(7) For the service of a court reporter at each trial held in the case 10.00"

; rewrote the last paragraph, which prior thereto read:

"The fees prescribed in paragraphs (4) and (5) shall be paid by the court clerk into the general fund of the county where service is made or attempted; all other fees shall be deposited into the local court fund in the county where collected."

; and increased certain fees.

The 1984 amendment redesignated paragraphs (1) to (5) as paragraphs 1 to 5; in paragraph 5, substituted "requested" for "impanelled"; and in the last paragraph, rewrote the first sentence, which prior thereto read: "The fee prescribed in paragraph (4) shall be paid by the court clerk into the general fund of the county where service is made or attempted."

Laws 1986, c. 61, § 1, inserted paragraph 5; redesignated former paragraph 5 as paragraph 6; and in the last paragraph, in the first sentence, substituted "paragraphs 4 and 5" for "paragraph 4" and "514.1 of Title 19 of the Oklahoma Statutes" for "1 of this act" and added "or where the sheriff's sale occurs".

Laws 1986, c. 223, § 19, added paragraph 7; and in the first sentence of the last paragraph, substituted "fees" for "fee".

The 1987 amendment added paragraph 8; and increased certain fees.

Laws 1988, c. 63, § 1, in paragraph 4, substituted "Twenty Dollars (\$20.00)" for "Ten Dollars (\$10.00)".

Laws 1988, c. 327, § 2, increased the fee in paragraph 2.

The 1989 amendment increased the fee in paragraph 6.

Section 7 of Laws 1971, c. 105 directed codification.

**Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 8 of Laws 1971, c. 105 provides for an effective date.

Section 2 of Laws 1980, c. 18, provides for an effective date.

Section 2 of Laws 1986, c. 61 provides for an effective date.

Section 2 of Laws 1988, c. 63 provides for an effective date.

**Title of Act:**

An Act relating to courts; amending § 3, Chapter 359, O.S.L.1968, as amended by § 2, Chapter 202, O.S.L.1969, § 5, Chapter 359, O.S.L.1968 (28 O.S.Supp. 1970, §§ 153 and 155), and § 7, Chapter 214, O.S.L.1969 (28 O.S.Supp.1970, § 55); providing for disposition of cer-

tain charges; providing for posting of notice and notice fees; providing for certain court fees and deposits and disposition thereof; providing for service of summonses and orders; repealing § 8, Chapter 214, O.S.L.1969 (12 O.S.Supp. 1970, § 932), § 1, Chapter 214, O.S.L. 1969, as amended by § 1, Chapter 7, O.S.L.1970, §§ 2 and 3, Chapter 214, O.S.L.1969, and § 2, Chapter 383, O.S.L. 1968, (28 O.S.Supp.1970, §§ 39.1, 39.2, 39.3 and 54); directing codification; and setting effective date. Laws 1971, c. 105, eff. Oct. 1, 1971.

**Cross References**

Law library fund, transfer of money to, see title 20, § 1202.

**Law Review Commentaries**

Symposium in the Oklahoma law of damages: costs of litigation. 6 Okl.L. Rev. 312 (Aug.1953).

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

**Construction and application 2**  
**Prior law 1**

**1. Prior law**

Under Mansf.Dig. § 3250 (Ind.T. Ann. St.1899, § 2234), which provided that no sheriff could be compelled to execute any writ, unless the person in whose favor it was issued would first tender to him sufficient money to pay the cost of service, a sheriff could refuse to levy an attachment writ until his fees were tendered him or satisfactorily secured. Tul-

ly v. Cutler, 5 Ind.T. 180, 82 S.W. 714 (Ind.1904).

**2. Construction and application**

Administrative judge of district court exceeded his authority by issuing administrative order forbidding court clerk from attempting to collect court costs from landowners who formally demanded jury trial in condemnation cases; it was discriminatory and unequal protection to not assess prepayment fee for jury trial for parties in certain condemnation cases while requiring it in other condemnation cases. Petuskey v. Cannon, Okl., 742 P.2d 1117 (1987).

**§ 152.2. Fee for posting notice**

In all applications filed with the district court clerk when posting of notices is required by statute, the district court clerk shall cause said notice to be posted, and a fee of twenty cents (\$0.20) per mile shall be paid out of the local court fund to the person performing said service.

Laws 1971, c. 105, § 2, eff. Oct. 1, 1971. Laws 1983, c. 273, § 9, operative July 1, 1983.

**Historical and Statutory Notes**

The 1983 amendment substituted (\$0.20)" for "ten cents (\$0.10)", and inserted "when" for "where" and "twenty cents" for "local".

**Notes of Decisions****1. Construction and application**

Pursuant to § 1 of this title a deputy court clerk may not receive a separate fee for posting legal notices pertaining to

probate matters from the attorney handling the probate except those fees statutorily provided by law. Op.Atty.Gen. No. 79-123 (June 14, 1979).

**§ 152.3. Poundage fee and court costs in condemnation proceedings**

Every condemnor, be it the state, a political subdivision thereof, or a private entity, shall be liable for poundage fee and court costs in a condemnation proceeding. Those public entities which are restricted by law from advancing costs shall be allowed to file the condemnation proceeding without costs prepayment, but at the termination of each such case, the court clerk will render to the condemnor an itemized bill for costs and shall claim payment of all costs due in the case.

Laws 1975, c. 293, § 7, eff. Oct. 1, 1975.

**Historical and Statutory Notes**

Section 10 of Laws 1975, c. 293 directed codification of this section.

**Cross References**

Highway department, liability for poundage and condemnation fees, see title 69, § 1203.

**Library References**

Eminent Domain ⇨265(1).  
WESTLAW Topic No. 148.  
C.J.S. Eminent Domain § 381 et seq.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions****Construction and application 1****1. Construction and application**

City in inverse condemnation action was "condemnor" within meaning of this

section making condemnor liable for poundage fee and court costs in condemnation proceeding, and, thus, city was liable for fees of commissioners used to ascertain compensation, even though city prevailed; landowner was contacted

## 28 § 152.3

## FEES

### Note 1

about possible condemnation of property and informed of rights under law of eminent domain. *Oxley v. City of Tulsa By and Through Tulsa Airport Authority*, Okl., 794 P.2d 742 (1989) certiorari denied 110 S.Ct. 1128, 107 L.Ed.2d 1034.

Under title 69, § 1203, providing that Department of Highways shall in all cases pay the costs and expenses of the first assessment, Department of Highways was required to pay poundage fee charged by court clerk for receiving and paying out money deposited by Department to satisfy eminent domain award. *State ex rel. Dept. of Highways v. Marshall*, Okl., 530 P.2d 1023 (1974).

The poundage fee, charged by court clerks for receiving and paying out money deposited by condemnor to satisfy commissioners' award as prerequisite to taking possession of property in exercise

of right of eminent domain, is part of "costs" of first assessment within §§ 53 to 64 of title 66, requiring condemnor to pay costs and expenses of first assessment. *Kelly v. Oklahoma Turnpike Authority*, Okl., 269 P.2d 359 (1954).

Failure of condemnor to deposit into court, along with amount of commissioners' award, the poundage fee prior to taking possession did not destroy condemnor's right to prosecute further proceedings for determination of sufficiency of condemnation award. *Id.*

The Department of Transportation is liable, under the provisions of title 69, § 1203, for court costs and poundage fees only in the event of an appeal resulting in a jury verdict in excess of the commissioner's original award. *Op. Atty.Gen. No. 78-280* (Dec. 5, 1978).

## § 152.4. License fees

In any proceeding for issuance of a license other than a marriage license, the court clerk shall collect at the time of filing the application for said license, court costs in the same amounts as required in civil cases in addition to other fees prescribed by law.

Laws 1986, c. 223, § 20, operative July 1, 1986.

## § 153. Costs in criminal cases

*Text as amended by Laws 1990, c. 109, § 3*

A. The clerks of the courts shall collect as costs in every criminal case for each offense of which the defendant is convicted, irrespective of whether or not the sentence is deferred, the following flat charges and no more, except for charges otherwise provided for by law, which fee shall cover docketing of the case, filing of all papers, issuance of process, warrants, orders, and other services to date of judgment:

1. For each defendant convicted of a misdemeanor, including violation of any traffic law, other than for driving under the influence of alcohol or other intoxicating substance, whether charged individually or conjointly with others ..... \$ 55.00
2. For each defendant convicted of a felony, other than for driving under the influence of alcohol or other intoxicating substance, whether charged individually or conjointly with others \$ 75.00

**COSTS—FILING FEES****28 § 153**

3. For each defendant convicted of the misdemeanor of driving under the influence of alcohol or other intoxicating substance, whether charged individually or conjointly with others .....	\$155.00
4. For each defendant convicted of the felony of driving under the influence of alcohol or other intoxicating substance, whether charged individually or conjointly with others .....	\$155.00
5. For the services of a court reporter at each trial held in the case .....	\$ 20.00
6. For each time a jury is requested .....	\$ 30.00
A sheriff's fee for serving or endeavoring to serve each writ, warrant, order, process, command, or notice or pursuing any fugitive from justice .....	\$ 20.00 or mileage as established by the Oklahoma Statutes, whichever is greater.

B. Of the amount collected pursuant to paragraphs 1 through 4 of subsection A of this section, the sum of Three Dollars (\$3.00) shall be deposited to the credit of the county Law Library Fund pursuant to Section 1201 et seq. of Title 20 of the Oklahoma Statutes.

C. Prior to conviction, parties in criminal cases shall not be required to pay, advance, or post security for the issuance or service of process to obtain compulsory attendance of witnesses. These fees shall be deposited into the court fund except that the sheriff's fee, when collected, shall be transferred to the Sheriff's Service Fee Account, created pursuant to the provisions of Section 514.1 of Title 19 of the Oklahoma Statutes, of the sheriff in the county in which service is made or attempted.

Laws 1968, c. 359, § 3, eff. July 1, 1968. Laws 1969, c. 202, § 2, eff. April 18, 1969; Laws 1971, c. 105, § 3, eff. Oct. 1, 1971; Laws 1973, c. 147, § 2, eff. May 14, 1973; Laws 1975, c. 293, § 4, eff. Oct. 1, 1975; Laws 1978, c. 212, § 11, eff. July 1, 1978; Laws 1983, c. 273, § 10, operative July 1, 1983; Laws 1984, c. 268, § 4, eff. Nov. 1, 1984; Laws 1986, c. 8, § 1, emerg. eff. March 17, 1986; Laws 1986, c. 242, § 2, emerg. eff. June 12, 1986; Laws 1987, c. 181, § 4, eff. July 1, 1987; Laws 1990, c. 109, § 3, eff. Sept. 1, 1990.

*For text as amended by Laws 1990, c. 151, § 1, see § 153, post*

**§ 153. Costs in criminal cases***Text as amended by Laws 1990, c. 151, § 1*

The clerks of the courts shall collect as costs in every criminal case for each offense of which the defendant is convicted, irrespective of whether or not the sentence is deferred, the following flat charges and no more, except for charges otherwise provided for by law, which fee shall cover docketing of the case, filing of all papers, issuance of process, warrants, orders, and other services to date of judgment:

For each defendant convicted of a misdemeanor, including violation of any traffic law, other than for driving under the influence of alcohol or other intoxicating substance, whether charged individually or conjointly with others .....	\$57.00
For each defendant convicted of a felony, other than for driving under the influence of alcohol or other intoxicating substance, whether charged individually or conjointly with others .....	\$77.00
For each defendant convicted of the misdemeanor of driving under the influence of alcohol or other intoxicating substance, whether charged individually or conjointly with others .....	\$157.00
For each defendant convicted of the felony of driving under the influence of alcohol or other intoxicating substance, whether charged individually or conjointly with others .....	\$157.00
For the services of a court reporter at each trial held in the case .....	\$20.00
For each time a jury is requested .....	\$30.00
A sheriff's fee for serving or endeavoring to serve each writ, warrant, order, process, command, or notice or pursuing any fugitive from justice.....	\$20.00 or mileage as established by the Oklahoma Statutes, whichever is greater.

Prior to conviction, parties in criminal cases shall not be required to pay, advance, or post security for the issuance or service of process to obtain compulsory attendance of witnesses. These fees

shall be deposited into the court fund except that the sheriff's fee provided for in this section and the amount provided for in Section 2 of this act,<sup>1</sup> when collected, shall be transferred to the Sheriff's Service Fee Account, created pursuant to the provisions of Section 514.1 of Title 19 of the Oklahoma Statutes, of the sheriff in the county in which service is made or attempted.

Laws 1968, c. 359, § 3, eff. July 1, 1968. Laws 1969, c. 202, § 2, eff. April 18, 1969; Laws 1971, c. 105, § 3, eff. Oct. 1, 1971; Laws 1973, c. 147, § 2, eff. May 14, 1973; Laws 1975, c. 293, § 4, eff. Oct. 1, 1975; Laws 1978, c. 212, § 11, eff. July 1, 1978; Laws 1983, c. 273, § 10, operative July 1, 1983; Laws 1984, c. 268, § 4, eff. Nov. 1, 1984; Laws 1986, c. 8, § 1, emerg. eff. March 17, 1986; Laws 1986, c. 242, § 2, emerg. eff. June 12, 1986; Laws 1987, c. 181, § 4, eff. July 1, 1987; Laws 1990, c. 151, § 1.

<sup>1</sup> Section 153.2 of this title.

*For text as amended by Laws 1990, c. 109, § 3, see § 153, ante*

**Historical and Statutory Notes**

As originally enacted, the section read:

"The clerks of the courts shall collect as costs in all criminal cases in which the defendant is convicted of a felony a flat charge of Twenty Dollars (\$20.00) and no more, except for the District Attorney's fee as presently provided by law, and except for the charges hereinafter specifically set out, and further provided that, prior to conviction, parties in criminal cases shall not be required to pay, advance or post security for the issuance or service of process to obtain compulsory attendance of witnesses."

The 1969 amendment deleted "except for the District Attorney's fee as presently provided by law, and" following "more".

The 1971 amendment rewrote the section to read:

"The clerks of the courts shall collect as costs in all criminal cases in which the defendant is convicted the following flat charge and no more, except for the charges hereinafter specifically set out, which fee shall cover docketing of the case, filing of all papers, issuance of process warrants and orders and other services to date of judgment:

"Upon conviction of a misdemeanor, including violation of any traffic law .....	\$15.00
"Upon conviction of a felony.....	\$20.00
"For the services of a reporter .....	\$ 5.00
"If a jury is impanelled .....	\$ 5.00
"A sheriff's fee for serving or endeavoring to serve all writs, warrants, orders, process, commands or notices or pursuing any fugitive from justice .....	\$ 7.00.

"Provided, that, prior to conviction, parties in criminal cases shall not be required to pay, advance or post security for the issuance or service of process to obtain compulsory attendance of witnesses. These fees shall be deposited into the court fund except the aforesaid sheriff's fee, when collected, shall be transferred to the general fund of the

county in which service is made or attempted."

The 1973 amendment, in the introductory clause, substituted "every criminal case" for "all criminal cases" and inserted ", irrespective of whether or not the sentence is deferred,;" and rewrote the fee schedule to read:



"For each defendant convicted of a misdemeanor, including violation of any traffic law, whether charged individually or conjointly with others.....	\$15.00
"For each defendant convicted of a felony, whether charged individually or conjointly with others.....	\$40.00
"For the services of a reporter at each trial held in the case .....	\$5.00
"For each time a jury is impanelled .....	\$5.00
"A sheriff's fee for serving or endeavoring to serve all writs, warrants, orders, process, commands or notices or pursuing any fugitive from justice .....	\$7.00"

The 1975 amendment inserted a comma following "process" in the introductory clause.

The 1978 amendment inserted "or mileage as established by Oklahoma Statutes whichever is greater" in the fee schedule.

The 1983 amendment, in the introductory clause, substituted "charges otherwise provided for by law" for "the charges hereinafter specifically set out", following "warrants" substituted a comma for "and", and inserted a comma following "orders"; in the fee schedule, in the first and second paragraphs, inserted ", other than for deriving under the influence of alcohol or other intoxicating substance", inserted the fourth and fifth paragraphs, in the last paragraph inserted "the" and a comma, and increased certain fees and in the last paragraph, in the first sentence, substituted "Prior" for "Provided that, prior" and in the last sentence substituted "that the sheriff's" for "the aforesaid sheriff's" and added "to be credited to the official account of the sheriff of said county".

The 1984 amendment, in the introductory clause, substituted "charges" for "charge"; in the fee schedule, in the sixth paragraph, substituted "requested" for "impanelled"; and in the last paragraph, rewrote the last sentence to read: "These fees shall be deposited into the court fund except that the sheriff's fee, when collected, shall be transferred to the Sheriff's Service Fee Account, created pursuant to the provisions of Sec-

tion 1 of this act, of the sheriff in the county in which service is made or attempted."

Laws 1986, c. 8, § 1, in the last paragraph of the fee schedule, substituted "each writ, warrant, order, process, command or notice" for "all writs, warrants, orders, process, commands, or notices"; and, in the last paragraph, in the last sentence, substituted "514.1 of Title 19 of the Oklahoma Statutes" for "1 of this act".

Laws 1986, c. 242, § 2, in the introductory clause, substituted "for each offense of" for "in".

The 1987 amendment increased certain fees.

Laws 1990, c. 109, § 3, inserted the subsection and paragraph designations; inserted subsection B; and increased certain fees.

Laws 1990, c. 151, § 1, without reference to the amendment made by Laws 1990, c. 109, § 3, increased certain fees; and in the last paragraph, in the second sentence, inserted "provided for in this section and the amount provided for in Section 2 of this act".

#### **Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 3 of Laws 1990, c. 151 provides for an operative date of July 1, 1990, but since it is not an emergency act and falls within ninety days of adjournment, it has no effect.

#### **Cross References**

Determination of ability to pay, see title 22, § 983.

Informer, payment of costs, see title 22, § 1275.

Inmates of penal institutions, prosecution of offenses committed by, see title 22, § 1277.

Probation fee, see title 22, §§ 991d, 991e.

Quarterly transfer of funds credited under this section to county Law Library Fund, see title 20, § 1202.

### **Library References**

Costs ⇐ 303.

WESTLAW Topic No. 102.

### **WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

### **United States Code Annotated**

Federal district court, payment of costs by defendant, see 28 U.S.C.A. § 1918.

### **Notes of Decisions**

#### **Construction and application 2**

#### **Time of payment of fees 3.**

#### **Validity 1**

filed an affidavit in forma pauperis which has not been successfully challenged. Op.Atty.Gen. No. 70-130 (March 12, 1970).

Under provisions of this section and former § 54 of this title (repealed: see, now, this section), only one fee can be collected by clerk of district court in each case where a conviction results, and it is discretionary with the court whether or not the fee is apportioned between defendants, but each defendant convicted is jointly and severally liable for the entire fee, though only one "flat charge" could be enforced. Op.Atty.Gen. No. 69-137 (March 28, 1969).

#### **1. Validity**

Constitutionality of court costs statute (this section) was a question which could have been raised at trial in D.W.I. case and where defendant failed to do so and did not appeal he was estopped from bringing separate declaratory judgment action to challenge the statute. McDowell v. Austin, Okl., 699 P.2d 1100 (1985).

#### **2. Construction and application**

Accused was liable for county attorney's fee where he had entered guilty pleas to charges of driving an automobile while under the influence of intoxicating liquor. Ex parte White, 75 Okl.Cr. 204, 130 P.2d 103 (1942).

The term "conviction" refers to a final judgment based upon a plea of guilty or a verdict of guilty after a trial. Id.

A court clerk is not authorized to charge \$1 for the law library fund as provided by § 1202 of title 20 in addition to the flat fee provided for in §§ 151 to 157 of this title (repealed, in part); rather, the court clerk must, when appropriate, deduct and set aside the \$1 library fee provided for by § 1202 of title 20 from the flat fee, should set aside \$1 from all civil cases where a flat filing fee is provided for in § 152 of this title and should not set aside \$1 for the law library fund from fees put up in criminal cases or cases where the litigant has

#### **3. Time of payment of fees**

There is no provision of law requiring the payment of fees in advance to an officer for serving subpoena in a criminal case. Thompson v. State, 6 Okl.Cr. 334, 118 P. 614 (1911).

Provision in this section that prior to conviction, parties in criminal cases shall not be required to pay, advance or post security for issuance or service of process to obtain compulsory attendance of witnesses is applicable to both felony and misdemeanor cases and must be given effect despite any contrary intent inferable from § 39.4 (repealed) and former §§ 39.1 to 39.3 of this title (repealed; see, now, § 152.1 et seq. of this title), because Const. Art. 2, § 20 provides that in a criminal prosecution the accused has a right to compulsory process to obtain witnesses in his behalf and this section is an expression of that right and as such is not superseded or repealed by implication, even though

## **28 § 153**

## **FEES**

### **Note 3**

§ 39.4 (repealed) and former §§ 39.1 to 39.3 (repealed; see, now, § 152.1 et seq. of this title) were later expressions of the Legislature. Op.Atty.Gen. No. 69-298 (Dec. 15, 1969).

### **§ 153.1. Driving under influence of alcohol or other intoxicating substance within municipality—Costs**

In any case in which a defendant is charged with driving under the influence of alcohol or other intoxicating substance within a municipality with a municipal court other than a court of record, one-half (1/2) of the costs charged in said case as provided for in Section 153 of Title 28 of the Oklahoma Statutes shall be paid to the municipality to be used to defer the cost of such prosecution to the municipality if the arresting officer was an employee of the municipality's law enforcement agency.

Laws 1983, c. 273, § 11, operative July 1, 1983.

#### **Library References**

Costs ⇨ 294 to 296.  
WESTLAW Topic No. 102.

### **§ 153.2. Sheriff's Service Fee**

In any criminal case in which a defendant is arrested for a violation of state law, Five Dollars (\$5.00) of the costs charged in said case as provided for in Section 153 of Title 28 of the Oklahoma Statutes shall be paid to the Sheriff's Service Fee Account of the sheriff of the county in which the arrest was made. This fee shall be in addition to the fee authorized by Section 153 of Title 28 of the Oklahoma Statutes and shall be used to defer the costs associated with arrest.

Laws 1990, c. 151, § 2.

### **§ 154. Fees in lieu of other enumerated charges**

The flat fees herein provided for shall be in lieu of the charges enumerated in 28 O.S.1961, § 31, as amended by Section 6, Chapter 122, O.S.L.1967, and the court clerks, from and after the effective date of this act, shall no longer be required to list, itemize or charge pursuant to the schedule therein enumerated, except for proceedings after judgment, and except as herein specifically set out.

Laws 1968, c. 359, § 4, eff. July 1, 1968.

### **§ 155. Additional deposits in certain cases**

In addition to the flat fees herein provided for, the clerk shall require such additional deposits from time to time as might be

needed to pay witness fees, appraisers' fees, mileage fees, or other authorized expenses.

Laws 1968, c. 359, § 5, eff. July 1, 1968. Laws 1971, c. 105, § 4, eff. Oct. 1, 1971.

#### **Historical and Statutory Notes**

The 1971 amendment, following "clerk" deleted "shall require an additional deposit of Five Dollars (\$5.00) in all cases wherein personal service is requested on one or more parties and".

#### **WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

#### **Notes of Decisions**

##### **Construction and application 1**

##### **1. Construction and application**

The \$5 deposit formerly required by this section in all cases wherein personal service was requested on one or more parties, was to be placed by court clerk

in his operating depository fund within county treasury until such time as summons was returned with the amount of fees and mileage properly endorsed thereon, at which time a cash voucher to pay such claims was to be turned over to sheriff for deposit by him pursuant to § 541 of title 19. Op.Atty.Gen. No. 68-346 (Oct. 23, 1968).

### **§ 155.1. Fee for preparing and transmitting record for appellate review**

The clerk of the district court shall charge the sum of Thirty Dollars (\$30.00) for preparing, assembling, indexing and transmitting the record for appellate review. This fee shall be paid by the party taking the appeal and shall be entered as costs in the action. If more than one party to the action shall prosecute an appeal from the same judgment or order, the fee shall be paid by the party whose petition in error is determined by the district court or by the appellate court to commence the principal appeal. The fees collected hereunder shall be paid into the court fund.

Laws 1969, c. 214, § 7, operative July 1, 1969. Laws 1971, c. 105, §§ 5, 7, eff. Oct. 1, 1971; Laws 1975, c. 293, § 5, eff. Oct. 1, 1975; Laws 1978, c. 212, § 12, eff. July 1, 1978.

#### **Historical and Statutory Notes**

The 1971 amendment added the last sentence.

The 1975 amendment substituted "Twenty Dollars (\$20.00)" for "Ten Dollars (\$10.00)".

The 1978 amendment substituted "Thirty Dollars (\$30.00)" for "Twenty Dollars (\$20.00)".

Renumbered from § 55 of this title on authority of Laws 1971, c. 105, § 7.

#### **Cross References**

Costs on appeal, recovery upon reversal of judgment or order, see Title 12, § 978. Supreme Court, deposit to cover costs, see Title 20, § 15.

**Library References**

Costs ⇐253 et seq.  
WESTLAW Topic No. 102.  
C.J.S. Costs § 176.

**§ 156. Notice by publication—Deposit**

In all cases or proceedings in the district courts or other courts of record, in which notice by publication is required or requested, there must be deposited with the court clerk at the time of the filing of the petition therein the sum of Twenty-five Dollars (\$25.00). Said sum shall be in addition to the flat fees herein established and shall be used only for the purpose of paying the publisher's fee for publishing such notice or notices. In the event it cannot be ascertained at the time the petition is filed that notice by publication will be required or requested and the required deposit for publication is not paid at that time, then when an affidavit for service by publication or verified petition or pleading is filed for the first time the court clerk shall collect the said sum of Twenty-five Dollars (\$25.00) to be used only to pay the publisher's fee for publishing such notice or notices; any part of said amount not actually charged for publication costs shall be refunded. Prior to accepting any final decree or dismissal for filing in any case in which notice by publication is required or requested, the court clerk shall collect for transmittal to the publisher such fees as are necessary to pay for all costs of publication or have on file a statement or receipt from the publisher that the same have been paid and, provided further, that proof of publication shall be held by the court clerk but not filed until such time as such publication fees have been collected in full or such statement or receipt from the publisher that the same have been paid has been filed.

Laws 1968, c. 359, § 6, eff. July 1, 1968. Laws 1974, c. 175, § 1, eff. May 9, 1974.

**Historical and Statutory Notes**

The 1974 amendment substituted the third sentence, added “; any part of “Twenty-Five Dollars (\$25.00)” for “Ten said amount not actually charged for Dollars (\$10.00)” in two places; and in publication costs shall be refunded”.

**Cross References**

Fees for printing legal notices, see § 121 of this title.  
Taxation of costs, legal publication, see title 12, § 934.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

**Juvenile proceedings 1**

**1. Juvenile proceedings**

In juvenile proceedings and termination of parental rights proceedings, when notice is given by publication, the

party that files the petition or affidavit for service by publication, under this section, must deposit the sum of \$25 to cover the cost of notice by publication; furthermore, under title 10, § 1124, such party remains ultimately liable for the cost of notice by publication. Op.Atty. Gen. No. 86-116 (November 3, 1986).

**§ 157. Charges not affected by this act**

The charges for filing mechanics' and materialmen's liens, notary public bonds, statutory bonds, licensing fees, transmittal of funds other than attorneys' fees (poundage) shall not be affected by this act, and in those counties where newspaper fees and library fees are presently authorized by law, the clerk shall be entitled to deduct from the flat fee herein established whatever charges for the same as are presently authorized by law.

Laws 1968, c. 359, § 7, eff. July 1, 1968.

**Cross References**

Law library fund, see title 20, § 1202.

Notary public bonds, see title 49, § 2.

**WESTLAW Electronic Research**

See WESTLAW Electronic Research Guide following the Preface.

**Notes of Decisions**

**In general 1**

**1. In general**

A court clerk is not authorized to charge \$1 for the law library fund as provided in § 1202 of title 20 in addition to the flat fee provided for in §§ 151 to 167 of this title (repealed, in part); rather, the court clerk must, when appropriate, deduct and set aside the \$1 library

fee provided for by § 1202 of title 20 from the flat fee, should set aside \$1 from all civil cases where a flat filing fee is provided for in § 152 of this title and should not set aside \$1 for the law library fund from fees put up in criminal cases or cases where the litigant has filed an affidavit in forma pauperis which has not been successfully challenged. Op.Atty.Gen. No. 70-130 (March 12, 1970).

**§§ 158, 159. Repealed by Laws 1970, c. 107, § 1, eff. April 1, 1970**

**Historical and Statutory Notes**

Repealed § 158, derived from Laws 1968, c. 359, § 8, related to the discontinuance of litigation and court reporter's fees.

Repealed § 159, derived from Laws 1968, c. 359, § 9, was a repealer.

**§ 160. Repealed by Laws 1983, c. 273, § 15, eff. July 1, 1983****Historical and Statutory Notes**

The repealed section, derived from Laws 1968, c. 359, § 10, provided for severability.

**§ 161. Repealed by Laws 1970, c. 107, § 1, eff. April 1, 1970****Historical and Statutory Notes**

The repealed section was derived from Laws 1968, c. 359, § 11. It provided for an effective date.

**§ 162. Juvenile proceedings—Fees and costs**

A. The clerks of the courts shall collect as costs in every juvenile delinquency, child in need of supervision, child in need of treatment, or deprived case in which the juvenile is adjudicated, irrespective of whether or not the sentence is deferred, or in every such case in which a petition is filed at the demand of the parents of a juvenile and said petition is subsequently dismissed prior to adjudication at said parents' request, the following flat charge and no more, except for the charges provided for in this section, which fee shall cover docketing of the case, filing of all papers, issuance of process, warrants and orders, and other services to date of judgment:

For each case where one or more juveniles are adjudicated deprived.....	\$37.00
For each juvenile who is certified to stand trial as an adult.....	\$62.00
In each juvenile case wherein parental rights are terminated.....	\$37.00
For each juvenile adjudicated in need of supervision or in need of treatment.....	\$37.00
For each juvenile adjudicated for an offense which would be a misdemeanor if committed by an adult, including violation of any traffic law, whether charged individually or conjointly with others.....	\$37.00
For each juvenile adjudicated for an offense which would be a felony if committed by an adult, whether charged individually or conjointly with others.....	\$62.00
For the services of a court reporter at each trial held in the case.....	\$20.00

When a jury is requested .....	\$30.00
A sheriff's fee for serving or endeavoring to serve all writs, warrants, orders, process, commands, or notices or pursuing any fugitive from justice ....	\$20.00 or mileage as established by Oklahoma Statutes, whichever is greater.

B. Such costs shall be levied against the juvenile, the parent, or both, but shall not be levied against the legal guardian or any state or private agency having custody of any juvenile subject to such proceedings.

C. Prior to adjudication, parties in juvenile delinquency, child in need of supervision, child in need of treatment, and deprived cases shall not be required to pay, advance, or post security for the issuance or service of process to obtain compulsory attendance of witnesses. These fees shall be deposited into the court fund, except the sheriff's fee, when collected, shall be transferred to the general fund of the county in which service is made or attempted to be made.

D. The clerk of the district court shall charge the sum of Thirty Dollars (\$30.00) for preparing, assembling, indexing, and transmitting the record for appellate review. This fee shall be paid by the party taking the appeal and shall be entered as costs in the action. If more than one party to the action shall prosecute an appeal from the same judgment or order, the fee shall be paid by the party whose petition in error is determined by the district court or by the appellate court to commence the principal appeal. The fees collected hereunder shall be paid into the court fund.

E. Fees and costs collected in juvenile cases may be withdrawn from the court fund and used for operations of the juvenile bureaus, in counties wherein a statutory juvenile bureau is in operation, upon approval by the Chief Justice of the Oklahoma Supreme Court.

F. In those seventy-four counties in which court services are provided by contract between the Oklahoma Supreme Court and the Department of Human Services, funds received from court costs in juvenile cases may be withdrawn from the court fund and paid to the Department of Human Services upon approval by the Chief Justice of the Oklahoma Supreme Court. Said funds are to be expended by the Department of Human Services to supplement community-based programs, such as juvenile offender victim resti-



tution work programs, youth services programs, day treatment programs, group home services, and detention services. Specific annual training of Department workers in community-based services providing the above court-related services is also to be included for expenditure of funds received from court costs in juvenile cases by the Department of Human Services.

Laws 1983, c. 250, § 1, operative July 1, 1983. Laws 1985, c. 164, § 2, eff. Nov. 1, 1985; Laws 1987, c. 181, § 5, eff. July 1, 1987.

### Historical and Statutory Notes

The 1985 amendment, in subsection A, rewrote the penultimate paragraph, which prior thereto read:

"For each time a jury to impanelled  
..... \$10.00"

; and in the last paragraph, substituted "\$10.00" for "\$7.00"; and in subsection F, in the second sentence, inserted "juvenile offender victim restitution work programs,".

The 1987 amendment increased certain fees.

**Severability clauses, repeal of conflicting laws and effective/operative dates**

Section 2 of Laws 1983, c. 250 provides for an operative date.

#### Title of Act:

An Act relating to fees; authorizing costs in certain juvenile proceedings; providing for payment and collection; specifying amounts; providing procedures; providing for codification; providing an operative date; and declaring an emergency. Laws 1983, c. 250.

### Library References

Infants ⇐116.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 237, 239, 242, 270.

## INDEX

### CONSULT GENERAL INDEX

END OF VOLUME

