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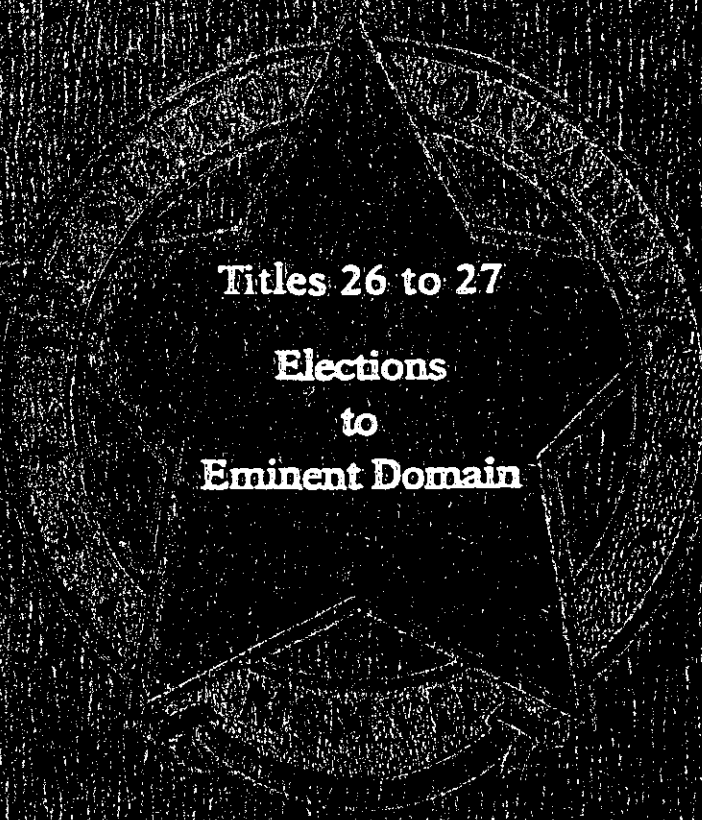
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OKLAHOMA  
STATUTES  
ANNOT.

26 to 27

Elections - Eminent Domain

# OKLAHOMA STATUTES ANNOTATED

The seal of the State of Oklahoma is embossed in the background. It features a five-pointed star with a smaller five-pointed star inside it. The words "GREAT SEAL OF THE STATE OF OKLAHOMA" are inscribed around the perimeter of the star.

Titles 26 to 27  
Elections  
to  
Eminent Domain

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# OKLAHOMA STATUTES ANNOTATED

## **Title 26. Elections**

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## **Title 27. Eminent Domain**

Under Arrangement of the  
Official Oklahoma Statutes

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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; and Title 27, Eminent Domain.

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 45th Legislature (1996).

### 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 .....	923 P.2d 87
Supreme Court Reporter .....	116 S.Ct. 2581
United States Reports .....	510 U.S. (part)
Lawyers' Edition, Second Series .....	135 L.Ed.2d (part)
Federal Reporter, Third Series .....	95 F.3d 1169
Federal Supplement .....	934 F.Supp. 1401
Federal Rules Decisions .....	168 F.R.D. 74
Bankruptcy Reporter .....	200 B.R. 288
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Oklahoma Opinions of the	
Attorney General .....	July 25, 1996
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## **PREFACE**

Preceding the Notes of Decisions under each section, the user will find a detailed alphabetical index to the annotations which 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 which enhance its value as a medium of research. These features include—

- Historical and Statutory 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 and to Vernon's Oklahoma Forms and Oklahoma Probate Law and Practice;
- 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**

February, 1997

# **WESTLAW ELECTRONIC RESEARCH GUIDE**

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# ABBREVIATIONS

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App. -----	Appendix
Art. -----	Article
B.R. -----	Bankruptcy Reporter
c. -----	Chapter of Act
Ch. -----	Chapter
Cl.Ct. -----	Claims Court Reporter
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.3d -----	Federal Reporter, Third Series
F.R.D. -----	Federal Rules Decision
F.Supp. -----	Federal Supplement
Fed.Cl. -----	Federal Claims Reporter
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. Supplement 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

## ABBREVIATIONS

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

## EFFECTIVE DATES OF LAWS

---

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

## EFFECTIVE DATES OF LAWS

Year	Legislature	Adjournment Date	Effective Date
1976	35th (1st Ex.Sess.)	June 23, 1976	*
1977	36th (1st Reg.)	June 8, 1977	September 7, 1977
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	*
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
1991	43rd (1st Ex.Sess.)	Jan. 18, 1991	*
1991	43rd (1st Reg.)	May 31, 1991	August 30, 1991
1992	43rd (2d Reg.)	May 29, 1992	August 28, 1992
1993	44th (1st Reg.)	May 28, 1993	August 27, 1993
1994	44th (2d Reg.)	May 27, 1994	August 26, 1994
1994	44th (1st Ex.Sess.)	May 27, 1994	No legislation
1994	44th (2d Ex.Sess.)	Nov. 4, 1994	*
1995	45th (1st Reg.)	May 26, 1995	August 25, 1995
1995	45th (1st Ex.Sess.)	Nov. 19, 1996**	No legislation
1996	45th (2d Reg.)	May 31, 1996	August 30, 1996

\* Emergency measures only

\*\* Expired

## CITE THIS BOOK

Thus: \_\_\_\_\_ Okl.St. Ann. § \_\_\_\_\_

\*

# **OKLAHOMA STATUTES**

## **ANNOTATED**

### **TITLE 26**

### **ELECTIONS**

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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.  
Area school districts, bonds, see Title 70, §§ 4415, 4416.  
Arrest, electors, privilege from, exceptions, 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.

Community, incorporation as 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, § 4.

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 et seq.; 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, see Const. Art. 2, § 4.

Right 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.

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 voters, absentee voting, 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 third 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 here-

with are repealed; providing for operative date; and declaring an emergency. Laws 1974, c. 153.

### Cross References

Presidential electors, see Title 26, § 10-101 et seq.

### 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.

### 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, generally 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*, Okla., 143 Okla. 281, 289 P. 254 (1930).

#### 2. General elections, generally

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, Okla., 203 Okla. 438, 222 P.2d 1032 (1950).

Under St.1931, § 5792 (repealed; see, 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*, Okla., 163 Okla. 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*, Okla., 1 Okla. 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 v. Barnes*, Okla., 22 Okla. 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). *State v. Barnes*, Okla., 22 Okla. 191, 97 P. 997 (1908).

## § 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 third 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 candidates 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 Title 26, § 6-101 et seq.

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

Primary elections, see Const. Art. 3, § 3.

Tie vote, see Title 26, § 8-105.

### Library References

Elections ⇨126(1), 159.

WESTLAW Topic No. 144.

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

### Notes of Decisions

City and town offices 5

Date of election 3

Party nominees 4

Primary elections, generally 2

Validity of prior laws 1

#### 1. Validity of prior laws

Laws 1929, Sp. Sess., c. 241 (repealed; see, now, this section) providing for gen-

## Note 1

eral primary elections, did not deprive citizen of free right of suffrage guaranteed by Constitution. *Kerr v. Luttrell*, Okla., 143 Okla. 275, 288 P. 938 (1930).

Laws 1929, Sp.Sess., c. 241 (repealed; now this section) did not deprive elector of constitutional right of suffrage. *Kerr v. Luttrell*, Okla., 143 Okla. 275, 288 P. 938 (1930).

## 2. Primary elections, generally

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.*, Okla., 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*, Okla., 200 Okla. 577, 198 P.2d 417 (1948).

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

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. *Craig v. Bond*, Okla., 160 Okla. 34, 15 P.2d 1014 (1932).

Law regulating method of nominating party candidates includes every class of elective offices within state requiring party primary nominations. *Dancy v. Peabody*, Okla., 132 Okla. 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*, Okla.Crim.App., 11 Okla.Crim. 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*, Okla.Crim.App., 7 Okla.Crim. 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. *Ex parte Wilson*, Okla.Crim.App., 7 Okla.Crim. 610, 125 P. 739 (1912).

## 3. Date of election

Former § 113 of this title (repealed; see, 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.*, Okla., 203 Okla. 1, 217 P.2d 805 (1950).

Former § 113 of this title (repealed; see, 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. *State ex rel. Sizemore v. State Election Bd.*, Okla., 203 Okla. 1, 217 P.2d 805 (1950).

## 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*, Okla., 200 Okla. 577, 198 P.2d 417 (1948).

By reason of Comp. Laws 1909, § 3266 (repealed; see, 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 candidacy 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, Okla.*, 33 Okla. 581, 127 P. 384 (1912).

### 5. City and town offices

Former § 113 of this title (repealed; see, 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, Okla.*, 197 Okla. 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 second 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.

### Library References

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

### United States Supreme Court

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

*Party*, U.S.Wash.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, Title 11, § 16-108). 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, Title 11, §§ 16-205, 16-206). 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 following 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. *Brickell v. State Election Bd.*, 203 Okla. 361, 221 P.2d 783 (1950); *Coe v. State Election Bd.*, 203 Okla. 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.

#### 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

Primary elections, see Const. Art. 3, § 3.

Registration of political affiliation of voters, see Title 26, § 4-110.1.

### Library References

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

### 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*, U.S.Conn.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*, U.S.Conn.1986, 107 S.Ct. 544, 479 U.S. 208, 93 L.Ed.2d 514.

Right of free political association, see  
*Kusper v. Pontikes*, U.S.Ill.1973, 94 S.Ct.  
 303, 414 U.S. 51, 38 L.Ed.2d 260.

### Notes of Decisions

#### Purpose 1

#### 1. Purpose

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

was to prevent the voter at a primary  
 election from voting different party bal-  
 lots for congressional, state, and county  
 candidates. Ex parte Wilson, Okla.Crim.  
 App., 7 Okla.Crim. 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 cen-

tral 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."

**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.

**Notes of Decisions**

**Death of party's nominee 1**  
**Judicial candidates 2**

**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 by the order of the state election board be placed upon official ballot for the coming general election. *Watson v. State Election Bd.*, Okla., 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. *Op.Atty.Gen. No. 80-209* (Sept. 16, 1980).

**2. Judicial candidates**

This section which provides for substitution of political party's nominee for office following death of nominee before general election had no application where judge who filed properly for office died before general election, as judges are elected on nonpartisan ballots. *Evans v. State Election Bd. of State of Okl.*, Okla., 804 P.2d 1125 (1990).

**§ 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: St. 1931, § 5648.  
 Laws 1913, c. 157, p. 318, § 9. 26 O.S. 1971, § 111.  
 Comp. St. 1921, § 6283.

## Cross References

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

## Law Review and Journal Commentaries

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

## Library References

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

## 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*, U.S. Ind. 1974, 94 S.Ct. 656, 414 U.S. 441, 38 L.Ed.2d 635, rehearing denied 94 S.Ct. 1476, 415 U.S. 952, 39 L.Ed.2d 568.

Party names, established political parties, affiliation, restrictions on use, see *Norman v. Reed*, 1992, 112 S.Ct. 698, 502 U.S. 279, 116 L.Ed.2d 711, on remand 180 Ill. Dec. 685, 154 Ill.2d 77, 607 N.E.2d 1198, certiorari denied 113 S.Ct. 3000, 509 U.S. 906, 125 L.Ed.2d 693.

## Notes of Decisions

## Political parties, generally 1

## 1. Political parties, generally

"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

## Note 1

of the Government and are governed by their own usages and establish their own rules. *Cooper v. Cartwright*, Okla., 200 Okla. 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*, Okla.Crim.App., 7 Okla. Crim. 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, in the first sentence, substituted "After" for "Within ninety (90) days after", and added the fourth sentence.

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 and Journal Commentaries

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

## Library References

Elections ⇨ 121(1).

WESTLAW Topic No. 144.

C.J.S. Elections § 83 et seq.

## United States Supreme Court

Ballot petitions, number of signatures required of new political parties in multi-district political subdivisions, see *Norman v. Reed*, 1992, 112 S.Ct. 698, 502 U.S. 279, 116 L.Ed.2d 711, on remand, 180 Ill.Dec. 685, 154 Ill.2d 77, 607 N.E.2d 1198, certiorari denied 113 S.Ct. 3000, 509 U.S. 906, 125 L.Ed.2d 693.

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

State committees, composition, see *Marchioro v. Chaney*, U.S.Wash.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

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 (Okla.)1988, 844 F.2d 740.

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 (Okla.)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.10 (Okla.)1982, 687 F.2d 1375, 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. *Arutunoff v. Oklahoma State Election Bd.*, C.A.10 (Okla.)1982, 687 F.2d 1375, certiorari denied 103 S.Ct. 1892, 461 U.S. 913, 77 L.Ed.2d 282.

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. *Arutunoff v. Oklahoma State Election Bd.*, C.A.10 (Okla.)1982, 687 F.2d 1375, certiorari denied 103 S.Ct. 1892, 461 U.S. 913, 77 L.Ed.2d 282.

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. *Arutunoff v. Oklahoma State Election Bd.*, C.A.10 (Okla.)1982, 687 F.2d 1375, certiorari denied 103 S.Ct. 1892, 461 U.S. 913, 77 L.Ed.2d 282.

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.Okla.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.Okla.1987, 685 F.Supp. 1193, affirmed 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.*, W.D.Okla.1984, 593 F.Supp. 118.

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.*, W.D.Okla.1984, 593 F.Supp. 118.

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.*, W.D.Okla.1980, 497 F.Supp. 646.

**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 pre-

scribed by law. *Crussel v. Oklahoma State Election Bd.*, W.D.Okla.1980, 497 F.Supp. 646.

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*, Okla., 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 and Journal Commentaries**

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

**Library References**

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

**Notes of Decisions**

**Construction and application** 2  
**Validity** 1

(Okla.)1982, 687 F.2d 1375, certiorari denied 103 S.Ct. 1892, 461 U.S. 913, 77 L.Ed.2d 282.

**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.10

**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

## Note 2

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, c. 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".

#### Cross References

Registration of political affiliation of voters, see Title 26, § 4-110.1.

#### Library References

Elections ⇨ 121(1).

WESTLAW Topic No. 144.

C.J.S. Elections § 83 et seq.

### § 1-111. Repealed by Laws 1991, c. 129, § 5, eff. April 1, 1992

#### Historical and Statutory Notes

The repealed section, prohibiting school district and vocational-technical school district elections on certain days,

was derived from Laws 1985, c. 193, § 8; Laws 1988, c. 296, § 1.

## 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".

**Source:**

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

St.1931, § 5672.

26 O.S.1971, § 11.

**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 Legis-

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

**Library References**

Elections ⇨51.

WESTLAW Topic No. 144.

C.J.S. Elections § 57 et seq.

**Notes of Decisions**

**Residence 1**

and any action against the board must be brought in Oklahoma county. Burns v. Slater, Okla., 559 P.2d 428 (1974).

**1. Residence**

State election board is a state agency officially residing in Oklahoma county

**§ 2-101.1. Appointment of members from certain political parties**

No later than February 15, 1983, and every four (4) years thereafter, the state central committee of the political party having the largest number of registered voters, based upon the latest January 1 registration report, shall submit to the Governor a list of ten (10) nominees for membership on the State Election Board, and the state central committee of the political party having the second largest number of registered voters, based upon the latest January 1 registration report, shall submit to the Governor a list of five (5) nominees for membership on the State Election Board. The Governor shall be confined to the lists of names submitted by each party and shall appoint two (2) members of the State Election Board from the political party with the largest number of registered voters, and one (1) member of the State Election Board from the political party with the second largest number of registered voters. Appointments shall be made no later than March 1, 1983, and every four (4) years thereafter.

Laws 1981, c. 286, § 2, emerg. eff. June 29, 1981.

**Historical and Statutory Notes**

Section 11 of Laws 1981, c. 286 directs codification.

Comp.Laws 1909, § 3103.

R.L.1910, § 3064.

Laws 1913, c. 157, p. 316, § 4.

Comp.St.1921, §§ 6131, 6278.

**Source:**

Laws 1907-08, p. 319.

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.

### 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 Legis-

lature 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.

### Notes of Decisions

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

##### 1. Validity of prior laws

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; see, now, this section)

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

## § 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****Source:**

Laws 1913, c. 157, p. 316, § 4.  
Comp.St.1921, § 6278.  
St.1931, § 5693.

26 O.S.1971, § 12.  
Laws 1974, c. 153, § 2-102.  
26 O.S.Supp.1980, § 2-102.

**§ 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****Source:**

Laws 1907-08, p. 319.  
Comp.Laws 1909, § 3103.  
R.L.1910, § 3064.  
Comp.St.1921, § 6131.

St.1931, § 5680.  
Laws 1965, c. 198, § 2.  
26 O.S.1971, § 55.  
Laws 1974, c. 153, § 2-102.  
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; see, 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, Okla.*, 43 Okla. 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; see, 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, Okla.*, 43 Okla. 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; see, now, this section) which provided that the secretary of the state Senate shall be secretary of the state election board. *Riley v. State, Okla.*, 43 Okla. 65, 141 P. 264 (1914).

**§ 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, derived from Laws 1981, c. 286, § 9, related to per diem and mileage for the State Election Board. See Title 74, § 500.1.

### § 2-101.9. Travel and expenses

Members of the State Election Board shall be paid Fifty Dollars (\$50.00) per diem for each meeting for the purpose of conducting hearings required by law, and Thirty-five Dollars (\$35.00) per diem for other meetings, and shall be allowed mileage reimbursement at the rate provided by the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes.

Laws 1992, c. 247, § 1, emerg. eff. May 21, 1992.

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

### DISPOSITION TABLE

Showing where the subject matter of §§ 2-102 to 2-105 can now be found.

Repealed Section	New Section	Repealed Section	New Section
2-102.....	2-101.4	2-104.....	2-101.7
2-103.....	2-101.6	2-105.....	None

### Historical and Statutory Notes

Repealed § 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. 317, § 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.

### § 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.



## Notes of Decisions

In general 1  
 Delegation of authority 2  
 Jurisdiction 3

## 1. In general

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.*, Okla., 22 Okla. 377, 97 P. 1003 (1908).

## 2. Delegation of authority

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.*, Okla., 203 Okla. 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. *Brickell v. State Election Bd.*, Okla., 203 Okla. 362, 221 P.2d 785 (1950).

## 3. Jurisdiction

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

## § 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 county election boards and shall have the authority to provide administrative supervision to any county election board. 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 Secretary of the State Election Board; the procedure and adoption of such rules and regulations shall be subject to the provisions of the Administrative Procedures Act, Section 250.1 et seq. of Title 75 of the Oklahoma Statutes. The Secretary shall promote and encourage voter registration and voter participation in elections. The Secretary shall be the chief state election official responsible for coordination of state responsibilities under the National Voter Registration Act of 1993.<sup>1</sup> The Secretary shall have the authority to implement programs for confirmation of voter registration and for removal of ineligible voters

in compliance with general Oklahoma election law<sup>2</sup> and requirements of the National Voter Registration Act of 1993.

Laws 1974, c. 153, § 2-107, operative Jan. 1, 1975; Laws 1979, c. 240, § 2, emerg. eff. July 1, 1979; Laws 1992, c. 247, § 2, emerg. eff. May 21, 1992; Laws 1994, c. 260, § 1, eff. Jan. 1, 1995.

<sup>1</sup> 42 U.S.C.A. § 1973gg et seq.

<sup>2</sup> Title 26, § 1-101 et seq.

### Historical and Statutory Notes

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

The 1992 amendment, in the first sentence, inserted "and shall have the authority to provide administrative supervision to any county election board", and in the third sentence, inserted ", Section 250.1 et seq. of Title 75 of the Oklahoma Statutes".

The 1994 amendment, in the first sentence, deleted "the several" following "authority over", in the third sentence, inserted "Secretary of the", and added the fifth and sixth sentences.

Section 29 of Laws 1994, c. 260 provides:

"The State Election Board is hereby authorized to promulgate emergency

rules to implement this act prior to its taking effect provided that such rules shall take effect no earlier than January 1, 1995, with respect to Sections 1 through 19 and Sections 21 through 25 of this act and September 1, 1994, with respect to Section 20 of this act. [So in enrolled bill; probably should read 'with respect to Sections 1 through 20 and Sections 22 through 25 of this act and September 1, 1994, with respect to Section 21 of this act']."

### 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****Source:**

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

**§ 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****Source:**

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

**Library References**

Records ⇨30.	C.J.S. Records §§ 60, 62, 63, 65, 93,
WESTLAW Topic No. 326.	95.

**§ 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.	Laws 1910-11, c. 106, p. 225, § 3.
Comp.Laws 1909, § 3100.	Comp.St.1921, § 6128.
R.L.1910, § 3061.	St.1931, § 5675.
	Laws 1965, c. 198, § 1.
	26 O.S.1971, § 21.

**Library References**

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

**§ 2-111. Appointment of members and alternates—Terms—Parties to submit nominations—Vacancies**

The State Election Board shall appoint two members of each county election board, and two alternates, 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 and a nominee to serve as the alternate. Said nominations 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 and one from each party to serve as the alternate. Said appointments shall be made no later than May 1, 1975, and every four (4) years thereafter. Alternates shall serve on the county election board at any meeting that the member for whom the person is an alternate is unable to attend. 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; Laws 1993, c. 316, § 3, eff. Sept. 1, 1993.

**Historical and Statutory Notes**

The 1993 amendment, in the first sentence, inserted "and two alternates," in the second sentence, inserted "and a nominee to serve as the alternate", in the third sentence, substituted "nominations" for "nomination", in the fourth sentence, inserted "and one from each party to serve as the alternate", and added the sixth sentence.

**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.

**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.

**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".

#### Source:

Laws 1907-08, p. 319.

R.L.1910, § 3063.

Laws 1910-11, c. 106, p. 226, § 4.

Comp.St.1921, § 6130.

St.1931, § 5677.

Laws 1937, p. 142, § 1.

26 O.S.1941, § 24.

Laws 1945, p. 98, § 1.

Laws 1947, p. 46, § 1.

Laws 1949, p. 63, § 2.

Laws 1953, p. 102, § 1.

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 1968, c. 389, § 1.

26 O.S.1971, § 24a.

### 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.

### Notes of Decisions

#### Jurisdiction 1

##### 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. *Par-doe v. Sellers*, Okla., 164 Okla. 80, 3 P.2d 709 (1931).

County election board has original jurisdiction to hear election contest involv-

ing office of judge of superior court. *Par-doe v. Sellers*, Okla., 164 Okla. 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 Bd. of Kingfisher County v. State*, Okla., 43 Okla. 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 ( $\frac{1}{2}$ ) 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 1916, c. 24, p. 38, § 7.  
Comp.St.1921, § 6255.  
St.1931, § 5657.  
Laws 1949, p. 214, § 2.

Laws 1957, p. 178, § 20.  
Laws 1961, p. 245, § 1.  
26 O.S.1961, § 77.  
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  
**Number of employees** 2  
**Records and files** 5

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 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).

**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*, Okla., 172 Okla. 101, 44 P.2d 84 (1935).

**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.*, Okla., 780 P.2d 707 (1989).

**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**

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).

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

**§ 2-118. Compensation of secretaries**

The secretary of each county election board shall be paid an annual salary according to the following schedule; provided, however, that the salary of a county election board secretary shall not fall below the

level of the June 30, 1995, salary, regardless of the number of registered voters, excluding inactive, in the county and provided that no salary shall be increased to the secretary of any county election board while that county is under the administrative supervision of the Secretary of the State Election Board:

Registered Voters	Salary
0 to 10,000	\$15,438.28
10,001 to 15,000	\$16,238.28
15,001 to 17,500	\$19,402.45
17,501 to 25,000	\$22,578.93
25,001 to 50,000	\$28,288.18
50,001 to 75,000	\$37,160.58
75,001 to 150,000	\$42,285.58
150,001 or more	\$47,410.58

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.

Laws 1974, c. 153, § 2-118, operative Jan. 1, 1975; Laws 1975, c. 103, § 1, emerg. 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, 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; Laws 1991, c. 299, § 7, operative July 1, 1991; Laws 1992, c. 332, § 4, eff. July 1, 1992; Laws 1995, c. 315, § 1, eff. July 1, 1995; Laws 1996, c. 57, § 2, eff. July 1, 1996.

#### Historical and Statutory Notes

The 1975 amendment rewrote the salary schedule, which prior thereto read:		Registered Voters	Salary
		15,001 to 25,000	7,500
Registered Voters		25,001 to 50,000	9,000
0 to 5,000		50,001 to 100,000	10,500
5,001 to 10,000		100,000 or more	12,000
10,001 to 15,000			

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
50,001 or more	4,000"

The 1978 amendment, in the salary schedule, substituted "3,400" for "3,000", "5,300" for "4,500", "7,200" for "6,000", "9,100" for "7,500", "11,000" for "9,000", "14,500" for "10,500" and "20,000" for "12,000"; 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, in the salary schedule, substituted "3,800" for "3,400", "5,800" for "5,300", "7,800" for "7,200", "9,800" for "9,100", "11,800" for "11,000", "15,400" for "14,500" and "21,000" for "20,000"; and deleted the second sentence, which 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 the second sentence.

The 1981 amendment rewrote the section, which prior thereto 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	\$ 3,800
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

"One-half (½) of the secretary's salary shall be paid from state funds and one-half (½) from county funds, and the salary shall be paid on a monthly basis. 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 1982 amendment, in the salary schedule, substituted "5,184.00" for "4,712", "7,920.00" for "7,192", "10,644.00" for "9,672", "13,368.00" for "12,152", "16,104.00" for "14,632", "21,012.00" for "19,096" and "28,644.00" for "26,040".

The 1985 amendment, in the salary schedule, substituted "5,604.00" for "5,184.00", "8,566.00" for "7,920.00", "11,496.00" for "10,644.00", "14,436.00" for "13,368.00", "17,388.00" for "16,104.00", "22,692.00" for "21,012.00" and "30,936.00" for "28,644.00".

The 1987 amendment designated the existing text as subsection A; in subsection A, in the 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)".

The 1991 amendment rewrote the section, which prior thereto read:

"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."

The 1992 amendment, in the first sentence, inserted "and provided that no salary shall be increased to the secretary of any county election board while that county is under the administrative supervision of the Secretary of the State Election Board"; and in the salary schedule, substituted "50,001 to 75,000" for "50,001 or more", and added "75,001 to 150,000 ... 39,303.00" and "150,001 or more ... 44,303.00".

Section 2 of Laws 1994, c. 261 provides:

"Effective October 1, 1994, all County Election Board Secretaries shall be awarded an annualized salary increase of Eight Hundred Dollars (\$800.00) per year above the salary amount in effect on September 30, 1994. Such salary increase shall be made regardless of any salary limitation provided in Section 2-118 of Title 26 of the Oklahoma Statutes."

The 1995 amendment, in the first sentence, substituted "1995," for "1991"; and rewrote the salary schedule, which prior thereto read:

Registered Voters	Salary
0 to 5,000	\$ 7,704.00
5,001 to 10,000	10,804.00
10,001 to 15,000	13,891.00
15,001 to 17,500	16,978.00
17,501 to 25,000	20,077.00
25,001 to 50,000	25,647.00
50,001 to 75,000	34,303.00
75,001 to 150,000	39,303.00
150,001 or more	44,303.00"

The 1996 amendment, in the salary schedule, substituted "\$15,438.28" for "\$14,238.28", "\$16,238.28" for "\$15,038.28", "\$19,402.45" for "\$18,202.45", "\$22,578.93" for "\$21,378.93", "\$28,288.18" for "\$27,088.18", "\$37,160.58" for "\$35,960.58", "\$42,285.58" for "\$41,085.58" and "\$47,410.58" for "\$46,210.58".

Section 8 of Laws 1996, c. 57, as amended by Laws 1996, c. 300, § 5, provides for an effective date of July 1, 1996.

**Source:**

- Laws 1907-08, p. 319.
- R.L.1910, § 3063.
- Laws 1910-11, c. 106, p. 226, § 4.
- Laws 1916, c. 24, p. 38, § 7.
- Comp.St.1921, §§ 6130, 6255.
- St.1931, §§ 5657, 5677.
- Laws 1937, p. 142, § 1.
- 26 O.S.1941, § 24.
- Laws 1945, c. 98, § 1.
- Laws 1947, p. 46, § 1.
- Laws 1949, p. 63, § 2.
- Laws 1949, p. 214, § 2.
- 26 O.S.1951, § 77.
- Laws 1953, p. 102, §§ 1, 2.
- Laws 1953, p. 103, § 1.
- Laws 1953, p. 112, § 22.
- Laws 1957, pp. 171, 178, §§ 1, 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, 93.20.

### Library References

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

### Notes of Decisions

#### Appropriation of funds 2 Status of secretary 1

##### 1. 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 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).

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

##### 2. 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 1957, p. 178, § 21.  
26 O.S.1971, §§ 93.21, 189.

### Cross References

Appropriation of public money, see Title 68, § 3001 et seq.

### Library References

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

Notes of Decisions

Construction and application 1  
Election expenses 2

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 of the

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.*, Okla., 157 Okla. 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, derived from certification of registered voters by the Laws 1974, c. 153, § 2-120, related to the secretary of the county election board.

§ 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, voting devices, ballot boxes and 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; Laws 1991, c. 321, § 1, eff. March 1, 1992.

Historical and Statutory Notes

The 1991 amendment, in the second sentence, inserted "voting devices, ballot boxes and".

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. The county election board office shall be open a minimum of six (6) 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; Laws 1995, c. 315, § 2, eff. July 1, 1995.

### Historical and Statutory Notes

The 1981 amendment added the third sentence.

The 1995 amendment rewrote the second sentence, which prior thereto read, "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."

### Library References

Records ⇨30.  
WESTLAW Topic No. 326.

C.J.S. Records §§ 60, 62, 63, 65, 93, 95.

## § 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

Source:  
Laws 1907-08, p. 320.  
Comp.Laws 1909, § 3104.  
R.L.1910, § 3065.

Laws 1910-11, c. 106, p. 226, § 5.  
Comp.St.1921, § 6132.  
St.1931, § 5681.  
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 seventh sentence, inserted "the vacancy shall be filled".

#### Source:

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

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.

#### 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****Source:**

Laws 1907-08, pp. 324, 332, 339.  
 Comp.Laws 1909, §§ 3114, 3164, 3190.  
 R.L.1910, §§ 3075, 3097.

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, 189.

**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 (½) 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****Source:**

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.

Laws 1943, p. 89, § 2, State Question No. 312, Referendum Petition No. 89.  
 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.

**Library References**

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

Notes of Decisions

Disqualification of ballot 1  
Political parties 2

1. Disqualification of ballot

Any one judge could prevent ballot from being counted under Laws 1899, c. 13, p. 154, § 48 (now repealed). *Roberson v. Hubler*, Okla., 11 Okla. 297, 67 P. 477 (1901).

2. Political parties

R.L.1910, § 3077 (repealed; see, now, this section) provided for equitable distribution of counters between all organized political parties, not exceeding four. *Rogers v. Reynolds*, Okla., 43 Okla. 528, 143 P. 515 (1914).

§ 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 Sixty Dollars (\$60.00) 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 Forty-seven Dollars (\$47.00) 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 statewide 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, eff. July 1, 1980; Laws 1981, c. 286, § 1, eff. July 1, 1981; Laws 1995, c. 315, § 3, eff. July 1, 1995.

<sup>1</sup> Title 74, § 500.1 et seq.

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)".

The 1995 amendment, in the first sentence, substituted "Sixty Dollars (\$60.00)" for "Fifty Dollars (\$50.00)";

and in the second sentence, substituted "Forty-seven Dollars (\$47.00)" for "Thirty-seven Dollars (\$37.00)".

#### 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, 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; Laws 1995, c. 290, § 1, eff. Nov. 1, 1995.

#### Historical and Statutory Notes

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

The 1995 amendment, in the first sentence, deleted "or to serve as a counter for a precinct election board," preceding "one must be".

### Library References

Elections ⇐51.

WESTLAW Topic No. 144.

C.J.S. Elections § 57 et seq.

## § 2-132. Disqualification of board members

No person shall serve on a county election board, precinct election board or absentee voting board at any election in which he or she is a candidate for office, or is a deputy or regular employee of a candidate for office. No person shall serve as chair or vice-chair of a county election board, precinct election board or absentee voting board at any election in which he or she 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 the office or position no later than ten (10) days following the close of the filing period during which such candidacy was filed.

The secretary of the county election board shall not participate in or carry out any duties or functions associated with the office during the actual conduct of a contest of candidacy or recount if the secretary is related within the third degree by either consanguinity or affinity to a candidate who is the petitioner or contestee in the contest of candidacy or who is a candidate in an election being recounted. The Secretary of the State Election Board shall appoint a replacement to carry out the duties or functions of the office, including voting as a member of the county election board, during the actual conduct of the contest of candidacy or recount.

Laws 1974, c. 153, § 2-132, operative Jan. 1, 1975; Laws 1983, c. 171, § 3, emerg. eff. June 6, 1983; Laws 1993, c. 316, § 5, eff. Sept. 1, 1993; Laws 1994, c. 55, § 1, eff. Sept. 1, 1994; Laws 1995, c. 290, § 2, eff. Nov. 1, 1995.

### Historical and Statutory Notes

The 1983 amendment added the third sentence.

The 1993 amendment, in the first sentence, substituted ", precinct election board, absentee voting board" for "or precinct election board,".

The 1994 amendment rewrote the section, which prior thereto read:

"No person shall serve on a county election board, precinct election board, absentee voting 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."

The 1995 amendment, in the first paragraph, in the first sentence, substituted "or absentee voting board" for ", absentee voting board or as a counter for a precinct election board,"; in the second sentence, substituted "chair or vice-chair of a county election board, precinct election board or absentee voting board" for "chairman or vice-chairman of a county

election board, or on a precinct election board, absentee voting board or as a counter for a precinct election board,"; and in the fourth sentence, substituted "the office" for "his office".

#### Source:

Laws 1907-08, p. 322.  
Comp.Laws 1909, § 3107.  
R.L.1910, § 3068.  
Laws 1910-11, c. 106, p. 227, § 6.  
Comp.St.1921, § 6135.  
St.1931, § 5684.  
Laws 1935, p. 120, § 1.  
Laws 1943, p. 87, § 1.  
Laws 1953, p. 113, § 1.  
26 O.S.1971, § 51.

#### Library References

Elections 6955.  
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 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.

Laws 1976, c. 90, § 6, emerg. eff. May 6, 1976; Laws 1994, c. 260, § 2, eff. Jan. 1, 1995.

**Historical and Statutory Notes**

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

The 1994 amendment, in subsection B, deleted "voter registrars and" following "including".

**Library References**

Elections ⇨57.

WESTLAW Topic No. 144.

C.J.S. Elections § 64.

**ARTICLE III. GENERAL ADMINISTRATION****§ 3-101. Elections to be on Tuesdays—Scheduling of special elections**

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

B. Except as otherwise provided by law, no special election shall be held by any county, school district, vocational-technical school district, municipality or other entity authorized to call elections except on the second Tuesday of January, February, May, June, July, August, September, October, November and December and the first Tuesday in March and April in odd-numbered years and the second Tuesday of January, February, March, May, June, October and December, the first Tuesday in April, the fourth Tuesday in August, the third Tuesday in September and the first Tuesday after the first Monday in November of any even-numbered year.

Laws 1974, c. 153, § 3-101, operative Jan. 1, 1975; Laws 1991, c. 129, § 1, eff. April 1, 1992; Laws 1992, c. 247, § 3, emerg. eff. May 21, 1992.

**Historical and Statutory Notes**

The 1991 amendment designated the existing text as subsection A and added subsection B.

The 1992 amendment, in subsection B, substituted "May, June, July, August, September, October, November and December and the first Tuesday in March and April in odd-numbered years and the second Tuesday of January, February,

March, May, June, October and December, the first Tuesday in April," for "March, July, August, September, October, November and December, the first Tuesday in April and May and the third Tuesday in June in odd-numbered years and the second Tuesday of January, February, March, April, October and December, the first Tuesday in May, the third Tuesday in June,".

**§ 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

Disenfranchisement of convicted felons who have completed their sentences and paroles, see *Richardson v. Ramirez*, U.S.Cal.1974, 94 S.Ct. 2655, 418 U.S. 24,

41 L.Ed.2d 551, 72 O.O.2d 232, on remand 12 Cal.3d 912, 117 Cal.Rptr. 562, 528 P.2d 378.

**§ 3-104. Costs—Payment from county or state funds**

The cost of rent for polling places, absentee ballot boxes, locks and keys, voting booths and United States flags shall be paid from county funds. The costs of notice and acknowledgement mailings as required in Sections 8 and 14 of this act<sup>1</sup> 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, voting devices and related supplies used in the Oklahoma Election Management System shall be paid from state funds. The cost of confirmation mailings required in Section 21 of this act<sup>2</sup> 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; Laws 1991, c. 321, § 2, eff. March 1, 1992; Laws 1994, c. 260, § 3, eff. Jan. 1, 1995.

<sup>1</sup> Title 26, §§ 4-103.1 and 4-113.

<sup>2</sup> Title 26, § 4-120.2.

**Historical and Statutory Notes**

The 1990 amendment, in the second [now third] sentence, substituted "The" for "In addition, the" and deleted "and precinct" following "cost of central"; and added the fourth [now fifth] sentence.

The 1991 amendment, in the first sentence, inserted "absentee", and in the fourth [now fifth] sentence, inserted "voting devices".

The 1994 amendment inserted the second sentence and added the sixth sentence.

**Source:**

Laws 1933, c. 199, p. 470, § 1.  
Laws 1957, p. 201, § 1.  
Laws 1959, p. 125, § 1.  
26 O.S.1971, § 551.

**Library References**

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

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

lating 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, re-

**§ 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.

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

lating 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, re-

**§ 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 and clerks 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 and clerk.

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 and clerks 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 and clerks 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 and clerks 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 or clerk 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 and clerks 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 and clerks in the payment made to the respective counties for elections for which said precinct inspectors, judges and clerks 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 and clerk 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 and clerks. Laws 1984, c. 210, § 4, operative Jan. 1, 1985; Laws 1986, c. 1, § 1, eff. July 1, 1986; Laws 1995, c. 290, § 3, eff. Nov. 1, 1995.

### 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, in-

cluding 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."

The 1995 amendment, in subsection A, in paragraph 1, substituted "and clerks" for "clerks and counters", and in paragraph 2, substituted "and clerk" for "clerk and counter"; in subsection B, in the first sentence, substituted "and clerks" for "clerks and counters"; in subsection C, in the first and third sen-

tences, substituted "and clerks" for "clerks and counters", and in the fourth sentence, substituted "or clerk" for "clerk or counter"; in subsection D, in the second sentence, substituted "and clerks" for "clerks and counters"; and in subsection E, in the first sentence,

twice substituted "and clerks" for "clerks and counters", in the second sentence, substituted "and clerk" for "clerk and counter", and in the third sentence, substituted "and clerks" for "clerks and counters".

### 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 and clerks provided in Section 3-105.1 of this title, 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; Laws 1995, c. 290, § 4, eff. Nov. 1, 1995.

### Historical and Statutory Notes

The 1995 amendment, in the first sentence, substituted "judges and clerks provided in Section 3-105.1 of this title" for

"judges, clerks and counters provided in Section 3-105.1 of Title 6 of the Oklahoma Statutes".

## § 3-106. Repealed by Laws 1991, c. 321, § 57, eff. March 1, 1992

### Historical and Statutory Notes

The repealed section, relating to payment of costs for counties with voting

machines, was derived from Laws 1974, c. 153, § 3-106; Laws 1978, c. 57, § 1.

## § 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 fifth sentence, substituted "State Treasurer" for "State Auditor".

#### Cross References

Appropriation of public money, see Title 68, § 3001 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.

### § 3-108.1. Reimbursement of State Election Board for computer supplies

County election boards are authorized to reimburse the State Election Board for computer supplies consumed for the benefit of schools, municipalities and other local entities for the conduct of the local elections. Such reimbursement shall be deposited in the State Election Board Revolving Fund.

Laws 1992, c. 247, § 4, emerg. eff. May 21, 1992.

### § 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, eff. July 1, 1979.

<sup>1</sup> Title 74, § 500.1 et seq.

#### 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 precinct election board and voter registration personnel

In each even-numbered year, the Secretary of the State Election Board shall cause to be conducted a training program in each county for precinct inspectors, judges, and clerks. Persons attending such training programs shall be allowed mileage reimbursement at the rate provided by the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes to be paid from county funds. The Secretary shall prescribe procedures for training of motor license agents, officials of voter registration agencies and others responsible for voter registration activities.

Laws 1974, c. 153, § 3-111, operative Jan. 1, 1975; Laws 1994, c. 260, § 4, eff. Jan. 1, 1995.

**Historical and Statutory Notes**

The 1994 amendment, in the first sentence, substituted "In each even-numbered year" for "Prior to the General Election in 1976, and every (2) years thereafter" and "precinct inspectors, judges, and clerks" for "voter registrars,

precinct inspectors, judges, clerks and counters", in the second sentence, inserted ", Section 500.1 et seq. of Title 74 of the Oklahoma Statutes", and added the third sentence.

**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. Said instructions shall be prescribed by the Secretary of the State Election Board.

Laws 1974, c. 153, § 3-113, operative Jan. 1, 1975; Laws 1991, c. 321, § 3, eff. March 1, 1992.

**Historical and Statutory Notes**

The 1991 amendment, in the first sentence, deleted "or upon each voting machine" following "booth".

**Library References**

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

**§ 3-114. Public information**

It shall be the duty of the secretary of each county election board to disseminate information about voter registration, the dates and time of elections, locations of polling places, 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; Laws 1994, c. 260, § 5, eff. Jan. 1, 1995.

**Historical and Statutory Notes**

The 1994 amendment, in the first sentence, inserted "voter registration," and deleted "names and addresses of voter registrars" following "places,".

**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 Title 26, § 6-117.

**§ 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.

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

In view of statute 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, Okla.*, 68 Okla. 264, 172 P. 1094 (1918).

A county election board was vested by statute 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. *Becknell v. State, Okla.*, 68 Okla. 264, 172 P. 1094 (1918).

**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 statute 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, W.D.Okla.1973, 361 F.Supp. 491.

### § 3-116. Precinct boundaries

A. The boundary line of any precinct shall not cross the boundary line of any district court judicial district electoral division or 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; Laws 1993, c. 362, § 8, eff. Sept. 1, 1993.

#### Historical and Statutory Notes

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

The 1990 amendment designated the existing text as subsection A, and added subsection B.

The 1993 amendment, in subsection A, inserted "district court judicial district electoral division or any".

#### 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, Okla., 102 Okla. 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, Okla., 67 Okla. 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 second 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 U.S. v. Board of Sup'rs of Warren County, Miss., 1977, 97 S.Ct. 833, 429 U.S. 642, 51 L.Ed.2d 106.

## § 3-118.1. Repealed by Laws 1990, c. 213, § 6, eff. Oct. 1, 1992

### Historical and Statutory Notes

Section 6 of Laws 1990, c. 213, repealing this section, was amended by Laws 1991, c. 311, § 1 to read:

"Section 5 of this act shall be repealed October 1, 1992."

The repealed section, derived from Laws 1990, c. 213, § 5, prohibited changes in precincts pending reapportionment.

## § 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 district court judicial district electoral division or 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 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; Laws 1991, c. 321, § 4, eff. March 1, 1992; Laws 1993, c. 362, § 9, eff. Sept. 1, 1993.

#### Historical and Statutory Notes

The 1979 amendment, in the first sentence, inserted "county".

The 1991 amendment, in the fifth sentence, deleted "boxes and" preceding "election materials".

The 1993 amendment, in the first sentence, inserted "district court judicial district electoral division or any".

#### Source:

Laws 1972, c. 167, § 1.  
26 O.S.Supp.1973, § 25a.

#### Library References

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

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

Except as otherwise provided for by law, 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; Laws 1992, c. 346, § 1, eff. Sept. 1, 1992.

#### Historical and Statutory Notes

The 1979 amendment added the second sentence.

The 1981 amendment added the third sentence.

The 1992 amendment, in the first sentence, substituted "Except as otherwise provided for by law, there" for "There".

**Cross References**

Electioneering prohibited, see Title 26, § 7-108.

**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. Voting devices—Ballot boxes**

There shall be one voting device and ballot box for each precinct. Each voting device shall be equipped with an opening through which a ballot may be inserted, counted and deposited into an attached ballot box which 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; Laws 1991, c. 321, § 5, eff. March 1, 1992.

**Historical and Statutory Notes**

The 1991 amendment rewrote the section, which prior thereto read:

"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."

**Source:**

Laws 1907-08, p. 334.

Comp.Laws 1909, § 3170.

R.L.1910, § 3103.

Comp.St.1921, § 6170.

Laws 1931, p. 92, § 2.

St.1931, § 5713.

26 O.S.1971, § 195.

**Cross References**

Counting of ballots, see Title 26, § 7-125 et seq.

**Library References**

Elections ⇨217.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 194, 204.

**§ 3-121.1. Repealed by Laws 1995, c. 290, § 18, eff. Nov. 1, 1995****Historical and Statutory Notes**

The repealed section, derived from Laws 1991, c. 2, § 1, related to voting devices and ballot boxes.

**§ 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

##### 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.

26 O.S.1971, § 190.

#### 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.

26 O.S.1971, § 190.

#### 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>	Comp.St.1921, § 6162.
Laws 1907-08, p. 332.	St.1931, § 5705.
Comp.Laws 1909, § 3162.	26 O.S.1971, § 187.
R.L.1910, § 3095.	

**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.

**Notes of Decisions****Failure to take oath 1****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 Incorpora-

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

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, Okla., 22 Okla. 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-four (24) 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; Laws 1994, c. 260, § 6, eff. Jan. 1, 1995.

**Historical and Statutory Notes**

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

The 1994 amendment, in the first sentence, substituted "twenty-four (24)" for "twenty-two (22)".

**Library References**

Records ☞ 30.  
WESTLAW Topic No. 326.

C.J.S. Records §§ 60, 62, 63, 65, 93, 95.

**§ 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.

**§ 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 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.1973, § 103.4.  
Laws 1974, c. 153, § 3-128.

**§ 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 read:

"'Mentally retarded persons' as defined in Section 3 of Title 43A of the

Oklahoma Statutes shall be ineligible to register."

**Source:**

Laws 1916, c. 24, p. 42, § 9.

Comp.St.1921, § 6257.

St.1931, § 5659.

Laws 1937, p. 147, § 6.

Laws 1941, p. 96, § 2.

Laws 1944, Ex.Sess. p. 2, § 1.

26 O.S.1951, § 79.

Laws 1953, p. 109, § 12.

Laws 1953, p. 566, § 6.

Laws 1955, p. 202, § 2.

Laws 1957, p. 172, § 1.

Laws 1957, p. 180, § 7.

Laws 1959, p. 117, § 10.

Laws 1961, p. 242, § 1.

Laws 1961, p. 246, § 2.

Laws 1963, c. 201, §§ 1 to 3.

Laws 1968, c. 151, § 3.

26 O.S.1971, §§ 93.1, 101e, 102.6, 103.12.



**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; pro-

viding 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 and Journal Commentaries**

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

**Library References**

Elections ⇨ 59, 98.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 16, 40.

**United States Supreme Court**

Disenfranchising convicted felons who have completed their sentences and paroles, see *Richardson v. Ramirez*, U.S.Cal.1974, 94 S.Ct. 2655, 418 U.S. 24, 41 L.Ed.2d 551, 72 O.O.2d 232, on remand 12 Cal.3d 912, 117 Cal.Rptr. 562, 528 P.2d 378.

Limitation of right to vote to persons who had "rendered" property for taxation, see *Hill v. Stone*, U.S.Tex.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*, Okla., 320 P.2d 1114 (1957).

**2. Residence**

Word "reside" within statute 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. *Johnson v. State Election Bd.*, Okla., 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 situ-

ated 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 resi-

dence where they are living they may register and vote in the county, state and federal elections. Op.Atty.Gen. No. 70-168 (June 8, 1970).

## § 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, pp. 33, 36 to 38, §§ 2, 5 to 7.  
Comp.St.1921, §§ 6250, 6253 to 6255.  
St.1931, §§ 5652, 5655 to 5657.  
Laws 1937, p. 147, § 6.  
Laws 1941, p. 96, § 2.  
Laws 1949, p. 214, § 2.  
26 O.S.1951, §§ 72, 75 to 77.  
Laws 1953, p. 109, § 12.

Laws 1953, p. 566, § 6.  
Laws 1955, p. 202, § 2.  
Laws 1957, p. 174, § 7.  
Laws 1957, p. 180, § 7.  
Laws 1959, p. 117, § 10.  
Laws 1961, p. 246, § 2.  
Laws 1963, c. 201, §§ 1 to 3.  
Laws 1965, c. 170, § 1.  
Laws 1968, c. 151, § 3.  
26 O.S.1971, §§ 93.7, 101e, 102.6, 103.12.

### Constitutional Provisions

Article 3, § 4 provides, in part:

" \* \* \* The Legislature may provide by law for the registration of electors

throughout the state and, when it is so provided, no person shall vote at any election unless he shall have registered according to law."

### Law Review and Journal Commentaries

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

### Library References

Elections ¶97, 118.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 38.

### Notes of Decisions

#### Necessity of registration 1

##### 1. Necessity of registration

A qualified elector, as prescribed by Constitution and laws of state, is eligible to vote in school district election notwithstanding he is not a registered voter under general election laws, such registra-

tion being no longer a prerequisite to eligibility. Jones v. Burkett, Okla., 346 P.2d 338 (1959).

Ballot cast by voter without valid registration certificate is not entitled to be counted. Cecil v. Geren, Okla., 135 Okla. 33, 273 P. 238 (1928), certiorari denied 49 S.Ct. 418, 279 U.S. 859, 73 L.Ed. 1000.

### § 4-103. Persons who will become qualified electors—Time for registration

Any person who will become a qualified elector before the next ensuing election at which he could vote shall be entitled to become a registered voter of the precinct of his or her residence not more than sixty (60) and not less than twenty-four (24) days prior to said election.

Laws 1974, c. 75, § 3, emerg. eff. April 19, 1974. Renumbered from § 93.33 by Laws 1976, c. 90, § 10, emerg. eff. May 6, 1976. Laws 1994, c. 260, § 7, eff. Jan. 1, 1995.

#### Historical and Statutory Notes

The 1994 amendment substituted "or her residence not more than sixty (60) and not less than twenty-four (24) days" for "residence during the last thirty (30) days preceding the close of registration".

#### Source:

Laws 1916, c. 24, p. 42, § 9.  
Comp.St.1921, § 6257.  
St.1931, § 5659.  
Laws 1937, p. 147, § 6.  
Laws 1941, p. 96, § 2.  
Laws 1944, Ex.Sess. p. 2, § 1.

26 O.S.1951, § 79.  
Laws 1953, p. 109, § 12.  
Laws 1953, p. 566, § 6.  
Laws 1955, p. 202, § 2.  
Laws 1957, p. 180, § 7.  
Laws 1959, p. 117, § 10.  
Laws 1961, p. 242, § 1.  
Laws 1961, p. 246, § 2.  
Laws 1963, c. 201, §§ 1 to 3.  
Laws 1968, c. 151, § 3.  
26 O.S.1971, §§ 93.1, 101e, 102.6, 103.12.

#### Library References

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

#### Notes of Decisions

##### Construction and application 1 Time for registration 2

##### 1. Construction and application

As used in statute 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. County Election

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

Statute 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, Okla., 191 Okla. 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, Okla., 135 Okla. 33, 273 P. 238 (1928), certiorari denied 49 S.Ct. 418, 279 U.S. 859, 73 L.Ed. 1000.

### § 4-103.1. Procedure to register or update registration

A. A qualified elector may apply to register to vote or update a registration to vote by:

1. Delivering by mail or otherwise a completed voter registration application to the State Election Board or any county election board;

2. Completing a voter registration application in person with any official of an agency described in Section 10 of this act;<sup>1</sup> or

3. Completing a voter registration application in person as part of an application for issuance, renewal or change of address for a driver's license or issuance of a state identification card issued pursuant to Section 6-105 of Title 47 of the Oklahoma Statutes with a designated representative of the Department of Public Safety.

B. The secretary of the county election board for the county of the applicant's residence shall send to each applicant by nonforwardable, first-class United States mail a notice of the disposition of the application. Notice mailing costs shall be paid by the county.

Laws 1994, c. 260, § 8, eff. Jan. 1, 1995.

<sup>1</sup> Title 26, § 4-109.2.

## § 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. 33, § 3.  
Laws 1917, c. 159, p. 253, § 1.  
Comp.St.1921, § 6251.  
St.1931, § 5653.  
Laws 1937, p. 149, § 14.  
Laws 1945, p. 99, § 1.  
Laws 1945, p. 98, § 1.

Laws 1949, p. 214, § 1.  
26 O.S.1951, § 73.  
Laws 1953, p. 568, § 14.  
Laws 1957, p. 173, § 3.  
Laws 1957, p. 182, § 2.  
Laws 1961, p. 243, § 1.  
Laws 1967, c. 38, § 1.  
Laws 1968, c. 389, § 3.  
Laws 1969, c. 217, § 1.  
26 O.S.1971, §§ 101m, 102.14.  
Laws 1972, c. 211, § 1.  
26 O.S.Supp.1972, § 93.3.

### Library References

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

## Repealed

**§§ 4-105 to 4-108.** Repealed by Laws 1994, c. 260, § 28, eff. Jan. 1, 1995**Historical and Statutory Notes**

Repealed § 4-105, relating to appointment and designation of registrars, was derived from:

Laws 1916, c. 24, p. 33, § 3.  
 Laws 1917, c. 159, p. 253, § 1.  
 Comp.St.1921, § 6251.  
 St.1931, § 5653.  
 Laws 1937, p. 149, § 14.  
 Laws 1945, p. 98, § 1.  
 Laws 1945, p. 99, § 1.  
 Laws 1949, p. 214, § 1.  
 26 O.S.1951, § 73.  
 Laws 1953, p. 568, § 14.  
 Laws 1957, p. 173, § 3.  
 Laws 1957, p. 182, § 2.  
 Laws 1961, p. 243, § 1.  
 Laws 1967, c. 38, § 1.  
 Laws 1968, c. 389, § 3.  
 Laws 1969, c. 217, § 1.  
 1971 H.J.R. No. 1027, § 1.  
 26 O.S.1971, §§ 93.29, 101m, 102.14.  
 Laws 1972, c. 211, § 1.  
 26 O.S.Supp.1973, § 93.3.  
 Laws 1974, c. 75, § 5.  
 26 O.S.Supp.1975, § 93.35.  
 Laws 1976, c. 90, § 10.  
 Laws 1980, c. 276, § 1.  
 Laws 1993, c. 191, § 2.

Repealed § 4-105.1, derived from Laws 1985, c. 193, § 2, related to termination of registrar who files declaration of candidacy.

Repealed § 4-106, relating to compensation of registrars, was derived from:

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 1957, p. 173, § 3.  
 Laws 1961, p. 243, § 1.  
 Laws 1967, c. 38, § 1.  
 Laws 1969, c. 217, § 1.  
 Laws 1972, c. 211, § 1.  
 26 O.S.Supp.1973, § 93.3.  
 Laws 1974, c. 75, § 6.  
 26 O.S.Supp.1975, § 93.36.  
 Laws 1982, c. 298, § 5.  
 Laws 1985, c. 193, § 1.  
 Laws 1993, c. 191, § 3.

Repealed § 4-107, relating to additional capacities in which registrars could serve, was derived from:

Laws 1974, c. 75, § 7.  
 26 O.S.Supp.1975, § 93.37  
 Laws 1976, c. 90, § 10.

Repealed § 4-108, relating to hours for registration, was derived from:

Laws 1937, p. 144, § 3.  
 Laws 1945, p. 100, § 1.  
 Laws 1953, p. 105, § 5.  
 Laws 1953, p. 563, § 3.  
 Laws 1957, p. 173, § 4.  
 Laws 1957, p. 179, §§ 1, 2.  
 Laws 1959, p. 116, §§ 2 to 5.  
 Laws 1969, c. 217, §§ 2, 3, 5, 7.  
 Laws 1972, c. 211, §§ 2, 3, 6.  
 Laws 1972, c. 226, § 5.  
 26 O.S.Supp.1973, §§ 93.4, 101b, 102.3, 103.5.  
 Laws 1974, c. 75, § 8.  
 26 O.S.Supp.1975, § 93.38.  
 Laws 1976, c. 90, § 10.  
 Laws 1993, c. 191, § 4.

**§ 4-109. Locations**

The Secretary of the State Election Board shall designate locations where voter registration applications will be available for distribution. The secretary of each county election board may, with approval of the Secretary of the State Election Board, designate additional locations where voter registration applications will be available for distribution. Preference shall be given to public libraries, public buildings and other locations where large numbers of potential voters may be located. Particular emphasis shall be placed on making voter registration applications available for organized voter registration programs.

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. Laws 1992, c. 247, § 5, emerg. eff. May 21, 1992; Laws 1994, c. 260, § 9, eff. Jan. 1, 1995.

**Historical and Statutory Notes**

The 1992 amendment added the second sentence.

The 1994 amendment rewrote the section, which prior thereto read:

"The secretary of the county election board shall assign the locations at which voter registrars may conduct registration transactions. Preference shall be given to public libraries, public buildings and other locations where large numbers of potential voters may be located."

**Source:**

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

Laws 1937, p. 144, § 3.  
Laws 1945, p. 99, § 1.  
Laws 1945, p. 98, § 1.  
Laws 1945, p. 100, § 1.  
Laws 1949, p. 214, § 1.  
26 O.S.1951, § 73.  
Laws 1953, p. 105, § 5.  
Laws 1953, p. 563, § 3.  
Laws 1957, p. 173, §§ 3, 4.  
Laws 1957, p. 179, §§ 1, 2.  
Laws 1959, p. 116, §§ 2 to 5.  
Laws 1961, p. 243, § 1.  
Laws 1967, c. 38, § 1.  
Laws 1969, c. 217, §§ 1 to 3, 5, 7.  
Laws 1972, c. 211, §§ 1 to 3, 5.  
Laws 1972, c. 226, § 5.  
26 O.S.Supp.1973, §§ 93.3, 93.4, 101b, 102.3, 103.5.

**Library References**

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

**§ 4-109.1. Repealed by Laws 1994, c. 260, § 28, eff. Jan. 1, 1995**

**Historical and Statutory Notes**

The repealed section, derived from Laws 1987, c. 161, § 1, related to location of voter registrars in adjacent counties.

**§ 4-109.2. Voter registration agencies**

A. The Secretary of the State Election Board shall designate offices in the state which provide public assistance, offices in the state that provide state-funded programs primarily engaged in providing services to persons with disabilities as voter registration agencies. The Secretary shall identify certain other agencies of state and local government and, with their agreement, of federal and nongovernmental entities as optional voter registration agencies where voter registration services prescribed by the Secretary shall be available. Recruitment offices of the Armed Forces of the United States and offices of the county election boards shall be voter registration agencies.

B. Each designated voter registration agency shall, with each application for service or assistance and with each recertification, renewal or change of address form relating to the service or assistance of voter registration:

1. Provide a voter registration application which may include all statements and declination form required under the National Voter Registration Act of 1993.<sup>1</sup>

2. Provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the registration application form as is provided by the office with regard to the completion of its own forms, unless the applicant refuses such assistance.

3. Require each applicant either to complete a voter registration application or to sign a declination form.

C. No information relating to a declination to register to vote in connection with an application made at an office designated a voter registration agency may be used for any purpose other than voter registration.

D. Declination forms signed by each applicant shall be retained by designated voter registration agencies for twenty-four (24) months from the date of the declination.

E. The identity of a voter registration agency through which a particular voter registered may not be disclosed to the public.

F. Optional voter registration agencies where voter registration services prescribed by the Secretary shall be available, shall provide such services during regular business hours of the agency during the time prescribed by law for making such transactions.

G. Voter registration agencies which are not county election boards shall transmit all completed voter registration applications at the close of business each week to the State Election Board in preaddressed, postage prepaid envelopes provided by the State Election Board.

Laws 1994, c. 260, § 10, eff. Jan. 1, 1995.

<sup>1</sup> 42 U.S.C.A. § 1973gg et seq.

### **§ 4-109.3. Motor vehicle licensing agencies—Voter registration**

A. When a qualified elector applies for issuance or renewal of an Oklahoma driver's license, or issuance of a state identification card issued pursuant to Section 6-105 of Title 47 of the Oklahoma Statutes, or for a change of address for driver's license purposes, the person shall be asked if he or she wishes to register to vote or to change his or her address for voting purposes. If the person wishes to register to vote or to change his or her address for voting purposes, the person shall be given a voter registration application which should be completed and signed by the applicant and returned to the official of the motor license agency. If the person declines, he or she shall be given a declination statement with the application form prescribed by the Secretary of the State Election Board which shall be retained by the motor license agency or designated represen-

tative of the Department of Public Safety for twenty-four (24) months. All completed voter registration applications shall be transmitted by the motor license agent at the close of business each week to the State Election Board in preaddressed, postage prepaid envelopes provided by the State Election Board. If a person registers or declines to register to vote, the office at which the person submits the voter registration application or the fact that the person declined to register shall remain confidential and will be used only for voter registration purposes.

B. Motor license agents shall receive fifty cents (\$0.50) per valid voter registration application or application for change in voter registration taken by themselves and employees of the motor license agent's office taken at the agent's office, payable by the State Election Board.

C. The Oklahoma Tax Commission shall notify the Secretary of the State Election Board of motor license agent appointments. The Oklahoma Department of Public Safety shall notify the Secretary of the State Election Board of motor license agents qualified to issue driver's licenses.

D. The Secretary of the State Election Board is authorized to develop with appropriate officials of the Department of Public Safety an experimental process to electronically transmit voter registration information from one or more motor license agencies to one or more county election boards.

Laws 1994, c. 260, § 11, eff. Jan. 1, 1995.

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

##### **Source:**

Laws 1993, c. 191, § 1.  
26 O.S.Supp.1993, § 4-111.1.

#### **Library References**

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

### **§ 4-110. Repealed by Laws 1994, c. 260, § 28, eff. Jan. 1, 1995**

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

See, now, Title 26, § 4-110.1.

### **§ 4-110.1. Time for submission of voter registration applications—Notice of disposition**

A. Voter registration applications may be submitted at any time. However, completed applications received by the State Election



Board, any county election board, any agency designated to accept voter registration applications or any motor license agent as part of a driver's license or identification card application twenty-four (24) days prior to an election; any mail application postmarked twenty-four (24) days or less prior to an election or any mail application received without a postmark nineteen (19) days or less prior to an election shall not be approved for that election if the applicant's residence is located within the geographical boundaries of the entity for which the election is being conducted.

B. No more than seven (7) days after any election, each county election board secretary for the county of the applicant's residence shall mail a notice of disposition as required in Section 8 of this act<sup>1</sup> to all persons whose voter registration applications were received twenty-four (24) days or less prior to the election.

C. Registration for voting purposes occurs when a completed voter registration application is approved by the county election board secretary for the county or the applicant's residence and on the date that the information is entered into the Oklahoma Election Management System for the county of the applicant's residence.

D. Registration for candidate filing or party affiliation purposes occurs at the earliest time the completed voter registration application is received at the State Election Board, any county election board, any agency designated to accept voter registration applications or any Motor License Agent as part of a driver's license or identification card application provided that the application subsequently is approved by the secretary of the county election board for the county of the applicant's residence; or, in the case of mail applications, registration for candidate filing or party affiliation purposes shall occur at the time when the completed voter registration application is postmarked provided that the application subsequently is approved by the secretary of the county election board for the county of the applicant's residence; or in the case of a mail application received without a postmark, registration for candidate filing or party affiliation purposes shall occur at the earliest time when the completed application is received by the State Election Board or any county election board provided that the application is subsequently approved by the secretary of the county election board for the county of the applicant's residence.

Laws 1994, c. 260, § 12, eff. Jan. 1, 1995.

<sup>1</sup> Title 26, § 4-103.1.

#### Historical and Statutory Notes

Source:

Laws 1917, c. 159, p. 253, § 1.

Laws 1916, c. 24, p. 33, § 3.

Comp.St.1921, § 6251.  
 St.1931, § 5653.  
 Laws 1937, p. 144, § 3.  
 Laws 1945, p. 99, § 1.  
 Laws 1945, p. 98, § 1.  
 Laws 1945, p. 100, § 1.  
 Laws 1949, p. 214, § 1.  
 26 O.S.1951, § 73.  
 Laws 1953, p. 563, § 3.  
 Laws 1957, p. 173, §§ 3, 4.  
 Laws 1957, p. 179, §§ 1, 2.  
 Laws 1959, p. 116, §§ 2 to 5.

Laws 1961, p. 243, § 1.  
 Laws 1967, c. 38, § 1.  
 Laws 1969, c. 217, §§ 1 to 3, 5, 7.  
 Laws 1972, c. 211, §§ 1 to 3, 5.  
 Laws 1972, c. 226, § 5.  
 26 O.S.Supp.1973, §§ 93.3, 93.4, 101b,  
 102.3, 103.5.  
 Laws 1974, c. 75, § 10.  
 26 O.S.Supp.1975, § 93.40.  
 Laws 1976, c. 90, § 10.  
 26 O.S.1991, § 4-110.

### **Library References**

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

### **Notes of Decisions**

#### **Construction and application 1**

##### **1. Construction and application**

Under statute, 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". *Roem v. Gill, Okla., 191 Okla. 198, 127 P.2d 822 (1942).*

**§§ 4-111, 4-111.1. Repealed by Laws 1994, c. 260, § 28, eff. Jan. 1, 1995**

### **Historical and Statutory Notes**

Repealed § 4-111, relating to the procedure for registration, was derived from:

Laws 1916, c. 24, pp. 33, 36 to 38, §§ 2, 5 to 7.

Comp.St.1921, §§ 6250, 6253 to 6255.

St.1931, §§ 5652, 5655 to 5657.

Laws 1937, pp. 145, 146, §§ 4, 5.

Laws 1941, p. 94, § 1.

Laws 1945, p. 101, § 3.

Laws 1945, p. 101, § 3.

Laws 1949, p. 214, § 2.

26 O.S.1951, §§ 72, 75 to 77.

Laws 1953, p. 106, § 8.

Laws 1953, pp. 564 to 566, §§ 4, 5.

Laws 1955, p. 202, § 1.

Laws 1957, p. 174, § 7.

Laws 1957, p. 179, § 3.

Laws 1957, p. 182, § 1.

Laws 1959, p. 117, §§ 7, 8.

Laws 1961, p. 245, § 1.

Laws 1963, c. 177, § 1.

Laws 1965, c. 170, § 1.

Laws 1967, c. 182, § 2.

Laws 1968, c. 151, §§ 1, 2.

26 O.S.1971, §§ 93.7, 101c, 101d, 102.4, 102.5.

Laws 1972, c. 226, § 8.

26 O.S.Supp.1973, § 103.8.

Laws 1974, c. 75, § 11.

26 O.S.Supp.1975, § 93.41.

Laws 1976, c. 90, § 10.

Laws 1991, c. 52, § 1.

For subject matter of repealed § 4-111.1, see, now, Title 26, § 4-109.3.

## **§ 4-112. Registration applications**

The Secretary of the State Election Board shall devise and distribute a registration application to be used for registering voters. Such registration application shall contain the following information: Vot-

er's full name and date of birth, county and 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 such voter and to ascertain his or her eligibility. A voter registration application shall be signed by the applicant in writing. The applicant shall personally subscribe his or her name to or make his or her mark on the application, and no agent, representative or employee of the applicant may sign or mark on the applicant's behalf. The signature or mark must be the original, handwritten signature, autograph or mark of the applicant. No facsimile, reproduction, typewritten or other substitute signature, autograph or mark will be valid. Notwithstanding any law to the contrary, the Secretary of the State Election Board shall prescribe procedures to authorize any person incapable of personally making his mark to complete a voter registration application with assistance of an official of any voter registration agency or motor license agency specified in Sections 10 and 11 of this act.<sup>1</sup> Persons not affiliated with any political party recognized by the laws of the State of Oklahoma or who do not indicate a political party on their registration application shall be designated as Independents. The form may request but shall not require the applicant's Oklahoma driver's license number or social security number and a telephone number where the applicant can be contacted during normal business hours. Any person may apply in writing to the Secretary of the State Election Board for permission to print, copy or otherwise prepare and distribute the registration applications designed by the Secretary of the State Election Board. The Secretary may revoke any such permission at any time. All registration applications shall be distributed to the public at no charge. The Secretary also shall prescribe procedures to accept and use federal registration applications as required by the National Voter Registration Act of 1993.<sup>2</sup>

Laws 1974, c. 75, § 12, emerg. eff. April 19, 1974. Renumbered from Title 26, § 93.42 by Laws 1976, c. 90, § 10, emerg. eff. May 6, 1976. Laws 1994, c. 260, § 13, eff. Jan. 1, 1995.

<sup>1</sup> Title 26, §§ 4-109.2 and 4-109.3.

<sup>2</sup> 42 U.S.C.A. § 1973gg et seq.

### Historical and Statutory Notes

The 1994 amendment rewrote the section, which prior thereto read:

"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."

**Source:**

Laws 1916, c. 24, pp. 33, 36 to 38, §§ 2, 5 to 7.  
Comp.St.1921, §§ 6250, 6253 to 6255.

St.1931, §§ 5652, 5655 to 5657.  
Laws 1937, p. 146, § 5.  
Laws 1949, p. 214, § 2.  
26 O.S.1951, §§ 72, 75 to 77.  
Laws 1953, pp. 105, 106, §§ 7, 8.  
Laws 1953, p. 566, § 5.  
Laws 1957, p. 174, § 7.  
Laws 1957, p. 179, § 3.  
Laws 1959, p. 117, §§ 7, 8.  
Laws 1965, c. 136, § 1.  
Laws 1965, c. 170, § 1.  
26 O.S.1971, §§ 93.7, 101d, 102.5.  
Laws 1972, c. 226, §§ 7, 8.  
26 O.S.1973, §§ 103.7, 103.8.

**Library References**

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

**Notes of Decisions**

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

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

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 addi-

tional training in dealing with unlimited number of parties. *Rainbow Coalition of Oklahoma v. Oklahoma State Election Bd.*, W.D.Okla.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.*, W.D.Okla. 1984, 593 F.Supp. 118.

**2. Marital status**

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

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

A. 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.

B. When a person registers to vote or changes his or her registration in any manner to require a new voter identification card, the

county election board secretary in the county of the voter's residence shall transmit the new voter identification card as acknowledgment of the transaction which may be the notice required in Section 8 of this act.<sup>1</sup>

Laws 1974, c. 75, § 13, emerg. eff. April 19, 1974. Renumbered from Title 26, § 93.43 by Laws 1976, c. 90, § 10, emerg. eff. May 6, 1976. Laws 1994, c. 260, § 14, eff. Jan. 1, 1995.

<sup>1</sup> Title 26, § 4-103.1.

### Historical and Statutory Notes

The 1994 amendment designated the existing text as subsection A and added subsection B.

#### Source:

Laws 1916, c. 24, p. 46, § 13.  
Comp.St.1921, § 6261.  
St.1931, § 5663.  
Laws 1937, p. 147, § 6.  
Laws 1941, p. 96, § 2.  
26 O.S.1951, § 82.  
Laws 1953, p. 109, § 12.

Laws 1953, p. 566, § 6.  
Laws 1955, p. 202, § 2.  
Laws 1957, p. 175, § 9.  
Laws 1957, p. 180, § 7.  
Laws 1959, p. 117, § 10.  
Laws 1961, p. 246, § 2.  
Laws 1961, p. 255, § 7.  
Laws 1963, c. 201, §§ 1 to 3.  
Laws 1968, c. 151, § 3.  
26 O.S.1971, §§ 93.9, 101e, 102.6, 103.12.

### 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 Title 26, § 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 registration 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."

#### Source:

Laws 1916, c. 24, p. 36, 38, §§ 5, 7.  
Comp.St.1921, §§ 6253, 6255.

St.1931, §§ 5655, 5657.  
Laws 1937, p. 145, § 4.  
Laws 1941, p. 94, § 1.  
Laws 1945, p. 101, § 3.  
Laws 1949, p. 214, § 2.  
26 O.S.1951, §§ 75, 77.  
Laws 1953, p. 564, § 4.  
Laws 1955, p. 202, § 1.  
Laws 1957, p. 175, § 8.  
Laws 1957, p. 182, § 1.  
Laws 1961, p. 244, § 1.  
Laws 1961, p. 245, § 1.  
Laws 1963, c. 177, § 1.  
Laws 1967, c. 182, §§ 1, 2.  
Laws 1968, c. 151, §§ 1, 2.  
26 O.S.1971, §§ 93.8, 101c, 102.4.

## 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 Title 26, § 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".

## Source:

Laws 1916, c. 24, p. 36, 38, §§ 5, 7.  
 Comp.St.1921, §§ 6253, 6255.  
 St.1931, §§ 5655, 5657.  
 Laws 1937, p. 145, § 4.  
 Laws 1941, p. 94, § 1.  
 Laws 1945, p. 101, § 3.  
 Laws 1949, p. 214, § 2.

26 O.S.1951, §§ 75, 77.  
 Laws 1953, p. 564, § 4.  
 Laws 1955, p. 202, § 1.  
 Laws 1957, p. 175, § 8.  
 Laws 1957, p. 182, § 1.  
 Laws 1961, p. 244, § 1.  
 Laws 1961, p. 245, § 1.  
 Laws 1963, c. 177, § 1.  
 Laws 1967, c. 182, §§ 1, 2.  
 Laws 1968, c. 151, §§ 1, 2.  
 26 O.S.1971, §§ 93.8, 101c, 102.4.

## Library References

Elections ⇨ 106.  
 Records ⇨ 30.  
 WESTLAW Topic Nos. 144, 326.

C.J.S. Elections §§ 39, 46.  
 C.J.S. Records §§ 60, 62, 63, 65, 93,  
 95.

## § 4-115.1. Correction of clerical or administrative errors

The secretary of each county election board is authorized to correct clerical or administrative errors in the Oklahoma Election Management System and to conform voter registration information to recognized standards, as determined by the Secretary of the State Election Board, for promotion of uniformity and consistency in address designations. No corrections shall be made to the original registration form signed by the voter except as provided by law or rule of the State Election Board.

Laws 1991, c. 321, § 6, eff. March 1, 1992.

## § 4-116. Transfer of registration

If a registered voter of a county changes his or her residence to another precinct within the same county, he or she shall be entitled to transfer his or her registration in a manner prescribed by the

Secretary of the State Election Board. 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 Title 26, § 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; Laws 1994, c. 260, § 15, eff. Jan. 1, 1995.

### 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".

The 1994 amendment rewrote the first sentence, 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 transfer his registration upon executing a form prescribed by the Secretary of the State Election Board before a person authorized to register voters."

### Source:

Laws 1916, c. 24, p. 41, § 8.  
Comp.St.1921, § 6256.  
St.1931, § 5658.  
Laws 1937, p. 147, § 7.  
Laws 1941, p. 93, § 1.  
Laws 1941, p. 96, § 3.  
Laws 1945, p. 100, § 2.  
Laws 1949, p. 216, § 3.  
26 O.S.1951, § 78.  
Laws 1953, p. 110, § 13.  
Laws 1957, p. 177, § 16.  
Laws 1957, p. 181, § 8.  
Laws 1959, p. 118, § 11.  
Laws 1961, p. 246, § 3.  
Laws 1969, c. 217, § 4.  
26 O.S.1971, §§ 93.16, 103.13.  
Laws 1972, c. 211, § 4.  
26 O.S.Supp.1973, § 101f.

### Library References

Elections ◊119.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 52.

## § 4-117. Change of name or of residence within same county

If a registered voter of a county has changed name or residence within the same county, and has not executed a transfer as hereinbefore provided, the voter shall be entitled to a change upon executing

an application on a form to be prescribed by the Secretary of the State Election Board and presenting such form along with the voter identification card to the inspector of the precinct in which the voter is registered or to a member of an in-person absentee voting board of the county in which the voter is registered on the day of the next ensuing election or of in-person absentee voting. Upon doing so, such registered voter shall be permitted to vote on the ballots of such precinct, and only of such precinct, for the election being conducted on that day only. The inspector or in-person absentee voting board member shall deliver such form to the secretary of the county election board, who shall change the registration in the manner prescribed by the Secretary of the State Election Board.

Laws 1974, c. 75, § 17, emerg. eff. April 19, 1974. Renumbered from Title 26, § 93.47 by Laws 1976, c. 90, § 10, emerg. eff. May 6, 1976. Laws 1990, c. 306, § 2, emerg. eff. May 30, 1990; Laws 1994, c. 260, § 16, eff. Jan. 1, 1995; Laws 1995, c. 290, § 5, eff. Nov. 1, 1995.

### **Historical and Statutory Notes**

The 1990 amendment, in the first sentence, deleted "to another precinct" following "changed his residence".

The 1994 amendment, in the first sentence, thrice substituted "his or her" for "his", and substituted "he or she" for "he" and "such" for "said"; in the second sentence, thrice substituted "such" for "said"; and in the third sentence, substituted "such" for "said transfer" and "in the manner prescribed by the Secretary of the State Election Board" for "in accordance with the application".

The 1995 amendment rewrote the section, which prior thereto read:

"If a registered voter of a county has changed his or her residence within the same county, and has not executed a transfer as hereinbefore provided, he or she shall be entitled to a transfer upon his or her executing an application on a form to be prescribed by the Secretary of the State Election Board and presenting such form along with his or her voter identi-

cation card to the inspector of the precinct in which he is registered on the day of the next ensuing election. Upon doing so, such registered voter shall be permitted to vote in such precinct, and only in such precinct, for the election being conducted on that day only. The inspector shall deliver such form to the secretary of the county election board, who shall transfer such registration in the manner prescribed by the Secretary of the State Election Board."

### **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.  
Laws 1953, p. 567, § 7.  
Laws 1957, p. 177, § 16.  
Laws 1969, c. 217, § 6.  
26 O.S.1971, §§ 93.16, 102.7.

### **Library References**

Elections ⇨119.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 52.



## Notes of Decisions

## Construction and application 1

tempted 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*, Okla., 744 P.2d 934 (1987).

## 1. Construction and application

Under this section, voter, who had moved from ward some nine years earlier and had previously unsuccessfully at-

## § 4-118. Change of residence to another county

Any registered voter who changes his or her residence to another county may apply for registration as an initial registrant in such other county. Such person shall indicate his or her prior registration information, including name, residence address and county and political affiliation, as appropriate, on the voter registration application. 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 Title 26, § 93.48 by Laws 1976, c. 90, § 10, emerg. eff. May 6, 1976. Laws 1990, c. 331, § 7, eff. July 1, 1990; Laws 1994, c. 260, § 17, eff. Jan. 1, 1995.

## Historical and Statutory Notes

The 1990 amendment, in the third sentence, substituted "State Election Board" for "election board in the first county".

The 1994 amendment rewrote the section, which prior thereto read:

"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."

## 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.  
Laws 1957, p. 177, § 16.  
26 O.S.1971, § 93.16.

## 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 or her political affiliation by 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. The county election board secretary in

the applicant's county of residence shall reject any such application for political affiliation change received by the State Election Board, any county election board, any agency designated to accept voter registration applications or any motor license agent as part of a driver's license or identification card application after 5:00 p.m. July 1 through 5:00 p.m. on September 30 in any even-numbered year or if a mail application is postmarked after 5:00 p.m. July 1 through 5:00 p.m. on September 30 in any even-numbered year or if a mail application is received without a postmark more than five (5) days after July 1 through 5:00 p.m. on September 30 in any even-numbered year.

Laws 1974, c. 75, § 19, emerg. eff. April 19, 1974. Renumbered from Title 26, § 93.49 by Laws 1976, c. 90, § 10, emerg. eff. May 6, 1976. Laws 1979, c. 240, § 14, emerg. eff. June 1, 1979; Laws 1994, c. 260, § 18, eff. Jan. 1, 1995.

### 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.

The 1994 amendment, in the first sentence, substituted "or her political affiliation by" for "political affiliation by appearing before a person authorized to register voters and"; and added the third sentence.

#### Source:

Laws 1916, c. 24, p. 41, 46, §§ 8, 13.  
Comp.St.1921, §§ 6256, 6261.  
St.1931, §§ 5658, 5663.  
Laws 1941, p. 93, § 1.  
Laws 1949, p. 216, § 3.  
26 O.S.1951, §§ 78, 83.  
Laws 1957, p. 177, § 18.  
Laws 1961, p. 245, § 1.  
Laws 1967, c. 32, § 5.  
Laws 1971, c. 161, § 1.  
26 O.S.1971, § 93.18.

### United States Supreme Court

Right of free political association, see *Kusper v. Pontikes*, U.S. Ill.1973, 94 S.Ct. 303, 414 U.S. 51, 38 L.Ed.2d 260.

### Notes of Decisions

#### Construction and application 1

##### 1. Construction and application

Except as specifically provided in statute, 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*, Okla., 102 Okla. 166, 228 P. 485 (1924).

## § 4-120. Cancellation of registrations

The registration of any registered voter may be cancelled only for one of the following reasons: Written notice from the voter; death; conviction of a felony; judicial determination of mental incapacitation under Title 30 of the Oklahoma Statutes; registration in another county or state; or failure to respond to a confirmation of

address mailing and failure to vote as prescribed in Section 21 of this act.<sup>1</sup>

Laws 1974, c. 75, § 20, emerg. eff. April 19, 1974. Renumbered from Title 26, § 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; Laws 1992, c. 247, § 6, emerg. eff. May 21, 1992; Laws 1994, c. 260, § 19, eff. Jan. 1, 1995.

<sup>1</sup> Title 26, § 4-120.2.

### Historical and Statutory Notes

The 1976 amendment, in paragraph 2, in the first sentence, substituted "No later than June 1 of the year" for "Immediately" and "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 "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"; inserted paragraph 5; and redesignated former paragraph 5 as paragraph 6.

The 1981 amendment deleted paragraphs 1 through 6, which read:

"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. No later than June 1 of the year 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 the immediately preceding two (2) calendar years. 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 June 1 to mail notice to said voter of such cancellation 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 June 30 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 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.

"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 court clerk in each county shall prepare each month a list of all persons who have been adjudged mentally incompetent and had said list for the secretary of the county election board. The secretary shall cancel the registration or 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.

"6. 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 1992 amendment substituted "incapacitation" for "incompetence".

The 1994 amendment deleted "failure to vote;" preceding "death", substituted "incapacitation under Title 30 of the Oklahoma Statutes;" for "incapacitation;

or", and inserted "; or failure to respond to a confirmation of address mailing and failure to vote as prescribed in Section 21 of this act".

**Source:**

Laws 1916, c. 24, p. 49, § 17.  
Comp.St.1921, § 6265.  
St.1931, § 5667.  
Laws 1937, p. 145, § 4.  
Laws 1955, p. 202, § 1.  
Laws 1957, p. 177, § 14.  
Laws 1957, p. 180, §§ 5, 6.  
Laws 1957, p. 182, § 1.  
Laws 1961, p. 244, § 1.  
Laws 1961, p. 245, § 1.  
Laws 1965, c. 465, § 1.  
Laws 1967, c. 5, §§ 1, 2.  
Laws 1967, c. 7, § 1.  
Laws 1967, c. 182, § 2.  
Laws 1968, c. 151, § 2.  
26 O.S.1971, §§ 93.14, 93.27, 93.28, 101c, 102.4, 103.10, 103.11.

**Library References**

Elections ☞ 108.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 48.

**Notes of Decisions**

**Failure to vote 1**

**1. Failure to vote**

Former statute 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*, Okla., 191 Okla. 198, 127 P.2d 822 (1942).

**§ 4-120.1. Voluntary cancellation of registration**

A registered voter may have his or her name removed from the registries of a county by executing a personally signed and notarized written notice for same to the Secretary of the State Election Board or any county election board.

Laws 1981, c. 45, § 2, emerg. eff. April 8, 1981; Laws 1994, c. 260, § 20, eff. Jan. 1, 1995; Laws 1995, c. 290, § 6, eff. Nov. 1, 1995.

**Historical and Statutory Notes**

The 1994 amendment inserted "or her" following "his", deleted "appearing before a person authorized to register voters in said county and" preceding "executing", and inserted "to the Secretary of the State Election Board or any county election board".

The 1995 amendment inserted "personally signed and notarized".

Section 12 of Laws 1981, c. 45 directs codification, and § 14 provides for the repeal of conflicting laws.

## Library References

Elections ⇄ 108.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 48.

**§ 4-120.2. Inactive voters**

After November 15 but no later than December 30, 1994, all registration information on inactive voters shall be removed from the central registry and the Oklahoma Election Management System, their registrations shall be canceled and the information destroyed. No later than June 1, 1997, and every two (2) years thereafter, any voter for whom a first-class mailing from the county election board was returned during the previous twenty-four (24) months, any voter identified by the Secretary of the State Election Board as a potential duplicate and any registered voter who did not vote in any election conducted by a county election board during the previous twenty-four (24) months and who has initiated no voter registration change during the previous twenty-four (24) months shall be sent an address confirmation mailing prescribed by the Secretary of the State Election Board and paid for by the state. Voters who do not respond to the confirmation mailing or whose mailing is returned as nonforwardable shall be designated as inactive sixty (60) days after the mailing. An inactive voter's status shall be changed to active under the following conditions:

1. With any registration change initiated by the voter; or
2. By voting in any election conducted by a county election board.

An inactive voter who does not vote in any election conducted by a county election board during the period beginning on the date of the confirmation mailing and ending on the day after the date of the second successive general election for federal office shall be removed as a registered voter and all the information on that voter shall be destroyed. Each county election board secretary shall maintain a list of the names and addresses of all persons sent a confirmation mailing as described in this section and information on whether or not each such person has responded to the notice. Said list shall be maintained for twenty-four (24) months following the date of the second successive federal general election after the date of the confirmation mailing.

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; Laws 1991, c. 321, § 7, eff. March 1, 1992; Laws 1994, c. 260, § 21, eff. Sept. 1, 1994.

**Historical and Statutory Notes**

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, which prior thereto 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 in an election wherein a precinct registry is used, in person, 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 canceled for failure to vote except as herein provided."

The 1991 amendment, in the first sentence, deleted ", in person," following "used".

The 1994 amendment rewrote the section, which prior thereto read:

"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 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."

Section 29 of Laws 1994, c. 260 provides:

"The State Election Board is hereby authorized to promulgate emergency rules to implement this act prior to its taking effect provided that such rules shall take effect no earlier than January 1, 1995, with respect to Sections 1 through 19 and Sections 21 through 25 of this act and September 1, 1994, with respect to Section 20 of this act. [So in enrolled bill; probably should read 'with respect to Sections 1 through 20 and Sections 22 through 25 of this act and September 1, 1994, with respect to Section 21 of this act']"

### 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

A. 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 accept written notice from the United States Attorney of persons convicted of felonies in a district court of the United States, which convictions have become final. The Secretary of the State Election Board shall transmit said list and notice to the secretary of each county election board who shall cancel the registrations of all registered voters included on said list and notice, and such persons shall be ineligible for registration for a period of time equal to the time prescribed in the judgment and sentence.

B. The court clerk in each county shall forward a copy of each journal entry of judgment and sentence for each person convicted in the county of a felony to the secretary of the county election board within forty-five (45) days after the journal entry is filed. The secretary shall cancel the registration of all registered voters included

on the journal entries and the registered voters shall be ineligible for registration for a period of time equal to the time prescribed in the journal entry.

Laws 1981, c. 45, § 5, emerg. eff. April 8, 1981; Laws 1990, c. 331, § 10, eff. July 1, 1990; Laws 1994, c. 260, § 22, eff. Jan. 1, 1995; Laws 1995, c. 290, § 7, eff. Nov. 1, 1995.

### Historical and Statutory Notes

The 1990 amendment, in the first sentence, substituted "Department of Corrections" for "court clerk in each county" and "transmit" for "prepare", deleted "within such county" following "become final", and substituted "Secretary" for "secretary" and "State Election Board" for "county election board"; and in the second [now third] sentence, inserted

"Secretary of the State Election Board shall transmit said list to the" and "of each county election board who".

The 1994 amendment inserted the second sentence, and in the third sentence, twice inserted "and notice".

The 1995 amendment designated the existing text as subsection A and added subsection B.

## § 4-120.5. Incapacitated persons—Cancellation of registration

The court clerk in each county shall prepare each month a list of all persons who have been adjudged incapacitated 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 adjudged no longer incapacitated by a court of competent jurisdiction.

Laws 1981, c. 45, § 6, emerg. eff. April 8, 1981; Laws 1992, c. 247, § 7, emerg. eff. May 21, 1992.

### Historical and Statutory Notes

The 1992 amendment, in the first sentence, substituted "incapacitated" for "mentally incompetent", and in the sec-

ond sentence, substituted "adjudged no longer incapacitated" for "declared mentally competent".

### 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 applications—Removal from registries—Destruction

The registration application of registered voters whose registration has been canceled, upon written notice of the voter, death, conviction of a felony, judicial determination of mental incapacitation 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-four (24) months by the secretary of each county election board. Reason for cancellation and date of said cancellation shall be noted on said registration application. After twenty-four (24) months, the registration application 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; Laws 1992, c. 247, § 8, emerg. eff. May 21, 1992; Laws 1994, c. 260, § 23, eff. Jan. 1, 1995.

## 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 substituted "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".

The 1992 amendment, in the first sentence, substituted "incapacitation" for "incompetence".

The 1994 amendment, in the first sentence, substituted "application" for "form" and "twenty-four (24)" for "twenty-two (22)"; in the second sentence, substituted "application" for "form"; and in the third sentence, substituted "twenty-four (24)" for "twenty-two (22)" and "application" for "form".

## Source:

Laws 1916, pp. 38, 41 to 43, §§ 7 to 9, 11.  
 Comp.St.1921, §§ 6255 to 6257, 6259.  
 St.1931, §§ 5657 to 5659, 5661.  
 Laws 1937, p. 145, § 4.  
 Laws 1941, p. 93, § 1.  
 Laws 1941, p. 94, § 1.  
 Laws 1944, Ex.Sess., p. 2, § 1.  
 Laws 1945, p. 101, § 3.  
 Laws 1949, p. 214, § 2.  
 Laws 1949, p. 216, § 3.  
 26 O.S.1951, §§ 77 to 79, 81.  
 Laws 1953, p. 104, § 2.  
 Laws 1953, p. 113, §§ 1 to 6.  
 Laws 1953, p. 564, § 4.  
 Laws 1955, p. 202, § 1.  
 Laws 1957, p. 175, § 8.  
 Laws 1957, p. 182, § 1.  
 Laws 1961, p. 244, § 1.  
 Laws 1961, p. 245, § 1.  
 Laws 1963, c. 177, § 1.  
 Laws 1967, c. 182, § 2.  
 Laws 1968, c. 151, §§ 1, 2.  
 26 O.S.1971, §§ 93.8, 101c, 102.4.  
 Laws 1974, c. 75, § 21.  
 26 O.S.Supp.1975, § 93.51.  
 Laws 1976, c. 90, § 10.  
 26 O.S.Supp.1979, § 4-121.

**Library References**

Elections  $\S$  108.  
WESTLAW Topic No. 144.  
C.J.S. Elections  $\S$  48.

**§ 4-120.8. Reregistration of cancelled voter**

A person whose registration has been cancelled 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,  $\S$  9, emerg. eff. April 8, 1981.

**Historical and Statutory Notes**

**Source:**

Laws 1916, pp. 38, 41 to 43,  $\S\S$  7 to 9, 11.  
Comp.St.1921,  $\S\S$  6255 to 6257, 6259.  
St.1931,  $\S\S$  5657 to 5659, 5661.  
Laws 1941, p. 93,  $\S$  1.  
Laws 1944, Ex.Sess., p. 2,  $\S$  1.  
Laws 1949, p. 214,  $\S$  2.  
Laws 1949, p. 216,  $\S$  3.

26 O.S.1951,  $\S\S$  77 to 79, 81.  
Laws 1953, p. 104,  $\S$  2.  
Laws 1953, p. 113,  $\S\S$  1 to 6.  
Laws 1957, p. 175,  $\S$  8.  
Laws 1961, p. 244,  $\S$  1.  
26 O.S.1971,  $\S$  93.8.  
Laws 1974, c. 75,  $\S$  22.  
26 O.S.Supp.1975,  $\S$  93.52.  
Laws 1976, c. 90,  $\S$  10.  
26 O.S.Supp.1979,  $\S$  4-122.

**Library References**

Elections  $\S$  108.  
WESTLAW Topic No. 144.  
C.J.S. Elections  $\S$  48.

**Notes of Decisions**

**Construction and application 1**

**1. 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, Okla., 294 P.2d 548 (1956).

A qualified elector who held a certificate of registration canceled under for-

mer statute could reregister by the same method as that provided for an elector who changed his place of residence. *Ro-rem v. Gill*, Okla., 191 Okla. 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. *Ro-rem v. Gill*, Okla., 191 Okla. 198, 127 P.2d 822 (1942).

**§ 4-120.9. Repealed by Laws 1990, c. 331,  $\S$  21, eff. July 1, 1990**

**Historical and Statutory Notes**

See, now, Title 26,  $\S$  7-102.1.

Repealed

**§§ 4-121 to 4-123.** Repealed by Laws 1981, c. 45, § 11, emerg. eff. April 8, 1981

### DISPOSITION TABLE

Showing where the subject matter of §§ 4-121 to 4-123 can now be found.

Repealed Section	New Section	Repealed Section	New Section
4-121 .....	4-120.7	4-122 .....	4-120.8
		4-123 .....	4-120.9

**§ 4-124.** Repealed by Laws 1979, c. 240, § 30, emerg. eff. June 1, 1979

### Historical and Statutory Notes

The repealed section, relating to county election board records, was derived from:

Laws 1916, c. 24, pp. 38, 42, §§ 7, 9.  
Comp.St.1921, §§ 6255, 6257.  
St.1931, §§ 5657, 5659.  
Laws 1937, p. 148, §§ 10, 11.  
Laws 1949, p. 214, § 2.  
26 O.S.1951, §§ 77, 79.

Laws 1953, p. 568, §§ 10, 11.  
Laws 1957, p. 175, § 8.  
Laws 1961, p. 244, § 1.  
Laws 1967, c. 182, § 1.  
26 O.S.1971, §§ 93.8, 101i, 101j,  
102.10, 102.11.  
Laws 1974, c. 75, § 24.  
26 O.S.Supp.1975, § 93.54.  
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, § 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 and Journal Commentaries

Dimensions of newly emergent, quasi-fundamental right to political candidacy. Dennis W. Arrow. 6 Okla.City U.L.Rev. 1 (1981).

## Library References

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

## Notes of Decisions

**Armed forces personnel 3**  
**Construction and application 1**  
**Persons not registered as voters 2**

## 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).

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. Op. Atty. Gen. No. 76-315 (Aug. 23, 1976).

## 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.*, Okla., 197 Okla. 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.*, Okla., 197 Okla. 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 1987 amendment deleted "Judge of the Court of Appeals" following "State Representative,".

## Cross References

Financial disclosure statement, see Title 51, § 319.

## 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 51, § 319.

#### 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 Title 26, § 1-107.

#### Library References

Elections Ⓔ123.

WESTLAW Topic No. 144.

C.J.S. Elections § 89 et seq.

#### United States Supreme Court

<p>Freedom of political association to have Communist Party on ballot, see <i>Communist Party of Indiana v. Whitcomb</i>, U.S.Ind.1974, 94 S.Ct. 656, 414</p>	<p>U.S. 441, 38 L.Ed.2d 635, rehearing denied 94 S.Ct. 1476, 415 U.S. 952, 39 L.Ed.2d 568.</p>
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### § 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

The 1981 amendment rewrote the section, which prior thereto 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 1987 amendment designated the existing text as subsection A, and added subsection B.

### Cross References

Financial disclosure statement, persons required to file, see Title 51, § 319.

Registration of political affiliation of voters, see Title 26, § 4-112.

### Law Review and Journal Commentaries

Dimensions of newly emergent, quasi-fundamental right to political candidacy.

Dennis W. Arrow. 6 Okla.City U.L.Rev. 1 (1981).

### Library References

Elections  $\S$  126(4).

WESTLAW Topic No. 144.

C.J.S. Elections  $\S\S$  115, 130.

### Notes of Decisions

**Purpose** 2

**Validity** 1

ballot. Davis v. State Election Bd. of Oklahoma, Okla., 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

#### 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, Okla., 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.

### Cross References

Declaration of candidacy for district board of education, requirements of candidate as set forth in this section, see Title 26, § 13A-105.

### Library References

Elections ⇨126(4).

Officers and Public Employees ⇨31.

Pardon and Parole ⇨24.

WESTLAW Topic Nos. 144, 283, 284.

C.J.S. Elections §§ 115, 130.

C.J.S. Officers and Public Employees § 22.

C.J.S. Pardon and Parole §§ 17 to 26.

### 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.*, Okla., 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.*, Okla., 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. For purposes of this section a Special Election and a Regular Election held on the same date shall be considered one election. Laws 1974, c. 153, § 5-106, operative Jan. 1, 1975; Laws 1994, c. 260, § 26, emerg. eff. May 26, 1994.

**Historical and Statutory Notes**

The 1994 amendment added the second sentence.

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

Statute 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 nomination for more than one office at the same primary election. *Riley v. Cordell*, Okla., 200 Okla. 390, 194 P.2d 857 (1948).

A second filing of a Declaration of Candidacy by a person for the Office of Coun-

ty 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. *Op. Atty. Gen. No. 76-315* (Aug. 23, 1976).

**§ 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  $\S$  16(1).  
WESTLAW Topic No. 269.  
C.J.S. Names  $\S$  14.

### 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 statute 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.*, Okla., 203 Okla. 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 and Journal Commentaries

Law of change of name in Oklahoma.  
Clarence M. Mills. 23 Okla.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.

### 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 statute. *Murphy v. State Election Bd.*, Okla., 203 Okla. 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. *Murphy v. State Election Bd.*, Okla., 203 Okla. 129, 218 P.2d 917 (1950).

## § 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.

### Cross References

Special elections, filing periods for, see Title 26, § 12-101.

### Library References

Elections ¶120, 126.  
 WESTLAW Topic No. 144.

C.J.S. Elections §§ 89 et seq., 111 to  
 119, 130.

### 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.*, Okla., 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*, Okla., 200 Okla. 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 statute. *Madrox v. Hunt*, Okla., 183 Okla. 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  $\S$  126, 156, 158.

WESTLAW Topic No. 144.

C.J.S. Elections  $\S\S$  90, 111 to 119, 130, 135, 138.

## Notes of Decisions

## Affidavits 3

## Construction and application 2

## Good faith 4

## Sufficiency of forms 5

## Validity of prior laws 1

Bare v. Patterson, Okla., 200 Okla. 420, 195 P.2d 281 (1948).

The provisions of statute 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. Bare v. Patterson, Okla., 200 Okla. 420, 195 P.2d 281 (1948).

## 1. Validity of prior laws

The additional qualification under former statute 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., Okla., 203 Okla. 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 was 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 Bd., Okla., 168 Okla. 97, 32 P.2d 691 (1934).

## 3. Affidavits

Electors' supporting affidavits may be filed separately, and all filing papers may be amended under proper circumstances.

## 4. Good faith

Statute 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., Okla., 197 Okla. 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, Okla., 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.

## 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  
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.10 (Okla.)1982, 687 F.2d 1375, 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.*, Okla., 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*, Okla., 559 P.2d 428 (1974).

## 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, Okla.*, 444 P.2d 465 (1968).

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*, Okla., 200 Okla. 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 Elec-

tion 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".

### Notes of Decisions

**Refunds** 2  
**Validity** 1

regulate and preserve the electoral process. *Clegg v. Oklahoma State Election Bd.*, Okla., 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

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

### Cross References

Dissolution of campaigns, procedures, see Title 51, § 314.

### Library References

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

### Notes of Decisions

#### Construction and application 1 Death 2

deemed to have been elected pursuant to § 6-102 of this title. Op.Atty.Gen. No. 76-315 (Aug. 23, 1976).

#### 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. 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

#### 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. Op.Atty. Gen. No. 80-209 (Sept. 16, 1980).

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. Op.Atty.Gen. No. 80-209 (Sept. 16, 1980).

## § 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.

### Cross References

Dissolution of campaigns, procedures, see Title 51, § 314.

### 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 and Journal Commentaries

Dimensions of, newly emergent, quasi-fundamental right to political candidacy. Dennis W. Arrow. 6 Okla.City U.L.Rev. 1 (1981).

## Library References

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

## Notes of Decisions

## Residency 1

## 1. Residency

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*, Okla., 526 P.2d 936 (1974).

## § 5-118. Contests of candidacy except for district board of education

With the exception of a contest of a candidacy for member of a district board of education, 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 the declaration of candidacy. In the event only one candidate files for an office, a petition contesting the 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; Laws 1994, c. 360, § 1, eff. July 1, 1994.

## Historical and Statutory Notes

The 1990 amendment, at the end of the second sentence, added "who is eligible to vote for the candidate".

The 1994 amendment, in the first sentence, substituted "With the exception of a contest of a candidacy for member of a district board of education, any" for "Any" and "the declaration" for "his declaration"; and in the second sentence,

substituted "the candidacy" for "his candidacy".

## 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.

## Law Review and Journal Commentaries

Extraordinary remedies available to review decisions of election boards. 4 Okla.L.Rev. 492 (November 1951).

The primary filing fee: Reasonable regulation or equal protection violation? (1968) 9 Santa Clara Law. 169.

## Library References

Elections ¶148.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 120 et seq.

## Notes of Decisions

Construction and application	1
Hearing and determination of contest	4
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### 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.*, Okla., 762 P.2d 935 (1988).

By enacting statute 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.*, Okla., 357 P.2d 421 (1960).

### 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 Bd. of Craig County*, Okla., 194 Okla. 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 Bd.*, Okla., 168 Okla. 441, 33 P.2d 806 (1934).

When filing of candidate for party nomination was challenged by petition, chal-

lenged 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. *State ex rel. Rogers v. State Election Bd.*, Okla., 168 Okla. 441, 33 P.2d 806 (1934).

### 4. Hearing and determination of contest

Where statute 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*, Okla., 509 P.2d 459 (1973).

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*, Okla., 206 Okla. 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*, Okla., 203 Okla. 160, 219 P.2d 620 (1950).

### 5. Limitation of contest

Where defeated candidate had failed to challenge to the legality or regularity of notification and declaration in accordance with statute which specified that no objection or challenge to candidacy shall be filed after five days 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 ques-

tioning the same. *Wickersham v. State Election Bd.*, Okla., 357 P.2d 421 (1960).

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*, Okla., 268 P.2d 860 (1954).

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*, Okla., 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. *State ex rel. Robinett v. Jarrett*, Okla., 200 Okla. 387, 196 P.2d 849 (1948).

## 7. Mandamus

As statute 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*, Okla., 526 P.2d 936 (1974).

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*, Okla., 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. *Hallman v. County Election Bd. of Oklahoma County*, Okla., 509 P.2d 459 (1973).

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 Bd.*, Okla., 168 Okla. 446, 33 P.2d 800 (1934).

## § 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.

## 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.*, Okla., 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, Okla., 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)".

## 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 ⇨150.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 120, 143.

### Notes of Decisions

#### Construction and application 1

##### 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 absenting himself from further proceedings connected with protests by demand for return of his deposit. *Turner v. State Election Bd.*, Okla., 197 Okla. 153, 169 P.2d 285 (1946).

Statute 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. *Turner v. State Election Bd.*, Okla., 197 Okla. 153, 169 P.2d 285 (1946).

## § 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****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.

**§ 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****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**

Contest of candidacy for district board of education, service of petition and notice of date and place of hearing as set forth in this section, see Title 26, § 13A-105.

**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 fifth 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.

### Cross References

Contest of candidacy for district board of education, service of petition and notice of date and place of hearing as set forth in this section, see Title 26, § 13A-105.

### 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.

**Cross References**

Dissolution of campaigns, procedures, see Title 51, § 314.

**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 prohibited

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*, Okla., 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****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  $\Leftrightarrow$ 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****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  $\Leftrightarrow$ 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

#### Source:

Laws 1937, p. 137, § 4.

Laws 1943, p. 91, § 1.

Laws 1947, p. 237, § 1.

Laws 1967, c. 32, § 6.

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

#### Source:

Laws 1937, p. 138, § 6.

26 O.S.1971, § 224a.

### Cross References

Prohibited names, see Title 26, §§ 5-107 to 5-109.

### Library References

Elections ⇨126(5), 172.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 118, 161 et seq.

### United States Supreme Court

Positioning of candidates on ballot, see

Bradley v. Lunding, U.S.111.1976, 96 S.Ct.

891, 424 U.S. 1309, 47 L.Ed.2d 74.

### Notes of Decisions

#### Title 1

#### 1. Title

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 Bd., Okla., 168 Okla. 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.

### 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*, Okla., 207 Okla. 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. *Adair v. Cable*, Okla., 207 Okla. 123, 248 P.2d 599 (1952).

State election board was 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*, Okla., 160 Okla. 34, 15 P.2d 1014 (1932).

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. *Op.Atty.Gen. No. 36-315* (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 this section. *Op.Atty.Gen. No. 36-315* (Aug. 23, 1976).

#### 2. Party committees

Duties of party central committees under law regulating method of nominating candidates was ministerial only as relating to unopposed candidate. *Dancy v. Peebly*, Okla., 132 Okla. 84, 270 P. 311 (1928).

## § 6-102.1. Voting devices—Definitions

As used in this title, the following definitions shall apply to counties using voting devices:

1. "Ballot card" means a card upon which votes may be marked;
  2. "Ballot" means a category of offices or measures, one or more of which can appear on a ballot card;
  3. "Count" means the process by which votes marked on a ballot card are examined manually or electronically by a voting device and a determination is made as to whom or for what the votes are cast;
  4. "Results" means the manual or electronic tabulation of the votes counted for a candidate or issue;
  5. "Seal" means a device or devices prescribed by the Secretary of the State Election Board to permit detection of opening or tampering with contents of voting devices, ballot boxes, transfer cases and vote data packs;
  6. "Transfer case" means a container, prescribed by the Secretary of the State Election Board, which can be closed and sealed and is constructed so as to, when sealed, prevent accidental opening or opening by any other reasonable means, except by removing, breaking, tearing or otherwise damaging the seal so if opened by any means it would be obvious in the normal situation that the container had been subject to tampering;
  7. "Vote data pack" means the apparatus which contains electronic instructions for a voting device and in which electronic results are stored; and
  8. "Voting device" means an optical scanning apparatus that electronically counts votes marked on ballot cards and produces printed results.
- Laws 1991, c. 2, § 2, emerg. eff. Feb. 25, 1991.

### **§ 6-103. Ballots printed by State Election Board**

The State Election Board shall cause ballots to be printed for statewide Primary, Runoff Primary, General Elections and special elections; and for county, municipal, school or other local elections held in conjunction with statewide 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; State Senators; State Representatives; district attorneys; county officers, and such other officers as required by law, in the order they

appear in the statutes, and shall cause ballots to be printed for state questions.

Laws 1974, c. 153, § 6-103, operative Jan. 1, 1975; Laws 1991, c. 321, § 8, eff. March 1, 1992.

### Historical and Statutory Notes

The 1991 amendment, in the first sentence, substituted "statewide Primary, Runoff Primary, General Elections and special elections; and for county, municipal, school or other local elections held in conjunction with statewide elections" for "Primary, Runoff Primary and General Elections"; and in the second sentence, inserted "State Senators; State Representatives; district attorneys; county officers, and such other officers as required by law, in the order they appear in the statutes,".

#### Source:

Laws 1907-08, pp. 328, 329, 334, 335.  
Comp.Laws 1909, §§ 3156, 3158, 3181, 3182, 3183.  
R.L.1910, §§ 3089, 3091, 3106, 3107, 3108.  
Comp.St.1921, §§ 6158, 6173, 6174, 6175.  
Laws 1931, p. 105, § 11.  
Laws 1931, p. 107, § 14.  
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.

### Notes of Decisions

#### Construction and application 1 State questions 2

##### 1. Construction and application

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 statute. *Trapp v. Wells Fargo Express Co.*, Okla., 22 Okla. 377, 97 P. 1003 (1908).

##### 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*, Okla., 21 Okla. 448, 96 P. 747 (1908).

A statement on ballots at an election for submission of the question of incurring indebtedness for waterworks and 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. *State v. Millar*, Okla., 21 Okla. 448, 96 P. 747 (1908).

## § 6-104. Ballots printed by county election board

Each county election board shall cause ballots to be printed on ballot cards for county, municipal, school or other local elections not held in conjunction with statewide 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 offices in the order they appear in the statutes. The county election board shall cause a sufficient number of ballots to be printed for each precinct, taking into account the highest percentage of registered voters likely to vote in a given election based on historical experience and other factors, but shall not necessarily require a ballot to be printed for each registered voter.

Laws 1974, c. 153, § 6-104, operative Jan. 1, 1975; Laws 1991, c. 321, § 9, eff. March 1, 1992; Laws 1992, c. 247, § 9, emerg. eff. May 21, 1992.

### Historical and Statutory Notes

The 1991 amendment, in the first sentence, substituted "on ballot cards provided by the State Election Board for county, municipal, school or other local election not held in conjunction with statewide elections" for "for Primary, Runoff Primary and General Elections"; in the second sentence, substituted "offices" for "the following offices, in the following order: State Senators; State Representatives; district attorneys; and county officers,"; and added the third sentence.

The 1992 amendment, in the first sentence, deleted "provided by the State Election Board" following "cards".

### Source:

Laws 1907-08, pp. 329, 334, 335.  
Comp.Laws 1909, §§ 3157, 3181, 3182, 3183.  
R.L.1910, §§ 3090, 3106, 3107, 3108.  
Comp.St.1921, §§ 6127, 6173, 6174, 6175.  
Laws 1931, p. 107, § 14.  
Laws 1931, p. 108, §§ 15, 16.  
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.

### Notes of Decisions

#### Construction and application 1

application be made. *Town of Grove v. Haskell, Okla.*, 24 Okla. 707, 104 P. 56 (1909).

#### 1. Construction and application

Provisions of statute were mandatory as to election officials, provided timely

## § 6-105. Separate ballots for general election

At the General Election, each ballot card shall contain a separate ballot 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, Judges of the Court of Criminal Appeals and Judges of the Court of Appeals; (5) 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; Laws 1991, c. 321, § 10, eff. March 1, 1992.

### **Historical and Statutory Notes**

The 1991 amendment substituted "each ballot card shall contain a separate ballot" for "separate ballots shall be printed" and "Judges of the Court of Criminal Appeals and Judges of the Court of Appeals; (5)" for "and Judges of the Court of Criminal Appeals; (5) Judges of the Court of Appeals,".

#### **Source:**

Laws 1943, p. 92, § 1.  
Laws 1968, c. 387, § 3.  
Laws 1970, c. 247, § 15.  
26 O.S.1971, § 227.1.

### **Library References**

Elections ⇨ 166.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 156 et seq.

## **§ 6-106. Manner of printing ballot cards for general election**

The official ballot card for the General Election shall be printed so that the nominees of the various political parties and nonpartisan candidates will appear in columns. For each ballot for which there are partisan candidates, the candidates of the Democratic party shall be printed in the first position, those of the Republican party in the second position 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, followed by candidates who filed as Independents. 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 each ballot on which there are partisan candidates shall appear the name of each recognized party with the emblem of said party. The name and emblem of the Democratic party shall be printed in the first position, the Republican party in the second position and the 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 registration report. Below said name and emblems 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 names of the nominees for such office printed with the name of the nominee's party followed by candidates who file as Independents for such office printed with the word "Independent". 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. The columns shall be set off with well defined lines.

Laws 1974, c. 153, § 6-106, operative Jan. 1, 1975; Laws 1976, c. 90, § 4, emerg. eff. May 6, 1976; Laws 1991, c. 321, § 11, eff. March 1, 1992.

### Historical and Statutory Notes

The 1976 amendment, in the fourteenth sentence, substituted "may" for "shall".

The 1991 amendment rewrote the section, which prior thereto read:

"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 ( $\frac{1}{2}$ ) 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 ( $\frac{1}{4}$ ) 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."

### 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.

**Cross References**

Election emergencies, ballot printing for general election, see Title 26, § 22-102.

**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.

**Library References**

Elections ⇨ 166.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 156 et seq.

**Notes of Decisions**

**Ballot title 2**  
**Form of ballot 1**

**1. Form of ballot**

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.*, Okla., 392 P.2d 711 (1964).

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*, Okla., 24 Okla. 707, 104 P. 56 (1909).

Statute which prescribed 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 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*, Okla., 24 Okla. 707, 104 P. 56 (1909).

Variation in form of ballot prescribed by statute was not material, in absence of showing of fraud. *State v. Millar*, Okla., 21 Okla. 448, 96 P. 747 (1908).

**2. 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*, Okla., 276 P.2d 209 (1954).

**§ 6-107. Order of names for absentee ballots for primary**

Immediately following the close of the contest 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. The determination of the

order of names of candidates on absentee ballots printed by county election boards 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; Laws 1991, c. 321, § 12, eff. March 1, 1992; Laws 1992, c. 247, § 10, emerg. eff. May 21, 1992.

### Historical and Statutory Notes

The 1991 amendment deleted the third sentence, which read, "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."; and in the fourth sentence, inserted "of the order of names of candidates on absentee ballots printed by county election boards".

The 1992 amendment, in the first sentence, substituted "Immediately following the close of the contest" for "On the Monday following the close of the filing".

### 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 school, city and town offices shall be placed on the ballot according to lot.

Laws 1974, c. 153, § 6-109, operative Jan. 1, 1975; Laws 1992, c. 247, § 11, emerg. eff. May 21, 1992.

### Historical and Statutory Notes

The 1992 amendment, in the second sentence, inserted "school,".

Source:  
Laws 1913, c. 157, p. 319, § 11.

Comp.St.1921, § 6285.  
 St.1931, § 5700.  
 26 O.S.1971, § 118.

### Library References

Elections ☞ 126(5).  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 118.

## § 6-110. Separate ballot cards for primary and runoff primary

The names of candidates of the several political parties shall be printed on separate ballot cards for the Primary and Runoff Primary Elections, and each ballot card shall be a different color.

Laws 1974, c. 153, § 6-110, operative Jan. 1, 1975; Laws 1991, c. 321, § 13, eff. March 1, 1992.

### Historical and Statutory Notes

The 1991 amendment substituted "ballot cards for the Primary and Runoff Primary Elections, and each ballot card shall be a different color" for "ballots for

the Primary and Runoff Primary Elections, and each type of ballot shall be printed on a different color of paper".

## § 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 number of the stub and 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.

Laws 1974, c. 153, § 6-111, operative Jan. 1, 1975; Laws 1979, c. 240, § 17, emerg. eff. June 1, 1979; Laws 1993, c. 316, § 6, eff. Sept. 1, 1993.

### 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".

The 1993 amendment, in the second sentence, inserted "number of the stub and the"; and deleted the third through sixth sentences, which read, "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."

### 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. Identification of ballot as to precinct**

All ballots for Primary, Runoff Primary and General Elections must be designated in such a manner as the Secretary of the State Election Board may prescribe to achieve the identification of a ballot for a particular precinct.

Laws 1974, c. 153, § 6-112, operative Jan. 1, 1975; Laws 1992, c. 247, § 12, emerg. eff. May 21, 1992.

**Historical and Statutory Notes**

The 1992 amendment deleted "bear the name of the county and precinct in which said ballots are to be used, or must" following "Elections must" and "same" following "achieve the".

**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 "FOR THE (AMENDMENT OR ACT)-YES" and "AGAINST THE (AMENDMENT OR ACT)-NO", one above the other.

Laws 1974, c. 153, § 6-113, operative Jan. 1, 1975; Laws 1991, c. 321, § 14, eff. March 1, 1992.

**Historical and Statutory Notes**

The 1991 amendment substituted "FOR THE (AMENDMENT OR ACT)-YES" and "AGAINST THE (AMENDMENT OR ACT)-NO", one above the other for "YES" and "NO", one above the other, each preceded by a square one-fourth ( $\frac{1}{4}$ ) inch in size".

**Source:**

Laws 1913, c. 70, p. 111, § 1.  
 Comp.St.1921, § 6662.  
 St.1931, § 5901.  
 26 O.S.1971, § 230.

**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, the Secretary of the State Election Board shall determine the number of ballots to be printed for statewide elections and the secretary of the county election board shall determine the number of ballots to be printed for county, school, municipal and other local elections. Laws 1974, c. 153, § 6-115, operative Jan. 1, 1975; Laws 1992, c. 247, § 13, emerg. eff. May 21, 1992.

**Historical and Statutory Notes**

The 1992 amendment substituted “the Secretary of the State Election Board shall determine the number of ballots to be printed for statewide elections and the secretary of the county election board shall determine the number of ballots to be printed for county, school, municipal and other local elections” for “at least one ballot shall be printed for each voter eligible to cast such ballot in each precinct”.

**Source:**

Laws 1907-08, p. 335.

Comp.Laws 1909, § 3182.

R.L.1910, § 3107.

Comp.St.1921, § 6174.

Laws 1931, p. 108, § 15.

St.1931, § 5717.

26 O.S.1971, § 222.

**§ 6-116. Absentee ballots**

As soon as practicable, the State Election Board and each county election board, when ballots are printed by a 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; Laws 1991, c. 321, § 15, eff. March 1, 1992.

### Historical and Statutory Notes

The 1991 amendment inserted “, when ballots are printed by a county election board,”.

### Library References

Elections §126(5), 216.1.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 118, 210.

## § 6-117. Sample ballot cards

Sample ballot cards for all elections conducted by any county election board shall be prepared as prescribed by the Secretary of the State Election Board and the words “Sample Ballot” shall be printed in letters at least one-half ( $\frac{1}{2}$ ) inch high across the face of the ballot card. Sample ballot cards 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; Laws 1991, c. 321, § 16, eff. March 1, 1992; Laws 1995, c. 290, § 8, eff. Nov. 1, 1995.

### Historical and Statutory Notes

The 1991 amendment, in the first sentence, substituted “ballot cards for all elections conducted by any county election board shall be exact duplicates of the regular ballot cards” for “ballots for Primary, Runoff Primary and General Elections shall be exact duplicates of the regular ballots” and “face of the ballot card” for “face of the ballot”; and in the second sentence, substituted “ballot cards” for “ballots”.

The 1995 amendment, in the first sentence, substituted “prepared as prescribed by the Secretary of the State Election Board” for “exact duplicates of the

regular ballot cards for such elections, except that a stub need not be attached.”.

### Source:

Laws 1907-08, p. 333.  
Laws 1909, p. 271.  
Comp.Laws 1909, §§ 3166, 3274.  
R.L.1910, §§ 3031, 3099.  
Comp.St.1921, §§ 6100, 6166.  
Laws 1927, c. 203, § 8.  
Laws 1931, p. 97, § 7.  
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.

## Notes of Decisions

## Use as official ballots 1

## 1. Use as official ballots

Statute 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.*, Okla., 392 P.2d 711 (1964).

Statute which prohibited counting of sample ballots if they are voted is to prevent stuffing of ballot boxes with unau-

thorized ballots and is not to disfranchise qualified electors. *Sparks v. State Election Bd.*, Okla., 392 P.2d 711 (1964).

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.*, Okla., 392 P.2d 711 (1964).

## § 6-118. Repealed by Laws 1991, c. 321, § 57, eff. March 1, 1992

## Historical and Statutory Notes

The repealed section, derived from Laws 1974, c. 153, § 6-118, related to gummed labels.

## § 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. Contracts for ballots—Advertising for bids

The State Election Board is authorized to contract with the Department of Central Services for all ballots required by the State Election Board. If ballots are not printed by the Department of Central Services, the State Election Board and each county election board, for required ballot printing, shall cause advertisement for bids for printing of all ballots to be made, and shall provide specifications and copy for said ballots. A contract for printing said ballots shall be awarded to the lowest and best 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; Laws 1991, c. 321, § 17, eff. March 1, 1992; Laws 1995, c. 290, § 9, eff. Nov. 1, 1995.

### Historical and Statutory Notes

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."

The 1991 amendment rewrote the section, which prior thereto read:

"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."

The 1995 amendment, in the first and second sentences, substituted "Department of Central Services" for "Office of Public Affairs"; and in the third sentence, inserted "and best".

### 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.

### 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.

### 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. Op.Atty.Gen. No. 78-305 (Dec. 29, 1978).

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. Op.Atty. Gen. No. 78-305 (Dec. 29, 1978).

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.            | Laws 1931, p. 107, §§ 12, 13.    |
| Comp.Laws 1909, §§ 3159, 3160, 3169, 3190, 3275. | St.1931, §§ 5702, 5767.          |
| R.L.1910, §§ 3028, 3093, 3102.                   | Laws 1949, p. 218, § 1.          |
| Comp.St.1921, §§ 6097, 6159, 6160, 6169, 6182.   | 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 1916, pp. 38, 41 to 43, §§ 7 to 9, 11. | Laws 1953, p. 113, §§ 1 to 6. |
| Comp.St.1921, §§ 6255 to 6257, 6259.        | Laws 1957, p. 178, § 19.      |
| St.1931, §§ 5657 to 5659, 5661.             | Laws 1959, p. 115, § 1.       |
| Laws 1941, p. 93, § 1.                      | 26 O.S.1971, § 93.19.         |
| Laws 1944, Ex.Sess., p. 2, § 1.             | Laws 1974, c. 75, § 23.       |
| Laws 1949, p. 214, § 2.                     | 26 O.S.Supp.1975, § 93.53.    |
| Laws 1949, p. 216, § 3.                     | Laws 1976, c. 90, § 10.       |
| 26 O.S.1951, §§ 77 to 79, 81.               | Laws 1979, c. 240, § 16.      |
| Laws 1953, p. 104, § 2.                     | 26 O.S.Supp.1979, § 4-123.    |
|   | 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 existing text 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. 193, § 3.  
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 6:30 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; Laws 1992, c. 247, § 14, emerg. eff. May 21, 1992.

**Historical and Statutory Notes**

The 1992 amendment, in the first sentence, substituted "6:30" for "6:45".

**Source:**

Laws 1907-08, pp. 331, 339.  
Comp.Laws 1909, §§ 3159, 3190.  
Comp.St.1921, §§ 6159, 6182.

Laws 1927, c. 203, § 12.  
Laws 1931, p. 107, § 12.  
St.1931, §§ 5702, 5744.  
Laws 1949, p. 218, § 1.  
Laws 1955, p. 206, § 12.  
Laws 1959, p. 121, § 2.  
26 O.S.1971, §§ 184, 282.

**Law Review and Journal Commentaries**

Dimensions of newly emergent, quasi-fundamental right to political candidacy.

Dennis W. Arrow. 6 Okla.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. Empty ballot box—Tape verifying no counted votes**

When all else is in readiness for the opening of the polls, the inspector shall, in view of the judge, clerk and any registered voters at the polling place, confirm that the ballot box is empty and locked and shall cause the voting device to print out a paper tape to verify that no votes have been counted. This tape shall remain attached to the voting device and in evidence throughout the voting process.

The key used for obtaining printed totals shall be retained by the inspector.

Laws 1974, c. 153, § 7-107, operative Jan. 1, 1975; Laws 1991, c. 321, § 18, eff. March 1, 1992.

**Historical and Statutory Notes**

The 1991 amendment rewrote the section, which prior thereto read:

"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."

**Source:**

Laws 1907-08, pp. 343, 361.  
Comp.Laws 1909, §§ 3197, 3277.  
R.L.1910, §§ 3030, 3124.  
Comp.St.1921, §§ 6099, 6195.  
St.1931, §§ 5727, 5770.  
Laws 1963, c. 109, § 1.  
26 O.S.1971, §§ 120, 252.

**Cross References**

Election emergencies, opening ballot box, see Title 26, § 22-103.

**Library References**

Elections ⇨126(6), 217.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 114, 118, 194, 204.

**§ 7-107.1. Repealed by Laws 1995, c. 290, § 18, eff. Nov. 1, 1995**

**Historical and Statutory Notes**

The repealed section, derived from Laws 1991, c. 2, § 3, related to the handling of ballot boxes.

**§ 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.

**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.

### Law Review and Journal Commentaries

Evidence: Voter testimony—Faulty legislative response to *Helm v. State Election Board*. 33 Okla.L.Rev. 150 (1980).

### Library References

Elections Ⓒ228, 309.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 215, 324, 334.

### Comments.

Topical privileges, political vote, see Evidence, vol. 2, Whinery, § 42.02.

### 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*, Okla., 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 (½) 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****Source:**

Laws 1907-08, p. 344.  
Comp.Laws 1909, § 3198.  
R.L.1910, § 3125.

Comp.St.1921, § 6196.  
St.1931, § 5728.  
26 O.S.1971, § 253.

**Cross References**

Disabled voters, see Title 26, §§ 7-123.1, 7-123.3.

**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".

### Library References

Elections ⇨212.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 197.

### United States Supreme Court

Equal protection for voting to persons criminally detained, see *O'Brien v. Skinner*, U.S.N.Y.1974, 94 S.Ct. 740, 414 U.S. 524, 38 L.Ed.2d 702.

### Notes of Decisions

#### Construction and application 1

##### 1. Construction and application

This section does not require that the name announced identically match the

registration, only that the original form can be found in the precinct registry. *Keltch v. Alfalfa County Election Bd.*, Okla., 737 P.2d 908 (1987).

## § 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 Title 26, § 14-101 et seq.

### Library References

Elections ⇨216.1.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 210.

### Notes of Decisions

#### Construction and application 1

##### 1. Construction and application

Requirement that voters sign either precinct registry, challenged voter affida-

vit, or absentee voter affidavit was merely directory, and fact that there were more votes cast in election than there were signatures could not serve as basis for invalidating election results or excess number of votes. *Jackson v. Maley*, Okla., 806 P.2d 610 (1991).

## § 7-116. Use of voter identification card—Affidavit required

A. 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 the voter presents a voter identifica-

tion card showing the voter to be a registered voter of the precinct to the judge, completes a voter registration application for a residence address within the county and signs an affidavit swearing or affirming that the voter is currently registered and eligible to vote in said precinct and that has not cast an absentee ballot for said election.

B. If a person alleges to an election official in the county of the person's residence on a day of regular or in-person absentee voting that the person applied to become a registered voter twenty-five (25) days or more prior to the election, the person shall be allowed to vote a ballot for the precinct of the person's residence if:

1. The county election board secretary of the person's county of residence confirms that a valid application for the person is on file at the county election board office and the application became valid twenty-five (25) days or more prior to the election; and

2. The person signs an affidavit swearing or affirming that the person applied to become a registered voter of the precinct of the person's residence twenty-five (25) days or more prior to the election. Laws 1974, c. 153, § 7-116, operative Jan. 1, 1975; Laws 1990, c. 331, § 15, eff. July 1, 1990; Laws 1995, c. 290, § 10, eff. Nov. 1, 1995.

### Historical and Statutory Notes

The 1990 amendment substituted "name" for "original registration form" following "does not contain a voter's".

The 1995 amendment designated the existing text as subsection A; rewrote subsection A, which prior thereto read:

"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."

; and added subsection B.

### Library References

Elections ¶212.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 197.

### Notes of Decisions

#### Construction and application 1

##### 1. Construction and application

Requirement that voters sign either precinct registry, challenged voter affidavit, or absentee voter affidavit was merely directory, and fact that there were more votes cast in election than there were signatures could not serve as basis for

invalidating election results or excess number of votes. *Jackson v. Maley*, Okla., 806 P.2d 610 (1991).

In context of petition alleging irregularities, evidence supported finding that 87 persons who voted in election were not registered to vote by records of county election board. *Jackson v. Maley*, Okla., 806 P.2d 610 (1991).

## § 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 fourth sentence, substituted "twenty-two (22)" for "six (6)".

The 1990 amendment substituted "precinct registry" for "pollbook" throughout the section.

#### 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.

### Notes of Decisions

#### Construction and application 1

##### 1. Construction and application

Requirement that voters sign either precinct registry, challenged voter affidavit, or absentee voter affidavit was merely directory, and fact that there were more votes cast in election than there were signatures could not serve as basis for invalidating election results or excess number of votes. *Jackson v. Maley*, Okla., 806 P.2d 610 (1991).

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. *Keltch v. Alfalfa County Election Bd.*, Okla., 737 P.2d 908 (1987).

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 the ballot as prescribed by the Secretary of the State Election Board for the party of his choice or for the candidates of his choice or for the answer he desires to select on each question.

Laws 1974, c. 153, § 7-119, operative Jan. 1, 1975; Laws 1991, c. 321, § 19, eff. March 1, 1992.

## Historical and Statutory Notes

The 1991 amendment substituted "the ballot as prescribed by the Secretary of the State Election Board" for "in ink,

an 'X' or cross in the appropriate circle or square" and "select" for "give".

**§ 7-120. Secrecy envelopes**

Before leaving the voting booth, the voter may insert his ballot card into a secrecy envelope in such a manner that his votes cannot be seen. The voter then shall insert his ballot card in the voting device. The voter thereupon shall immediately leave the polling place.

Laws 1974, c. 153, § 7-120, operative Jan. 1, 1975; Laws 1978, c. 80, § 1, operative July 1, 1978; Laws 1991, c. 321, § 20, eff. March 1, 1992; Laws 1993, c. 316, § 7, eff. Sept. 1, 1993.

## Historical and Statutory Notes

The 1978 amendment added the sixth and seventh sentences.

The 1991 amendment, in the first sentence, substituted "may insert his ballot card into a secrecy envelope in such a manner" for "shall fold his ballot so"; in the second sentence, substituted "The voter shall remove the" for "He shall remove said"; in the third sentence, twice inserted "card"; in the fourth sentence, substituted "insert his ballot card in the voting device" for "deposit his ballot in the ballot box"; and in the sixth sentence, inserted "card".

The 1993 amendment rewrote the section, which prior thereto read:

"Before leaving the voting booth, the voter may insert his ballot card into a

secrecy envelope in such a manner that his votes cannot be seen, but so that the numbered stub is plainly visible. The voter shall remove the numbered stub in the presence of the inspector. The inspector shall examine said numbered stub to determine that the ballot card was the same ballot card said voter was issued. The voter then shall insert his ballot card in the voting device. 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 card. 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."

**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 ballot cards**

Should a voter spoil any ballot in his effort to vote the same, he shall fold the ballot card and return it to the clerk. The clerk shall destroy said ballot card or cards in the presence of the voter and shall issue said voter another ballot card 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 ballot card or cards, returned said ballot card or cards to the clerk, that the clerk destroyed the ballot card or cards in his presence and that he was issued a new ballot card or cards.

Laws 1974, c. 153, § 7-122, operative Jan. 1, 1975; Laws 1991, c. 321, § 21, eff. March 1, 1992; Laws 1993, c. 316, § 8, eff. Sept. 1, 1993.

**Historical and Statutory Notes**

The 1991 amendment, in the first sentence, substituted "the ballot card and return it and all other ballot cards" for "it and return it and all other ballots"; in the second sentence, substituted "ballot card or cards" for "ballots"; and in the third sentence, substituted "ballot card or cards, returned said ballot card or cards to the clerk, that the clerk destroyed the ballot card or cards in his presence and that he was issued a new ballot card or cards" for "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".

The 1993 amendment, in the first sentence, deleted "and all other ballot cards which he was issued" following "return it"; and in the second sentence, substituted "another ballot card" for "another complete set of ballots".

**Source:**

Laws 1907-08, p. 344.  
Comp.Laws 1909, § 3200.  
R.L.1910, § 3127.  
Comp.St.1921, § 6198.  
St.1931, § 5730.  
26 O.S.1971, § 255.

**Library References**

Elections ⇨219.

WESTLAW Topic No. 144.

C.J.S. Elections § 206.

### Notes of Decisions

#### Construction and application 1

##### 1. Construction and application

Requirement that affidavit be signed when voter somehow spoils ballot such that new one has to be issued is directory rather than mandatory, and lack of affidavits could not serve as basis for invalidating election or even votes claimed; statute provided no invalidating sanction, and there was no indication that spoiled ballots were not destroyed or that spoiled ballots were counted as valid votes in

election. *Jackson v. Maley*, Okla., 806 P.2d 610 (1991).

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 shall be provided with another ballot. *Stover v. Alfalfa County Election Bd.*, Okla., 530 P.2d 1020 (1975).

Ballot mutilated by qualified elector on erroneous advice of election official when prohibited from casting ballot could not be counted. *Jackson v. Orendorff*, Okla., 139 Okla. 82, 281 P. 147 (1929).

### § 7-123. Repealed by Laws 1988, c. 101, § 5, eff. July 1, 1989

#### Historical and Statutory Notes

The repealed section, relating to assistance for voters with physical disabilities, was derived from:

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.

See Title 26, §§ 7-123.1, 7-123.3.

#### § 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 (2) 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.

#### 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, derived from See Title 26, § 7-123.3.  
Laws 1981, c. 116, § 2, related to assistance for illiterate voters.

**§ 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.

**Library References**

Elections ¶220.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 208.

**Notes of Decisions**

**Construction and application** 1 disabled voter in marking his ballot. Op. Atty.Gen. No. 81-277 (Oct. 21, 1981).

**1. Construction and application**

Pursuant to statute, a state classified employee may lawfully assist a visually

**§ 7-124. Repealed by Laws 1988, c. 101, § 5, eff. July 1, 1989**

**Historical and Statutory Notes**

The repealed section, derived from See Title 26, § 7-123.3.  
Laws 1974, c. 153, § 7-124, related to assistance for visually disabled voters.

**§ 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 and voting devices are not used, 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; Laws 1991, c. 321, § 22, eff. March 1, 1992.

#### Historical and Statutory Notes

The 1991 amendment, in the sixth sentence, inserted "and voting devices are not used".

#### 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.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 224.

### § 7-126. Repealed by Laws 1991, c. 321, § 57, eff. March 1, 1992

#### Historical and Statutory Notes

See, now, Title 26, § 22-104.

### § 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 name shall not be counted;

2. Any mark prescribed by the Secretary of the State Election Board made by voters indicating the voter's choice of party, candidate or issue on a ballot 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;

3. Marks used to designate the intention of the voter, other than those herein defined as valid markings, shall not be counted;

4. 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;

5. A valid marking marked for 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 for a candidate's name shall take precedence, for that office, over a valid marking for a political party. Provided, further, that if valid markings are marked for more than one political party on a ballot, said ballot shall not be counted for any party offices thereon; and

6. 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; Laws 1991, c. 321, § 23, eff. March 1, 1992.

### Historical and Statutory Notes

The 1978 amendment, in paragraph 3, added the fourth sentence.

The 1983 amendment deleted former paragraph 1, which 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 through 8 as paragraphs 1 through 7.

The 1991 amendment rewrote the section, which prior thereto read:

"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."

**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.

### Cross References

Election emergencies, rules governing counting and recounting votes, see Title 26, § 22-105.

### Law Review and Journal Commentaries

Evidence: Voter testimony—Faulty legislative response to Helm v. State Election Board. 33 Okla.L.Rev. 150 (1980).

### Library References

Elections 239, 241, 244.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 224, 226, 227.

### Notes of Decisions

**Construction and application** 2

**Deceased candidates** 8

**Distinguishing marks, generally** 4

**Failure to mark ballot** 6

**Intent of voter** 3

**Validity** 1

**Voting machines** 7

**Write-in votes** 5

county commissioner. Boevers v. Election Bd. of Canadian County, Okla., 640 P.2d 1333 (1981).

#### 3. 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, Okla., 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., Okla., 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

#### 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., W.D.Okla.1984, 593 F.Supp. 118.

#### 2. Construction and application

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

intended to vote could be given by the voters themselves. *Helm v. State Election Bd.*, Okla., 589 P.2d 224 (1979).

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*, Okla., 26 Okla. 502, 110 P. 1115 (1910).

#### 4. Distinguishing marks, generally

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. *Stover v. Alfalfa County Election Bd.*, Okla., 530 P.2d 1020 (1975).

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*, Okla., 446 P.2d 384 (1968).

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*, Okla., 47 Okla. 1, 145 P. 760 (1914).

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*, Okla., 22 Okla. 507, 98 P. 565 (1908).

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*, Okla., 16 Okla. 612, 86 P. 283 (1906).

#### 5. Write-in votes

Oklahoma's ban on write-in votes for presidential and vice-presidential elections was presumed constitutional given that state's ballot access laws were constitutional, even though state's interest in banning write-in votes was less in presidential elections. *Coalition for Free and Open Elections, Prohibition Party v. McElderry*, C.A.10 (Okla.)1995, 48 F.3d 493, certiorari denied 116 S.Ct. 63, 133 L.Ed.2d 26.

Interests of voters for minor political parties in casting write-in votes was insufficient to overcome presumption that Oklahoma's ban on write-in votes for presidential and vice-presidential elections was valid. *Coalition for Free and Open Elections, Prohibition Party v. McElderry*, C.A.10 (Okla.)1995, 48 F.3d 493, certiorari denied 116 S.Ct. 63, 133 L.Ed.2d 26.

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.*, Okla., 530 P.2d 1020 (1975).

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*, Okla., 47 Okla. 1, 145 P. 760 (1914).

#### 6. 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*, Okla., 744 P.2d 934 (1987).

#### 7. Voting machines

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 candidate or candidates thereby affected is clearly directed toward the paper ballot and does not apply to voting machines. *Helm v. State Election Bd.*, Okla., 589 P.2d 224 (1979).

Fact that voting machine was improperly programmed in that the names of

## Note 7

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.*, Okla., 589 P.2d 224 (1979).

was inapplicable to votes cast for incumbent judge who properly filed for office but who died before election, as voters' choice of candidates was easily discerned; 91% of them voted for incumbent judge. *Evans v. State Election Bd. of State of Okl.*, Okla., 804 P.2d 1125 (1990).

## 8. Deceased candidates

This section pertaining to mismarked or improperly marked election ballots

## §§ 7-128, 7-129. Repealed by Laws 1991, c. 321, § 57, eff. March 1, 1992

### Historical and Statutory Notes

For disposition of subject matter of repealed §§ 7-128 and 7-129, see, now, Title 26, §§ 22-106 and 22-107, respectively.

### § 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.

### Library References

Elections 239, 244.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 226, 227.

### § 7-129.2. Substitute ballot cards

In the event a ballot card is mutilated by the voting device and thus not counted during the counting process, then two members of the precinct or county election board of different political party affiliations shall be authorized to mark a substitute ballot card in identical fashion, insofar as is possible. In the event a ballot card 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 card shall be entered for counting into the voting device. A written record of such action shall be made by the two precinct or county election board members.

Laws 1984, c. 38, § 2, operative July 1, 1984; Laws 1991, c. 321, § 24, eff. March 1, 1992.

### Historical and Statutory Notes

The 1991 amendment, in the first sentence, substituted "card is mutilated" for "counted electronically by a voting device is mutilated", inserted "or county", and

inserted "card" following "substitute ballot"; in the second and third sentences, inserted "card"; and in the fourth sentence, inserted "or county".

### Library References

Elections Ⓒ235.

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 chair 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. Watchers shall be entitled to observe the voting device both before the polls are opened and after the polls are closed; provided, further, that said watchers shall not be present at the polling place at other times. Watchers may be commissioned to observe voting device testing and 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; Laws 1991, c. 321, § 25, eff. March 1, 1992; Laws 1995, c. 290, § 11, eff. Nov. 1, 1995.

### Historical and Statutory Notes

The 1983 amendment, in the third sentence, substituted "Wednesday" for "Monday", and added the ninth and tenth [now seventh and eighth] 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".

The 1991 amendment deleted the sixth and seventh sentences, which read, "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 the eighth sentence, substituted "Watchers shall be entitled to observe the voting device" for "In counties using voting machines, watchers shall be entitled to observe the

vote-recording device on the machine"; and in the ninth sentence, substituted "Watchers may be commissioned to observe voting device testing and" for "In counties using voting machines, watchers may be commissioned".

The 1995 amendment, in the second sentence, substituted "chair" for "chairman"; and in the sixth sentence, substituted "shall" for "need".

**Source:**

Laws 1907-08, p. 326.  
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.

**Cross References**

Election emergencies, appointment and duties of watchers, see Title 26, § 22-108.

**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.  
Comp.St.1921, §§ 6187, 6199.  
St.1931, § 5731.  
26 O.S.1961, § 63.  
26 O.S.1971, § 256.  
Laws 1974, c. 153, § 7-131.

## § 7-132. Certificate of vote—Electronic results of vote data pack

After the last voter has voted, the inspector shall insert the key in the voting device and obtain a number, prescribed by the Secretary of the State Election Board, of printouts of results from the vote data pack. The inspector, judge and clerk shall each sign all printouts which shall be certificates that the results are true and correct. The printed certificate of vote and electronic results of the vote data pack shall be official results of the precinct. 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; Laws 1991, c. 321, § 26, eff. March 1, 1992.

**Historical and Statutory Notes**

The 1991 amendment deleted the former first sentence, which read, "At the conclusion of the official count, the counters shall execute certificates of vote wherein said counters attest to the cor-

rectness of the totals."; and inserted the first through third sentences.

**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.

### Cross References

Election emergencies, certificates of vote, see Title 26, § 22-109.

### Library References

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

### Notes of Decisions

**Construction and application** 1  
**Declaration of votes** 3  
**Presumptions** 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, Okla.*, 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 Title 26, § 9-102, 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. 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, Okla.*, 191 Okla. 628, 136 P.2d 411 (1942).

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, Okla.*, 121 Okla. 248, 249 P. 700 (1926).

#### 3. 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, Okla.*, 116 Okla. 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. *State v. Lasher, Okla.*, 116 Okla. 273, 244 P. 809 (1926).

## § 7-132.1. Voting devices—Certificate of vote and electronic results

In counties using voting devices, after the last voter has voted, the Inspector shall insert the key in the voting device and obtain a



number, prescribed by the Secretary of the State Election Board, of printouts of results from the vote data pack. The inspector, judge and clerk shall each sign all printouts which shall be certificates that the results are true and correct. The printed certificate of vote and electronic results of the vote data pack shall be the official results of the precinct. 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 1991, c. 2, § 4, emerg. eff. Feb. 25, 1991.

### **§ 7-132.2. Voting devices—Removal and transfer of vote data pack**

In counties using voting devices, after vote data pack results have been printed, the voting device shall be unlocked and the seal removed from the vote data pack compartment. The vote data pack shall be removed and prepared for transfer to the county election board as prescribed by the Secretary of the State Election Board. Laws 1991, c. 2, § 5, emerg. eff. Feb. 25, 1991.

### **§ 7-133. Ballot cards—Certificate of vote—Return to county election board**

After certificates of vote have been printed, the ballot box shall be unlocked and all ballot cards and a copy of the signed certificate of vote shall be placed in a transfer case. Said transfer case shall be sealed, and the inspector shall return it, along with all other election materials and a copy of the certificate of vote, forthwith to the county election board.

Laws 1974, c. 153, § 7-133, operative Jan. 1, 1975; Laws 1991, c. 321, § 27, eff. March 1, 1992.

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

The 1991 amendment rewrote the section, which prior thereto read:

"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."

#### **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.Supp.1973, § 373.

#### **Cross References**

Election emergencies, return of ballots and materials to county election board, see Title 26, § 22-110.

**Library References**

Elections ⇨255.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 234.

**§ 7-133.1. Voting devices—Ballot cards and certificate of vote placed in transfer case—Transfer to county election board**

In counties using voting devices, after certificates of vote have been printed, the ballot box shall be unlocked and all ballot cards and a copy of the signed certificate of vote shall be placed in a transfer case. Said transfer case shall be sealed, and the inspector shall return it, along with all other election materials and a copy of the certificate of vote, forthwith to the county election board.

Laws 1991, c. 2, § 6, emerg. eff. Feb. 25, 1991.

**§ 7-134. Retention of transfer case**

The county election board shall not disturb anything in the transfer case, and the case shall remain sealed and 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 another election, at which time the ballots shall be destroyed; provided, however, that in no case shall the ballot cards be destroyed until thirty (30) days after the election at which they were cast.

Laws 1974, c. 153, § 7-134, operative Jan. 1, 1975; Laws 1991, c. 321, § 28, eff. March 1, 1992.

**Historical and Statutory Notes**

The 1991 amendment, in the first sentence, substituted "transfer case, and the case shall remain sealed and" for "ballot box, and the box shall be", "another" for "the next", and "ballot cards" for "ballots"; and deleted the second sentence, which read, "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."

**Source:**

Laws 1907-08, p. 328.  
Comp.Laws 1909, § 3140.  
R.L. 1910, § 3088.  
Laws 1910-11, c. 106, p. 229, § 8.  
Comp.St. 1921, § 6155.  
Laws 1931, p. 91, § 1.  
St. 1931, § 5808.  
Laws 1973, c. 3, § 1.  
26 O.S.Supp. 1973, § 373.

**Cross References**

Election emergencies, retention of ballot box, see Title 26, § 22-111.

**Library References**

Elections ⇨255.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 234.

## Notes of Decisions

**Construction and application 1**  
**Custody of ballot boxes 2**  
**Discovery 3**

**1. Construction and application**

St.1921, § 6155 (repealed; now this section) which prescribed method of preserving ballots was directory only, and substantial compliance therewith authorizes recount in election contest. *Looney v. Election Bd. of Seminole County, Okla.*, 146 Okla. 207, 293 P. 1056 (1930).

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, Okla.*, 35 Okla. 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 Okla. 161, 42 P.2d 285 (1935); *Board of Com'rs of Hughes County v. Young*, 171 Okla. 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. *Board of Com'rs of Hughes County v. Sneed*, 171 Okla. 161, 42 P.2d 285 (1935); *Board of Com'rs of Hughes County v. Young*, 171 Okla. 161, 42 P.2d 281 (1935).

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. *Board of Com'rs of Hughes County v. Sneed*, 171 Okla. 161, 42 P.2d 285 (1935); *Board of Com'rs of Hughes County v. Young*, 171 Okla. 161, 42 P.2d 281 (1935).

**3. Discovery**

Oklahoma Election Code [26 Okl.Stat. Ann. § 1-101 et seq.] supplies exclusive 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, Okla.*, 770 P.2d 14 (1989).

**§ 7-134.1. Voting devices—Recounts**

In counties using voting devices, if on election night the uncounted ballot cards in a precinct exceed two percent (2%) of the total number of persons voting in the precinct or if the voting device has malfunctioned in such a way that there are no totals on the printout or if the printout is illegible, the county election board is authorized to open the transfer case and recount the ballots on a preassigned voting device in public view and in the presence of a representative of the sheriff's office. Upon completion of the recount the transfer case shall be resealed by members of the county election board. Laws 1991, c. 2, § 7, emerg. eff. Feb. 25, 1991.

**Cross References**

In-person absentee voting, handling of vote data packs, see Title 26, § 14-115.4.

§ 7-135. Repealed by Laws 1991, c. 321, § 57, eff. March 1, 1992

Historical and Statutory Notes

See, now, Title 26, § 22-112.

§ 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 accumulated and listed the results of such election, as the official precinct returns are received, in a manner and 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 electronically or in writing as prescribed by the Secretary of the State Election Board 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; Laws 1991, c. 321, § 29, eff. March 1, 1992.

Historical and Statutory Notes

The 1991 amendment, in the second sentence, inserted "accumulated and" and "in a manner and"; and in the third sentence, inserted "electronically or in writing as prescribed by the Secretary of the State Election Board".

Library References

Elections ⇨257.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 235.

Notes of Decisions

Construction and application 1  
Correction of errors 4  
Evidence 5  
Irregular precinct certificates 2  
Irregular returns 3  
Mandamus to board 6

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*, Okla., 35 Okla. 283, 129 P. 741 (1913).

1. Construction and application

Under Laws 1911, c. 106, § 8 (repealed; see, now, Title 26, § 7-134),

## Note 1

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. *Moren v. Nichols*, Okla., 35 Okla. 283, 129 P. 741 (1913).

## 2. 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 statute 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 Bd.*, Okla., 29 Okla. 31, 116 P. 168 (1911).

Canvassing board may canvass precinct returns even though all precinct certificates are not formally filled out. *State v. State Election Bd.*, Okla., 29 Okla. 31, 116 P. 168 (1911).

## 3. 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.*, Okla., 589 P.2d 224 (1979).

Precinct election officials' failure to make returns to county election board within time prescribed by did not defeat election in that precinct. *Bozarth v. Election Bd. of Okmulgee County*, Okla., 144 Okla. 206, 291 P. 804 (1930).

That only three official counters were appointed and signed returns from certain precinct did not defeat primary election in that precinct. *Bozarth v. Election Bd. of Okmulgee County*, Okla., 144 Okla. 206, 291 P. 804 (1930).

Count of ballots by counters of precinct out of view of election officers contrary to R.L. 1910, § 3082 (repealed; see, now, Title 26, § 7-126) 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*, Okla., 67 Okla. 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. *Cobb v. Berry*, Okla., 67 Okla. 29, 168 P. 46 (1917).

Where the certificate of election returns had not been executed, as prescribed by R.L. 1910, § 3084 (repealed; see, now, Title 26, § 7-132), 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*, Okla., 40 Okla. 20, 135 P. 282 (1913).

## 4. Correction of errors

Precinct election returns not properly authenticated by counters may be corrected under supervision of county canvassing board. *Moren v. Nichols*, Okla., 35 Okla. 283, 129 P. 741 (1913).

## 5. 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.*, Okla., 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 canvass thereof, the voter would still not be a competent witness to testify. *Helm v. State Election Bd.*, Okla., 589 P.2d 224 (1979).

The duplicate certificate signed by the counters of a precinct, provided for by Comp.Laws 1909, § 3136 (repealed; see, now, Title 26, § 7-132), the other two duplicates having been lost, held compe-

tent evidence of result of election in such precinct. *Hausam v. Parker*, Okla., 31 Okla. 399, 121 P. 1063 (1911).

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*, Okla., 11 Okla. 335, 66 P. 337 (1901).

#### 6. Mandamus to board

Canvassing board may be compelled by mandamus to re-convene and canvass complete returns of election. Board in such case was without authority to determine, upon affidavits, question of legality of election in any precinct. Election Bd.

of *Kingfisher County v. State*, Okla., 43 Okla. 337, 142 P. 984 (1914).

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*, Okla., 11 Okla. 335, 66 P. 337 (1901).

### § 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:

Laws 1974, c. 201, § 31.  
26 O.S.Supp.1975, § 327.31.

Laws 1976, c. 90, § 11.  
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 1943, pp. 97, 98, §§ 1, 2.

Laws 1967, c. 32, § 3.

26 O.S.1971, §§ 168.1, 168.2.

## Library References

Elections ⇨156.

WESTLAW Topic No. 144.

C.J.S. Elections § 135.

## Notes of Decisions

## Construction and application 1

## 1. Construction and application

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, Okla.*, 305 P.2d 525 (1956).

## § 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.

## Notes of Decisions

Construction and application 1  
Evidence 2

## 1. Construction and application

One's status as nominee of party for constable at primary election did not de-

pend on issuance of certificate of nomination by county election board. *State v. Lasher, Okla.*, 116 Okla. 273, 244 P. 809 (1926).

Provisions of R.L.1910, § 3037 (repealed) for issuing certificate of nomination by county election board were direc-

tory; issuance depending on filing by candidate of expense report required by law. *State v. Lasher*, Okla., 116 Okla. 273, 244 P. 809 (1926).

prima facie evidence of candidate's nomination by his party. *State v. Lasher*, Okla., 116 Okla. 273, 244 P. 809 (1926).

**2. Evidence**

Certificate of nomination at primary election, when delivered in due form, is

**§ 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**

**Construction and application 1**  
**Evidence 4**  
**Judicial powers 3**  
**Mandamus to board 2**

viding that each house should be judge of election returns and qualification of its own members. *Williamson v. State Election Bd.*, Okla., 431 P.2d 352 (1967).

**1. Construction and application**

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.*, Okla., 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 pro-

visions of an election statute which affect receiving and recording of the ballots and the canvassing of the votes are generally regarded as directory only. *Coffey v. Board of Com'rs of McCurtain County*, Okla., 205 Okla. 238, 237 P.2d 139 (1951).

Person elected to office at general election is entitled to certificate of election from proper election board. *State ex rel. Cameron v. Jones*, Okla., 165 Okla. 193, 25 P.2d 648 (1933).

County election board has no authority to determine qualifications of voters or how any voter voted at election. *Bozarth v. Election Bd. of Okmulgee County*, Okla., 144 Okla. 206, 291 P. 804 (1930).



**2. 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.*, Okla., 431 P.2d 352 (1967).

**3. 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.*, Okla., 431 P.2d 352 (1967).

**4. Evidence**

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.*, Okla., 501 P.2d 817 (1972).

Holder of due and proper certificate of election to office is prima facie entitled to qualify and assume duties. *O'Brien v. Gassoway*, Okla., 125 Okla. 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*, Okla., 53 Okla. 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*, Okla., 43 Okla. 231, 142 P. 408 (1914).

## **§ 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, General Election or any Primary 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 or their designee, 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 tying candidates for which the vote was tied. The notice shall include the time, date and location of the selection, 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 the 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 there are three (3) or more candidates and a tie for first place occurs for the nomination of a candidate at a Primary Election for which a Runoff Primary will be held, the names of the tied candidates 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; Laws 1991, c. 129, § 2, eff. Sept. 1, 1991.

### 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."

The 1991 amendment, in subsection A, substituted ", General Election or any Primary Election," for "or General Election or any Primary election for which no Runoff Primary will be held," and inserted "or their designee"; in subsection B, in paragraph 1, in the first sentence, inserted "," following "shall" and "elec-

tion" and inserted "tying", and in the second sentence, substituted "The notice" for "Such notice" and inserted "of the selection", and in paragraph 2, in the first sentence, substituted "the meeting" for "such meeting"; and rewrote subsection C, which prior thereto read:

"When there are three (3) or more candidates and a tie for first place occurs for the nomination of a candidate at a Primary Election for which a Runoff Primary will be held, the names of the tied

candidates shall be placed on the Runoff Primary ballot."

#### 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.

### Cross References

Certification of results, ties involving candidates resolved by lot substantially as prescribed by this section, see Title 26, § 8-115.

Fair association board of directors, tie vote in election, selection of candidate by lot pursuant to this section, see Title 2, §§ 104c, 131.3A.

### 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 and Journal Commentaries**

Survey of Oklahoma administrative law; hearing, evidence and compelling attendance of witnesses. Maurice H. Merrill. 4 Okla.L.Rev. 286, 296 (August 1951).

**Library References**

Elections ¶278.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 258.

**Notes of Decisions**

**Construction and application 1**

**1. Construction and application**

Petition alleging irregularities and requesting recount following general elec-

tion was timely filed where last date to file fell on official state holiday and petition was filed on following Monday. McKye v. State Election Bd. of State of Oklahoma, Okla., 890 P.2d 954 (1995).

## Note 1

Certification of election returns provision of city charter did not prescribe limit contrary to state's three-day protest period for filing election protest; section merely provided procedure for certification of the returns, but did not limit the time for appeal. *Simpson v. Dixon*, Okla., 853 P.2d 176 (1993).

Provision in city charter concerning certificate of nomination did not abridge statutory election protest; provision did not address when protest was to be filed for primary election. *Simpson v. Dixon*, Okla., 853 P.2d 176 (1993).

Certificate of election provision in city charter containing procedure for issuance of instrument did not conflict with

statutory protest procedure. *Simpson v. Dixon*, Okla., 853 P.2d 176 (1993).

Petition alleging irregularities in election was untimely when not filed by 5:00 p.m. on Friday following election, despite petitioner's contention that he timely filed recount petition and that he could not have known of irregularities until he began to hear evidence concerning preservation of ballots in connection with recount petition; petitioner raised no irregularities in recount petition, and petitioner was in position to determine by Friday whether any irregularities existed. *Henderson v. Maley*, Okla., 806 P.2d 626 (1991).

## § 8-110. Sheriff to provide security for ballot boxes or transfer cases

It shall be the duty of the sheriff in each county to provide security for the ballot boxes or transfer cases from the time said ballot boxes or transfer cases 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 or transfer cases are delivered to the district courtroom.

Laws 1974, c. 153, § 8-110, operative Jan. 1, 1975; Laws 1991, c. 321, § 30, eff. March 1, 1992.

### Historical and Statutory Notes

The 1991 amendment thrice inserted "or transfer cases".

### Cross References

In-person absentee voting, handling of vote data packs, see Title 26, § 14-115.4.

### 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 or individual authorized to request a recount 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.

The candidate or individual may indicate in the petition requesting the recount that said candidate or individual desires to have the ballots recounted manually. Failure by the candidate or individual to state such preference for a manual recount 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. 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. In elections involving candidates, 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. 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; Laws 1991, c. 321, § 31, eff. March 1, 1992.

### 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 eighth sentence [now subsection A, eleventh 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 tenth sentence [now subsection A, thirteenth sentence], substituted "at the date, time and place of said hearing" for "within twenty-four (24) hours".

The 1989 amendment designated the existing text as subsection A, and added subsection B.

The 1991 amendment, in subsection A, in the first sentence, inserted "or individual authorized to request a recount", inserted the third through fifth sentences, and in the seventh sentence, substituted "In elections involving candidates, it" for "It"; and in subsection B.2, deleted the third and fourth sentences, which read, "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 then (10) days from the date of filing of said petition."

### Cross References

Election emergencies, petitions for recount, see Title 26, § 22-113.

### Library References

Elections  $\S\S$  260, 261, 269, 308.  
WESTLAW Topic No. 144.

C.J.S. Elections  $\S\S$  237, 245 et seq.,  
321.

### Notes of Decisions

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# 1. Construction and application

Recount is creature of statutory law and is provided only for candidates for elective office. *Wood v. Lydick*, Okla., 523 P.2d 1082 (1974).

# 2. Exclusive remedy

The primary run-off election recount hearing provided for by former statute before county election board was exclusive of all other remedies in such elections, especially in view of Title 12, § 1531 forbidding civil actions to contest primary elections. *Wagoner County Election Bd. v. Plunkett*, Okla., 305 P.2d 525 (1956).

Statutory method for contesting primary election is exclusive. *Brown v. Branson*, Okla., 139 Okla. 271, 270 P. 63 (1928).

# 3. Primary elections, generally

Former statute, which provided for recount of ballots cast in primary elections applied alike to state, district and county offices. *Brickell v. State Election Bd.*, 203 Okla. 361, 221 P.2d 783 (1950); *Shell v. Election Bd. of Sequoyah County*, 203 Okla. 355, 221 P.2d 780 (1950); *Harrell v. County Election Bd. of Sequoyah County*, 203 Okla. 360, 221 P.2d 778 (1950); *Coe v. State Election Bd.*, 203 Okla. 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 statute applied also to run-off primary, though not specifically mentioned therein. *Brickell v. State Election Bd.*, 203 Okla. 361, 221 P.2d 783 (1950); *Shell v. Election Bd. of Sequoyah County*, 203 Okla. 355, 221 P.2d 780 (1950); *Harrell v. County Election Bd. of Sequoyah County*, 203 Okla. 360, 221 P.2d 778 (1950); *Coe v. State Election Bd.*, 203 Okla. 356, 221 P.2d 774 (1950).

The provisions of former § 345.11 of this title (repealed) that candidate receive

ing most votes for nomination for office, no candidate for which has filed petition under statute 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. *Brickell v. State Election Bd.*, 203 Okla. 361, 221 P.2d 783 (1950); *Shell v. Election Bd. of Sequoyah County*, 203 Okla. 355, 221 P.2d 780 (1950); *Harrell v. County Election Bd. of Sequoyah County*, 203 Okla. 360, 221 P.2d 778 (1950); *Coe v. State Election Bd.*, 203 Okla. 356, 221 P.2d 774 (1950).

*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). *Brown v. Branson*, Okla., 139 Okla. 271, 270 P. 63 (1928).

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*, Okla., 43 Okla. 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. *Shelton v. McMillan*, Okla., 43 Okla. 486, 143 P. 196 (1914).

*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. *Shelton v. McMillan*, Okla., 43 Okla. 486, 143 P. 196 (1914).

# 4. 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. *Brickell v. State Election Bd.*, 203 Okla. 361, 221



P.2d 783 (1950); *Coe v. State Election Bd.*, 203 Okla. 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 statute. *Brickell v. State Election Bd.*, 203 Okla. 361, 221 P.2d 783 (1950); *Coe v. State Election Bd.*, 203 Okla. 356, 221 P.2d 774 (1950).

Failure of election board to set primary election contest for hearing within time required by statute did not deprive contestant, complying with law, of right to recount of ballots cast. *Brickell v. State Election Bd.*, 203 Okla. 361, 221 P.2d 783 (1950); *Coe v. State Election Bd.*, 203 Okla. 356, 221 P.2d 774 (1950).

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 Okla. 206, 291 P. 804 (1930); *Looney v. Election Board of Seminole County*, 145 Okla. 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). *Bozarth v. Election Board of Okmulgee County*, 144 Okla. 206, 291 P. 804 (1930); *Looney v. Election Board of Seminole County*, 145 Okla. 25, 291 P. 554 (1930).

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*, Okla., 516 P.2d 239 (1973).

There is no statutory authority for recounts in municipal bond elections. *State ex rel. Lydick v. Brown*, Okla., 516 P.2d 239 (1973).

Right to recount of elections is purely statutory. *State ex rel. Lydick v. Brown*, Okla., 516 P.2d 239 (1973).

## 5. — 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 Okla. 361, 221 P.2d 783 (1950); *Coe v. State Election Bd.*, 203 Okla. 356, 221 P.2d 774 (1950).

No right to recount exists at common law. *Wood v. Lydick*, Okla., 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.*, Okla., 203 Okla. 362, 221 P.2d 785 (1950).

Candidate for nomination for political office has no common-law right of contest. *Brown v. Branson*, Okla., 139 Okla. 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*, Okla., 121 Okla. 193, 249 P. 381 (1926).

## 6. Grounds for recount

An allegation of fraud, misconduct or mistake may be grounds for a recount. *Wood v. Lydick*, Okla., 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. *Wood v. Lydick*, Okla., 523 P.2d 1082 (1974).

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*, Okla., 516 P.2d 239 (1973).

## 7. Petition for recount

Primary candidate's contest petition which did not allege fraud but which was filed within time prescribed by statute 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.*, Okla., 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 statute and conditions and entitled applicant to recount. *Harrell v. County Election Board of Sequoyah County*, Okla., 203 Okla. 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*, Okla., 199 Okla. 500, 187 P.2d 988 (1947).

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 statute, since petition was indefinite. *Otjen v. Kerr*, Okla., 191 Okla. 628, 136 P.2d 411 (1942).

Statute 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. *Otjen v. Kerr*, Okla., 191 Okla. 628, 136 P.2d 411 (1942).

## 8. Time for filing petition for recount

Provisions of statute 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*, Okla., 317 P.2d 200 (1957).

Under provision of statute 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. *Duggan v. Bailey*, Okla., 317 P.2d 200 (1957).

Statute 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.*, Okla., 203 Okla. 362, 221 P.2d 785 (1950).

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*, Okla., 197 Okla. 419, 172 P.2d 625 (1946).

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*, Okla., 172 Okla. 101, 44 P.2d 84 (1935).

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*, Okla., 107 Okla. 89, 230 P. 236 (1924).

## 9. Federal offices

In view of fact that statute 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,

## Note 9

even though Congress under U.S.C.A.Const. Art. 1, § 5, was given a right to be the judge of the elections, returns and qualifications of its own members. *Wickersham v. State Election Bd.*, Okla., 357 P.2d 421 (1960).

## 10. Laches

Right to contest an election may be lost by laches or inexcusable delay. *Wickersham v. State Election Bd.*, Okla., 357 P.2d 421 (1960).

### § 8-111.1. Repealed by Laws 1991, c. 321, § 57, eff. March 1, 1992

#### Historical and Statutory Notes

The repealed section, relating to requests for manual or electronic recounts,

was derived from Laws 1987, c. 29, § 1; Laws 1989, c. 289, § 3.

### § 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.

#### Notes of Decisions

Evidence 5

Mandamus 4

**Powers of county election board 2**

**Preservation of ballots 3**

**Recount of ballots, generally 1**

**1. Recount of ballots, generally**

Under R.L.1910, § 3038 (repealed) the ballots could not be opened and recounted except in case of a judicial recount. *Shelton v. McMillan*, Okla., 43 Okla. 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*, Okla., 43 Okla. 486, 143 P. 196 (1914).

**2. 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 Okla. 206, 291 P. 804 (1930); *Looney v. Election Board of Seminole County*, 145 Okla. 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. *Bozarth v. Election Board of Okmulgee County*, 144 Okla. 206, 291 P. 804 (1930); *Looney v. Election Board of Seminole County*, 145 Okla. 25, 291 P. 554 (1930).

County election board's action in recounting ballots after proper showing is ministerial and will not be controlled by Supreme Court. *Bozarth v. Election Board of Okmulgee County*, 144 Okla. 206, 291 P. 804 (1930); *Looney v. Election Board of Seminole County*, 145 Okla. 25, 291 P. 554 (1930).

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.*, Okla., 431 P.2d 352 (1967).

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*, Okla., 58 Okla. 672, 160 P. 890 (1916).

**3. 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 Okla. 206, 291 P. 804 (1930); *Looney v. Election Board of Seminole County*, 145 Okla. 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*, Okla., 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*, Okla., 162 Okla. 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. *Turlington v. Summers*, Okla., 162 Okla. 13, 18 P.2d 865 (1933).

To entitle general election contestant to recount, it must appear that ballot boxes were preserved in statutory manner and not exposed to tampering. *Turlington v. Summers*, Okla., 162 Okla. 13, 18 P.2d 865 (1933).

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 Bd. of Seminole County*, Okla., 146 Okla. 207, 293 P. 1056 (1930).

Finding that challenged ballots had not been tampered with did not comply with prohibition writ specifying manner of preservation of ballots as condition to recount. *Looney v. Election Bd. of Seminole County, Okla.*, 145 Okla. 136, 292 P. 44 (1930).

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, Okla.*, 27 Okla. 46, 110 P. 1121, *Am. Ann. Cas.* 1912B, 674 (1909).

#### 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. *An-*

*draws v. State ex rel. Eskew, Okla.*, 618 P.2d 398 (1980).

County election board has only such authority in election contests or recount petitions as is authorized by statute. *Borzarth v. Election Bd. of Okmulgee County, Okla.*, 144 Okla. 206, 291 P. 804 (1930); *Looney v. Election Bd. of Seminole County, Okla.*, 145 Okla. 25, 291 P. 554 (1930).

#### 5. Evidence

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, Okla.*, 121 Okla. 298, 249 P. 943 (1926).

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. *Whitaker v. State, Okla.*, 58 Okla. 672, 160 P. 890 (1916).

### § 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 recount—Watchers**

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 contestants, or their agents, an opportunity to view the testing procedure. In conducting a recount using electronic voting devices, the county election board shall open the transfer cases from each requested precinct or for absentee ballots individually and shall assign said ballot cards to one or more voting devices operated by persons appointed by the secretary of the county election board. The county election board shall supervise such counting and its decision shall be final in all cases. Each contestant is entitled to have a watcher present at each place where a voting device is being used. Said watcher shall be limited to a challenge, in writing, of any action taken by operators of the voting devices. Such challenge shall be made immediately to the county election board, whose decision on said challenge shall be final.

B. In conducting a manual recount of ballots, the county election board shall open the transfer cases from each requested precinct or for absentee ballots individually and shall assign said ballot cards to a group of counters appointed by the secretary of the county election board. 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 precinct judges and clerks 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; Laws 1991, c. 321, § 32, eff. March 1, 1992.

**Historical and Statutory Notes**

The 1989 amendment, in the fourth sentence [now subsection B, the fourth sentence], inserted "or individual petitioning for" following "Each candidate affected by".

The 1991 amendment inserted subsection A; designated the existing text as subsection B; and in subsection B, in the first sentence, substituted "a manual recount of ballots, the county election board shall open the transfer cases from each requested precinct or for absentee ballots individually and shall assign said ballot cards" for "the recount of ballots, the county election board shall open each ballot box individually and shall assign said ballots", in the second sentence, sub-

stituted "Counters" for "Said counters", and in the ninth sentence, substituted "precinct judges and clerks" for "they".

#### 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.

#### Cross References

Election emergencies, recounts, procedure for counting ballots, see Title 26, § 22-114.

#### Library References

Elections ¶260, 299(4).  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 237, 292.

#### Notes of Decisions

##### Challenges 1

##### 1. Challenges

Language of this section that "The county election board shall supervise such 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, Okla.*, 640 P.2d 1333 (1981).

### § 8-114.1. Repealed by Laws 1991, c. 321, § 57, eff. March 1, 1992

#### Historical and Statutory Notes

The repealed section, derived from Laws 1987, c. 29, § 2, related to law applicable to testing of electronic voting devices upon recount.

### § 8-115. Certification of results—Ties involving candidates

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.

In the event of a tie involving candidates, the election board authorized by law to issue the certified list or certificate of election shall, at the meeting called to conduct the recount or to issue the certified list or certificate of election, in the presence of the candidates involved, if they or any of them desire to be present, select the

nominee or electee by lot substantially as prescribed in paragraphs 3 and 4 of Section 8-105 of this title.

Laws 1974, c. 153, § 8-115, operative Jan. 1, 1975; Laws 1992, c. 247, § 15, emerg. eff. May 21, 1992.

### Historical and Statutory Notes

The 1992 amendment added the second paragraph.

### 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*, Okla., 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 Okla. 206, 291 P. 804 (1931); *Looney v. Election Board of Seminole County*, 145 Okla. 25, 291 P. 554 (1930).

State election board acted as a quasi-judicial body, not subject to a mandamus, in determining whether returns and find-

ings 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.*, Okla., 431 P.2d 352 (1967).

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*, Okla., 107 Okla. 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. *Ruggles v. Montgomery*, Okla., 107 Okla. 89, 230 P. 236 (1924).

## § 8-116. Cessation of recount—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.

#### 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.

### Notes of Decisions

#### Prior laws 1

Com'rs of Hughes County v. Young, Okla., 171 Okla. 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. Board of

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, Okla., 171 Okla. 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.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 245 et seq.

## 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, Okla.*, 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, Okla.*, 139 Okla. 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, Okla.*, 67 Okla. 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, Okla.*, 38 Okla. 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. *Allen v. Wildman, Okla.*, 38 Okla. 652, 134 P. 1102 (1913).

**§ 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 and Journal Commentaries

Insurance—Retroactive application of attorney fee statutes: Analysis of Cox v. American Fidelity Assurance Company. 4 Okla.City U.L.Rev. 256 (1979).

Legal profession—Determining statutory attorney's fees. 6 Okla.City U.L.Rev. 238 (1981).

### Library References

Elections ⇨269, 308.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 245 et seq., 321.

### 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, Okla., 664 P.2d 377 (1982).

##### 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 non-resident judge to hear the contest. Boevers v. Election Bd. of Canadian County, Okla., 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 inserted the first sentence in the last paragraph.

The 1990 amendment added the seventh and eighth sentences in the last paragraph.

### Law Review and Journal Commentaries

Evidence: Voter testimony—Faulty legislative response to *Helm v. State Election Board*. 33 Okla.L.Rev. 150 (1980).

### Library References

Elections ¶269.

WESTLAW Topic No. 144.

C.J.S. Elections § 245 et seq.

### Notes of Decisions

Burden of proof 4  
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Presumptions and burden of proof 4

#### 1. Mathematical certainty

In challenging results of school board election, the test to determine if irregularities are "sufficient to change the ultimate result" means proving that "it is impossible to determine with mathematical certainty" the election result. *Fuller v.*

Board of Educ. of Elementary School Dist. No. 22, Pushmataha County, Okla. App., 875 P.2d 1156 (1994), certiorari denied.

Only legal votes, as opposed to all votes cast, are used as total in calculating whether result of school bond election can be determined with mathematical certainty. *Fuller v. Board of Educ. of Elementary School Dist. No. 22, Pushmataha County, Okla.App.*, 875 P.2d 1156 (1994), certiorari denied.

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.*, Okla., 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. *Helm v. State Election Bd.*, Okla., 589 P.2d 224 (1979).

## **2. Irregularities, generally**

Failure of notice of school bond election to state locations of combined boxes and to include information about absentee voting was not sufficient to invalidate election, since no prejudice was shown; no allegations were made that anyone failed to vote because of deficient notice. *Fuller v. Board of Educ. of Elementary School Dist. No. 22, Pushmataha County, Okla.App.*, 875 P.2d 1156 (1994), certiorari denied.

Trial court should not have questioned mathematical certainty of election results due to fact that names of two candidates on official canvas were reversed from how they appeared on ballot; despite reversal of names, there was no showing that results reported from various precincts were reversed. *Jackson v. Maley*, Okla., 806 P.2d 610 (1991).

Lack of control over ballots at one precinct in election, errors by precinct offi-

cials in ballot accounting forms, lack of proper marking equipment to allow electronic scanning device to properly record vote, and absence of initial zero tape from several scanning tapes did not cast doubt on mathematical certainty of election results, absent any evidence that such alleged irregularities resulted in eligible voter being denied right to vote, that ballots cast were not properly recorded, or that any ballots were cast by anyone other than qualified electors. *Jackson v. Maley*, Okla., 806 P.2d 610 (1991).

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*, Okla., 597 P.2d 1218 (1979).

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*, Okla., 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. *Edmondson v. State ex rel. Phelps*, Okla., 533 P.2d 604 (1974).

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. *Edmondson v. State ex rel. Phelps*, Okla., 533 P.2d 604 (1974).

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 were cast by use of voting machines illegal or void. *Edmondson v. State ex rel. Phelps, Okla.*, 533 P.2d 604 (1974).

Election will not be set aside for technical irregularities, where proposition was fully understood in absence of fraud. *Moore v. Oklahoma City, Okla.*, 122 Okla. 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, Title 26, § 5-118 et seq.) 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, Okla.*, 268 P.2d 860 (1954).

### 4. Presumptions and burden of proof

Burden of establishing that it cannot be determined with mathematical certainty which candidate is entitled to certificate of election is on party contesting election results. *Jackson v. Maley, Okla.*, 806 P.2d 610 (1991).

Courts indulge every presumption in favor of validity of election and, where possible, such validity will be sustained; mere probability will not suffice to make prima facie case of mathematical uncertainty as to which candidate was actual winner. *Jackson v. Maley, Okla.*, 806 P.2d 610 (1991).

In order for irregularity to establish that it is impossible to determine with mathematical certainty which candidate was winner of election, party contesting election results must make prima facie case of mathematical uncertainty; upon such showing, it becomes incumbent on announced winner to go forward with evidence to establish that he or she achieved victory by mathematical certainty. *Jackson v. Maley, Okla.*, 806 P.2d 610 (1991).

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, Okla.*, 611 P.2d 637 (1980).

In the absence of evidence to the contrary, presumption arises in favor of the regularity and validity of election. *Arthur v. City of Stillwater, Okla.*, 611 P.2d 637 (1980).

Burden is on persons contesting election to prove failure to comply with constitutional and statutory requirements. *Arthur v. City of Stillwater, Okla.*, 611 P.2d 637 (1980).

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, Okla.*, 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. *Hembree v. City of Stilwell, Okla.*, 597 P.2d 1218 (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., Okla., 589 P.2d 224 (1979).

# 6. Evidence

Precinct returns, as embodied in official canvas of county election board, are prima facie evidence of correctness of vote; to impeach returns, party contesting election results must, at least, establish either that illegal votes were cast or that votes were cast by legal voters but were not counted or were counted incorrectly in sufficient numbers to eliminate margin of victory; party can also attempt to show that legal voters in sufficient numbers were denied right to vote. *Jackson v. Maley*, Okla., 806 P.2d 610 (1991).

Evidence did not establish that ballots permanently recorded as unread should have been recorded and thus that failure to record them established mathematical uncertainty of election results; ballot could be run through electronic scanning device and registered as permanently unread only by election supervisor's manual override, and supervisors testified that some voters insisted that device take their ballots even though they were blank. *Jackson v. Maley*, Okla., 806 P.2d 610 (1991).

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.*, Okla., 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. *Helm v. State Election Bd.*, Okla., 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 canvass thereof, the voter would still not be a competent witness to testify. *Helm v. State Election Bd.*, Okla., 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. *Helm v. State Election Bd.*, Okla., 589 P.2d 224 (1979).

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.*, Okla., 589 P.2d 224 (1979).

# 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 non-resident judge to hear the contest. *Boevers v. Election Bd. of Canadian County*, Okla., 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.

## Notes of Decisions

**Construction and application 1****1. Construction and application**

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 non-resident judge to hear the contest. *Boevers v. Election Bd. of Canadian County, Okla.*, 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, § 3-122, operative Jan. 1, 1975.

## Library References

Elections ⇨298(1).  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 247, 289.

## ARTICLE IX. VOTING DEVICES

**§ 9-100. Experimental voting devices or equipment**

Officials authorized by law to purchase voting devices and equipment may, with written authorization of the Secretary of the State Election Board, allow for the experimental use of one or more devices or equipment which they might lawfully purchase, to be used in one or more election precincts, without a formal purchase thereof. The use of such device or equipment in any election shall be as valid for all purposes as if it had been purchased.

Laws 1991, c. 321, § 33, eff. March 1, 1992.

## VOTING DEVICES

26 §§ 9-101 to 9-114  
Repealed

**§§ 9-101 to 9-114.** Repealed by Laws 1991, c. 321, § 57, eff. March 1, 1992

### Historical and Statutory Notes

Repealed § 9-101, granting authority to use voting machines, was derived from:

Laws 1927, c. 203, § 1.  
St.1931, § 5733.  
Laws 1955, p. 204, § 1.  
Laws 1961, p. 251, § 1.  
26 O.S.1971, § 271.  
Laws 1974, c. 153, § 9-101.

Repealed § 9-102, requiring that order to use be approved by State Election Board, was derived from:

Laws 1927, c. 203, § 2.  
St.1931, § 5734.  
Laws 1955, p. 204, § 2.  
26 O.S.1971, § 272.  
Laws 1974, c. 153, § 9-102.

Repealed § 9-103, relating to purchase or rental of voting machines, was derived from:

Laws 1927, c. 203, § 3.  
St.1931, § 5735.  
Laws 1955, p. 204, § 3.  
26 O.S.1971, § 273.  
Laws 1974, c. 153, § 9-103.

Repealed § 9-103.1, derived from Laws 1983, c. 225, § 7, related to elections in which voting machines shall be used.

Repealed § 9-104, relating to specifications, was derived from:

Laws 1927, c. 203, §§ 4, 9.  
St.1931, §§ 5736, 5741.  
Laws 1955, p. 204, § 4.  
Laws 1955, p. 206, § 9.  
Laws 1959, p. 121, § 1.  
Laws 1971, c. 145, § 1.  
26 O.S.1971, §§ 274, 279.  
Laws 1974, c. 153, § 9-104.

Repealed § 9-105, relating to storage and repair, was derived from:

Laws 1927, c. 203, § 5.  
St.1931, § 5737.  
Laws 1955, p. 205, § 5.  
Laws 1957, p. 201, § 2.  
26 O.S.1971, § 275.  
Laws 1974, c. 153, § 9-105.

Repealed § 9-106, relating to the number of voters per machine, was derived from:

Laws 1927, c. 203, §§ 6, 7.  
St.1931, §§ 5738, 5739.  
Laws 1955, p. 205, §§ 6, 7.  
26 O.S.1971, §§ 276, 277.  
Laws 1974, c. 153, § 9-106.

Repealed § 9-107, relating to ballot labels, was derived from:

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.  
Laws 1974, c. 153, § 9-107.

Repealed § 9-108, relating to order of names on ballot, was derived from:

Laws 1927, c. 203, § 9.  
St.1931, § 5741.  
Laws 1955, p. 206, § 9.  
26 O.S.1971, § 279.  
Laws 1974, c. 153, § 9-108.

Repealed § 9-109, derived from Laws 1974, c. 153, § 9-109, required allocation as separate ballots of separate portions of each voting machine panel.

Repealed § 9-110, relating to conformity of procedures with general laws for conduct of elections, derived from:

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.  
Laws 1974, c. 153, § 9-110.

Repealed § 9-111, requiring the securing of machines following elections, was derived from:

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.  
Laws 1974, c. 153, § 9-111.

Repealed § 9-112, derived from Laws 1974, c. 153, § 9-112, related to contests.

Repealed § 9-113, relating to experimental use of voting machines, was derived from:

Laws 1927, c. 203, § 19.

**Repealed**

St.1931, § 5751.  
 Laws 1955, p.208, § 19.  
 26 O.S.1971, § 289.  
 Laws 1974, c. 153, § 9-113.

Repealed § 9-114, derived from Laws 1974, c. 153, § 9-114, related to appointment of additional personnel.

**§ 9-115. Notice of preparation of voting devices**

Not less than ten (10) days prior to the preparation of the voting devices for any partisan 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 voting devices 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 voting devices are in proper condition for use in the election. The representatives may observe the programming of the voting devices but shall not interfere with the employees or assume any of their duties.

Laws 1974, c. 153, § 9-115, operative Jan. 1, 1975; Laws 1991, c. 321, § 34, eff. March 1, 1992.

**Historical and Statutory Notes**

The 1991 amendment, in the first sentence, thrice substituted "voting devices" for "machines" and substituted "any partisan election" for "any election"; and in the second sentence, substituted "devices" for "machines".

**Library References**

Elections ⇨222.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 203.

**§§ 9-116, 9-117. Repealed by Laws 1991, c. 321, § 57, eff. March 1, 1992****Historical and Statutory Notes**

Repealed § 9-116, relating to locking of machines, was derived from:

Laws 1927, c. 203, § 13.  
 St.1931, § 5745.  
 Laws 1955, p. 206, § 13.  
 Laws 1959, p. 122, § 3.

26 O.S.1971, § 283.  
 Laws 1974, c. 153, § 9-116.

Repealed § 9-117, derived from Laws 1974, c. 153, § 9-117, related to unauthorized possession of voting machine keys.

**§ 9-118. Unlawful acts relating to voting devices**

Any person who defaces a voting device, breaks, tampers with, impairs, impedes or otherwise interferes with the maintenance, adjustment, delivery, use or operation of any voting device or part thereof shall be guilty of a felony.

Laws 1974, c. 153, § 9-118, operative Jan. 1, 1975; Laws 1991, c. 321, § 35, eff. March 1, 1992.

**Historical and Statutory Notes**

The 1991 amendment substituted "a voting device" for "a voting machine or the ballot thereon" and "any voting device" for "any voting machine".

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.

**Source:**

Laws 1927, c. 203, § 16.

**Library References**

Elections ☞309, 314, 318.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 324, 327, 331, 334.

**§§ 9-119, 9-120. Repealed by Laws 1991, c. 321, § 57, eff. March 1, 1992**

**Historical and Statutory Notes**

Repealed § 9-119, relating to approval of nonconforming voting devices, was derived from Laws 1976, c. 105, § 1; Laws 1979, c. 240, § 18.

Repealed § 9-120, derived from Laws 1978, c. 57, § 3, related to payment of costs of printing and supplies.

**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, added the fourth sentence; and added paragraphs 1 and 2.

#### Source:

Laws 1961, p. 258, § 1.  
26 O.S.1971, § 522.

### Law Review and Journal Commentaries

Recognition of political parties and certification of presidential electors. 3 Okla. City U.L.Rev. 117 (1978).

### Library References

United States ☞25.  
WESTLAW Topic No. 393.  
C.J.S. United States § 28.

### Notes of Decisions

**Filings** 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*, Okla., 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. *McClendon v. Slater*, Okla., 554 P.2d 774 (1976), certiorari denied 97 S.Ct. 1112, 429 U.S. 1096, 51 L.Ed.2d 543.

Recently enacted election code is neither invidiously discriminatory nor unduly burdensome in its exercise of power of state to regulate selection of presidential electors. *McClendon v. Slater*, Okla., 554 P.2d 774 (1976), certiorari denied 97 S.Ct. 1112, 429 U.S. 1096, 51 L.Ed.2d 543.

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. *McClendon v. Slater*, Okla., 554 P.2d 774 (1976), certiorari denied 97 S.Ct. 1112, 429 U.S. 1096, 51 L.Ed.2d 543.

#### 2. Filings

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*, W.D.Okla.1976, 420 F.Supp. 910.

### 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*, Okla., 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. *McCarthy v. Slater*, Okla., 553 P.2d 489 (1976).

### 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. *American Party v. State Election Bd.*, Okla., 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.10 (Okla.)1969, 411 F.2d 1016.

## § 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 and Journal Commentaries

Recognition of political parties and certification of presidential electors. 3 Okla. City U.L.Rev. 117 (1978).

### Library References

United States  $\S$  25.  
WESTLAW Topic No. 393.  
C.J.S. United States  $\S$  28.

### Notes of Decisions

#### Validity 1

#### 1. Validity

Oklahoma ballot access laws, imposing July 15 deadline for signature petitions of nonrecognized party electors and requir-

ing voter signatures of at least 3% of total votes cast in most recent presidential election, did not violate First or Fourteenth Amendments. Coalition for Free and Open Elections, Prohibition Party v. McElderry, C.A.10 (Okla.)1995, 48 F.3d 493, certiorari denied 116 S.Ct. 63, 133 L.Ed.2d 26.

## § 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.

**Source:**

Laws 1927, c. 100, p. 162, § 2.

Laws 1931, p. 110, § 1.

St.1931, §§ 5815, 5816.

26 O.S.1971, §§ 512, 513.

**Library References**

United States ☞25.

WESTLAW Topic No. 393.

C.J.S. United States § 28.

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

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*, Okla., 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****Source:**

Laws 1907-08, p. 377.

Comp.Laws 1909, §§ 3307, 3308.

R.L.1910, §§ 3179, 3180.

Comp.St.1921, §§ 6271, 6272.

St.1931, §§ 5817, 5818.

Laws 1937, p. 143, § 2.

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.

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

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*, Okla., 200 Okla. 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  $\S\S$  3, 7, 8.  
WESTLAW Topic No. 227.  
C.J.S. Judges  $\S\S$  12 to 34.

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

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*, Okla., 200 Okla. 390, 194 P.2d 857 (1948).

**§ 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 and Journal Commentaries

Oklahoma's new judicial system.  
George B. Fraser. 21 Okla.L.Rev. 373,  
391 (Nov. 1968).

## Library References

Judges ¶3.  
WESTLAW Topic No. 227.  
C.J.S. Judges §§ 12 to 14.

## Notes of Decisions

## Construction and application 1

the court of criminal appeals for use on  
future ballots. Op.Atty.Gen. No. 68-313  
(Sept. 11, 1968).

## 1. Construction and application

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.

Laws 1974, c. 153, § 11-109, operative Jan. 1, 1975; Laws 1987, c. 33, § 7, emerg. eff. April 20, 1987; Laws 1991, c. 321, § 36, eff. March 1, 1992.

## Historical and Statutory Notes

The 1987 amendment, in the first sentence, inserted "and the Court of Appeals".

square one-fourth ( $\frac{1}{4}$ ) inch in size" following "other".

## Source:

The 1991 amendment, in the fourth sentence, deleted ", each preceded by a

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, § 162I.

**Library References**

Elections ⇨183.

Judges ⇨3.

WESTLAW Topic Nos. 144, 227.

C.J.S. Elections §§ 174, 177.

C.J.S. Judges §§ 12 to 14.

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

Supreme Court order assigning another judge to serve as temporary chief judge of district in which permanent chief

judge had been hospitalized did not effectively remove permanent chief judge from office, as Supreme Court has no authority to remove judge from office; thus, permanent chief judge was legally entitled to be on ballot for reelection. *Evans v. State Election Bd. of State of Okla., Okla.*, 804 P.2d 1125 (1990).

**§ 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, § 162I.

**Library References**

Judges ⇨3.

WESTLAW Topic No. 227.

C.J.S. Judges §§ 12 to 14.

**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 effec-

tively 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, or district judge, if the nominating district is coextensive with the entire judicial district or electoral division of a judicial district, 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 or electoral division of a 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; Laws 1992, c. 247, § 16, emerg. eff. May 21, 1992; Laws 1995, c. 290, § 12, eff. Nov. 1, 1995.

### **Historical and Statutory Notes**

The 1992 amendment, in the first sentence, inserted “, or district judge, if the nominating district is coextensive with the entire judicial district,”.

The 1995 amendment, in the first and second sentences, inserted “or electoral division of the judicial district”.

### **Library References**

Judges ⇐3.  
WESTLAW Topic No. 227.  
C.J.S. Judges §§ 12 to 14.

## **§ 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 or electoral division of a 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; Laws 1995, c. 290, § 13, eff. Nov. 1, 1995.

### **Historical and Statutory Notes**

The 1995 amendment inserted “or electoral division of a judicial district”.

## **§§ 11-114, 11-115. Repealed by Laws 1980, c. 272, § 29, eff. July 1, 1980**

### **Historical and Statutory Notes**

Repealed § 11-114, derived from Laws 1974, c. 153, § 11-114, related to judicial districts and nominating districts existing on January 1, 1973.

nating districts of district judges who were elected as superior court judges prior to January 13, 1969.

Repealed § 11-115, derived from Laws 1974, c. 153, § 11-115, related to nomi-

**§ 11-116. Deceased candidate—Primary or general election ballots—Special election**

A. If a judicial candidate whose name should be on the Primary Election ballot dies before ballot printing has begun for the election, the name of the deceased candidate shall not be printed on the ballot. If ballot printing has begun, votes for the deceased candidate shall not be counted. If the death of a candidate leaves only two (2) surviving candidates, their names shall not appear on the Primary Election ballot, votes shall not be counted in the race and the two (2) names shall appear on the ballot for the General Election.

B. If a judicial candidate whose name should be on the General Election ballot dies before ballot printing has begun, the name of neither candidate shall be printed on the ballot and the Governor shall call a special election to fill the office. In the call for the election, the Governor shall prescribe a filing period, to be held as nearly as practicable as the regular filing period, followed in no less than forty-five (45) days by a Special Primary Election which shall be followed in no less than forty-five (45) days by a Special General Election. The primary and general elections shall be held in the same manner as regular primary and general elections. If the death of a candidate occurs after ballot printing for the regular General Election has begun, votes shall not be counted in the race and the Governor shall call a special election as specified in this subsection. Laws 1991, c. 129, § 3, eff. Sept. 1, 1991.

**ARTICLE XII. SPECIAL ELECTIONS****§ 12-101. Vacancies in Congress**

A. Except as otherwise provided in this section, 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.

B. 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.

C. If in an even-numbered year an incumbent United States Senator with two (2) or more years remaining in the term for which the incumbent was elected shall file with the Oklahoma Secretary of State before July 1 a resignation in writing which states that the resignation will not become effective immediately, but rather will

become effective on some date certain which date is after the General Election, but before the convening of the next term of Congress, the vacancy shall be filled by a special election which shall be held in that even-numbered year on the same dates as the regular Primary Election, Runoff Primary Election and General Election. The filing period for the special election shall be the regular filing period prescribed in Section 5-110 of this title. The person elected in the General Election of the special election shall take office on the date the resignation of the incumbent becomes effective and shall serve the remainder of the unexpired term.

Laws 1974, c. 153, § 12-101, operative Jan. 1, 1975; Laws 1979, c. 240, § 19, emerg. eff. June 1, 1979; Laws 1994, c. 260, § 27, emerg. eff. May 26, 1994.

### Historical and Statutory Notes

The 1979 amendment added the second and third sentences.

The 1994 amendment rewrote the section, which prior thereto read:

"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."

### Source:

Laws 1915, c. 49, § 1.  
Comp.St.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.

### Notes of Decisions

#### Construction and application 1

#### 1. Construction and application

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*, Okla., 200 Okla. 390, 194 P.2d 857 (1948).

## § 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

The 1979 amendment added the second sentence.

Comp.St.1921, § 7389.  
St.1931, § 3396.

## Source:

Laws 1913, c. 96, p. 159, § 1.

26 O.S.1971, § 541.

## Library References

States ⇨28(1).  
WESTLAW Topic No. 360.  
C.J.S. States §§ 42, 43.

## Notes of Decisions

## Assumption of duties 3

## Construction and application 1

## Date of election 2

duty under this section to call special elections. *Reynolds v. State Election Bd.*, W.D.Okla.1964, 233 F.Supp. 323.

## 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

## 1. Construction and application

Where federal district court declared legislative offices of Oklahoma legislature vacant because of unconstitutional apportionment of seats, it became governor's

## 26 § 12-106

### Note 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).

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. Op. Atty.Gen. No. 76-262 (June 29, 1976).

### 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:

Laws 1913, c. 96, p. 159, § 2.  
Comp.St.1921, § 7390.

St.1931, § 3397.  
26 O.S.1971, § 542.

## § 12-108. 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, § 12-108, operative Jan. 1, 1975; Laws 1979, c. 240, § 22, 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 same 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 1913, c. 96, p. 159, §§ 2, 3.  
Comp.St.1921, §§ 7390, 7391.

St.1931, §§ 3397, 3398.  
26 O.S.1971, §§ 542, 543.

### Notes of Decisions

#### Construction and application 1

##### 1. Construction and application

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 in the office of state senator or state rep-

resentative where said vacancy occurs 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. Op. Atty.Gen. No. 76-262 (June 29, 1976).

### § 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.

### Notes of Decisions

#### Construction and application 1

##### 1. Construction and application

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).



**§ 12-110. 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 county elective offices**

A. Whenever a vacancy shall occur in the office of a county commissioner, the vacancy shall be filled at a special election to be called by the Governor within thirty (30) days after the 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 the office expires the following year. In such case, the candidate elected to the office at the Primary Election, runoff Primary Election, or the regular General Election shall be appointed by the Governor as soon as practical after the applicable election to fill the unexpired term.

B. Whenever a vacancy shall occur in any elective county office of any county in this state having a population of more than five hundred and fifty thousand (550,000), according to the latest Federal Decennial Census, the vacancy shall be filled at a special election to be called by the Governor within thirty (30) days after the 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 the office expires the following year. In such case, the candidate elected to the office at the Primary Election, runoff Primary Election, or the regular General Election shall be appointed by the Governor as soon as practical after the applicable election 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; Laws 1993, c. 316, § 9, eff. Sept. 1, 1993; Laws 1995, c. 174, § 1, eff. Nov. 1, 1995.

**Historical and Statutory Notes**

The 1979 amendment added the second and third sentences [now subsection A, second and third sentences].

The 1993 amendment, in the first sentence [now subsection A, first sentence], inserted "or occur in any elective county office of any county in the State of Oklahoma having a population of more than five hundred and fifty thousand (550,000), according to the latest Federal Decennial Census,".

The 1995 amendment designated the existing text as subsection A; in subsection A, in the first sentence, substituted "the vacancy shall" for "or occur in any elective county office of any county in the

State of Oklahoma having a population of more than five hundred and fifty thousand (550,000), according to the latest Federal Decennial Census, such vacancy shall" and "the vacancy occurs" for "such vacancy occurs", in the second sentence, substituted "the office" for "such office", and in the third sentence, substituted "the office" for "said office", and inserted "Primary Election, runoff Primary Election, or the" and "as soon as practical after the applicable election"; and added subsection B.

**Source:**

Laws 1961, p. 431, § 1.  
Laws 1971, c. 106, § 1.  
19 O.S.1971, § 361.

## Library References

Counties  $\S$  43.  
WESTLAW Topic No. 104.  
C.J.S. Counties  $\S$  66.

## Notes of Decisions

**Construction and application 1**  
**Death of commissioner 2****1. Construction and application**

It is the public policy of the 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*, Okla., 200 Okla. 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 election, 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,  $\S$  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,  $\S$  13, appoint one new commissioner to serve until the successors in office for both vacancies are elected and qualified. *Op. Atty. Gen.* No. 81-225 (Aug. 4, 1981).

In the event there are three vacancies on a board of county commissioners, the Governor may, pursuant to Const. Art. 6,  $\S$  13, appoint two commissioners to serve until the successors in office for all three vacancies are elected and qualified. *Op. Atty. Gen.* No. 81-225 (Aug. 4, 1981).

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,  $\S$  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,  $\S$  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,  $\S$  12-112, operative Jan. 1, 1975.

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

Laws 1961, p. 431, § 2.  
19 O.S.1971, § 362.

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

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.

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

In the event of a vacancy arising in the office of a county commissioner, the Gov-

ernor 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 sixty (60) days from the date said election is called; provided, that a special election called by a school or vocational-technical school district to be held on the date of the annual school runoff election shall not be held fewer than forty-five (45) days from the date said special 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 sixty (60) 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; Laws 1991, 1st Ex.Sess., c. 1, § 2, emerg. eff. Jan. 18, 1991; Laws 1992, c. 247, § 17, emerg. eff. May 21, 1992.

**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.

The 1991 amendment, in the second sentence, inserted "; provided, a special election pursuant to the provisions of Section 5 of this act which is called by the board of county commissioners on or before March 1, 1991, shall be held not fewer than thirty (30) days from the date said election is called".

The 1992 amendment, in the second sentence, substituted "sixty (60) days from the date said election is called; provided, that a special election called by a

school or vocational-technical school district to be held on the date of the annual school runoff election shall not be held fewer than forty-five (45) days from the date said special election is called" for "forty-five (45) days from the date said election is called; provided, a special election pursuant to the provisions of Section 5 of this act which is called by the board of county commissioners on or before March 1, 1991, shall be held not fewer than thirty (30) days from the date said election is called"; and in the third sentence, substituted "sixty (60)" for "forty-five (45)".

**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 sixty (60) 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; Laws 1993, c. 316, § 10, eff. Sept. 1, 1993.

**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.

The 1993 amendment, in the introductory paragraph, substituted "sixty (60)" for "forty-five (45)".

**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 subsection C], added “; 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”.

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:

Laws 1909, p. 264.  
R.L.1910, § 439.  
Comp.St.1921, § 4373.  
St.1931, § 6015.  
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 § 168 et seq.

**§ 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. Repealed by Laws 1992, c. 247, § 25, emerg. eff. May  
21, 1992**

## Historical and Statutory Notes

The repealed section, derived from  
Laws 1974, c. 153, § 13-112, related to  
scheduling of municipal election dates.

**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—Combination  
of voter registration records**

A. 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.

B. The Secretary of the State Election Board may allow certain precincts to be closed during school district and vocational-technical school district elections upon request of the secretary of the county election board or upon request of the board of education of a school district.

C. Except as otherwise provided in this section, upon request of the board of education of any school district, or of the board of education of any vocational-technical school district, or both if an election in the precinct is affected by both, the secretary of a county election board shall combine the voter registration records of any precinct, not split by two or more school districts in which elections are being held or by two or more school board districts in school districts of ten thousand (10,000) or more average daily membership, with those of an adjacent precinct within the school district for any school election, provided that the voter registration records of no more than three precincts may be combined in one precinct. No voter registration records may be moved if another entity, other than

a public school or vocational-technical school district, is holding an election in the precinct on the same day. No voter registration records may be moved across county lines.

D. School districts and vocational-technical school districts shall share polling places where the districts overlap if the districts hold elections on the same day.

E. At least ten (10) days prior to a school election, the superintendent for each board of education for a district in which voter registration information has been combined shall publish a notice and issue a news release of the polling place locations for that election in a newspaper of general circulation in each county where voter registration information was combined. Said notice shall list the name and location of the combined polling places, and which precinct will conduct the voting. Said notice shall include information about options for absentee and in-person absentee voting. Ten (10) days prior to the election, the county election board shall post a notice on the door of each polling place from which voter registration information is being moved. Said notice shall list the name and location of the combined polling places, and which precinct will conduct the voting. Said notice shall also be posted at each affected county election board stating that such polling place will not be open and explaining options for mail and in-person absentee voting.

Laws 1988, c. 296, § 2, eff. June 1, 1990; Laws 1991, c. 330, § 2; Laws 1992, c. 346, § 2, eff. Sept. 1, 1992.

### Historical and Statutory Notes

The 1991 amendment designated the existing text as subsection A, and added subsection B.

The 1992 amendment added subsections C through E.

#### 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; requiring 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.

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 et seq., 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 second Tuesday in February 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 first Tuesday in April 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 second Tuesday in February 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; Laws 1991, c. 330, § 3; Laws 1992, c. 247, § 18, eff. July 1, 1992.

**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.

The 1991 amendment, in subsection A, in the second paragraph, substituted "last" for "third".

The 1992 amendment, in subsection A, in the first paragraph, substituted "second Tuesday in February" for "first Tues-

day in May", and in the second paragraph, substituted "first Tuesday in April" for "last Tuesday in June"; and in subsection B, substituted "second Tuesday in February" for "first Tuesday in May".

### **§ 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—Contests of candidacy for district board of education—Procedure**

A. 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. The declaration of candidacy shall have an attachment listing the requirements of a candidate for election or reelection to a school board as set forth in Sections 13A-106 and 5-105a of this title and Sections 5-110, 5-110.1 and 5-113 of Title 70 of the Oklahoma Statutes and the candidate shall swear or affirm that he or she is eligible to run for such office or serve in such office if elected. Candidates shall file on the first Monday in December 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.

B. The candidacy of any candidate for member of a district board of education may be contested by any candidate for the same office or any registered voter who is eligible to vote for the candidate by the filing of a written petition with the State Board of Education. A person filing such petition is hereinafter referred to as petitioner.

C. A petition contesting the candidacy of any candidate for member of a district board of education shall be filed no later than 5:00 p.m. on the ninth day following the close of the filing period.

D. A petition contesting the candidacy of any candidate for member of a district board of education, hereinafter referred to as contestee, must allege that the contestee is not qualified by law to become a candidate for member of a district board of education and must set forth specific facts to support the allegation. The State Superintendent of Public Instruction may add allegations and supporting facts to the petition if the contestee is given written notice of

the additional allegations and facts by the State Superintendent at least three (3) days prior to the hearing on the petition. Any reason not appearing on the face of the petition, unless added by the State Superintendent of Public Instruction, shall be considered waived and shall not be grounds for a contest based on the petition.

E. A petition contesting the candidacy of a candidate for member of a district board of education must be accompanied by a cashier's check or certified check in the amount of Two Hundred Fifty Dollars (\$250.00) payable to the State Board of Education.

F. When a petition contesting the candidacy of a candidate is properly filed, the State Superintendent of Public Instruction shall set the matter for a hearing before the State Board of Education at the Board's next regularly scheduled meeting or at a special meeting. The hearing shall be scheduled no earlier than three (3) days from the date the petition was filed and no later than twenty (20) days after the close of the period for filing declarations of candidacy.

G. The petitioner shall cause a copy of the petition and notice of the date and place of the hearing to be served on the contestee and the secretary of the county election board in which the contested declaration of candidacy was filed. Service shall be made as set forth in Sections 5-124 and 5-125 of this title.

H. If a contestee desires to appear in answer to the contest, the contestee shall upon appearance at the hearing on the petition, or at the time the contestee files a written answer with the State Board of Education, whichever occurs first, deposit a cashier's check or certified check in the amount of Two Hundred Fifty Dollars (\$250.00) with the State Board of Education. Failure of the contestee to post the required cashier's or certified check shall be deemed a failure to answer the contest, and the petition contesting the candidacy shall be deemed successful.

I. The burden of proof shall be upon the petitioner to sustain the allegations in the petition. However, failure of the contestee to appear or answer shall be deemed a default and shall constitute an admission of the allegations of the petition. In the event of a default, the State Board of Education shall determine whether the factual allegations of the petition constitute appropriate grounds for disqualification. If the Board finds grounds for disqualification, the contestee's candidacy shall be stricken.

J. The petition may be heard without a formal answer being filed by the contestee if the contestee appears on the hearing date and posts the required cashier's or certified check. The State Board of Education shall have authority to issue subpoenas, compel the attendance of witnesses and the production of evidence, and receive

testimony of witnesses under oath. The State Superintendent of Public Instruction or, in the absence of the State Superintendent, the acting chair of the Board shall administer the oath. At the conclusion of the hearing, the Board shall render its decision in writing. The decision of the Board shall in all cases be final. If the Board determines that the contestee's declaration of candidacy may be amended or corrected to conform to law, the Board may allow the amendment or correction to be made.

K. The State Board of Education shall notify the secretary of the county election board in the county in which the contested declaration of candidacy was filed of the Board's decision on a contested candidacy by mailing notice of its decision within one (1) day of the decision. Upon receiving notice that the State Board of Education determined that the contestee was not qualified to become a candidate for member of a district board of education, the secretary of the county election board shall strike the candidacy and shall not place the name of the candidate on the ballot. If the State Board of Education determined that the declaration of candidacy may be amended or corrected, the secretary of the county election board shall allow the correction or amendment to be made upon appearance of the contestee for the purpose of making the correction or amendment.

L. If the petitioner is successful, the deposit shall be returned to petitioner, and the costs of the hearing shall be deducted from the deposit of the contestee. The balance of the deposit shall be returned to the contestee. If the contestee does not file an answer or make an appearance, or if the petitioner is unsuccessful, all costs of the hearing shall be paid from the petitioner's deposit. The balance of the petitioner's deposit shall be returned to the petitioner.

M. The State Board of Education shall cause to be compiled and issued an annual report which provides information, pursuant to the provisions of this section, on the number of petitions received, the disposition of the petitions and the funds received, deposited and/or returned by the State Board of Education.

N. The provisions of this section shall be the exclusive procedure for contesting a candidacy for member of a district board of education.

Laws 1988, c. 296, § 6, eff. June 1, 1990; Laws 1989, c. 132, § 2, eff. June 1, 1990; Laws 1992, c. 247, § 19, emerg. eff. May 21, 1992; Laws 1994, c. 360, § 2, eff. July 1, 1994.

#### Historical and Statutory Notes

The 1989 amendment, in the first sentence deleted "at the same time and" following "file declarations of candidacy" and

"during even numbered years" following "office", and rewrote the second sentence [now subsection A, third 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.

The 1992 amendment, in the second sentence [now subsection A, third sentence], substituted "first Monday in December" for "second Monday in March".

The 1994 amendment designated the existing text as subsection A; in subsection A, inserted the second sentence; and added subsections B through N.

### **§ 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 resided in the district for at least six (6) months preceding the first day of the filing period, and 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 resided in the district for at least six (6) months preceding the first day of the filing period and 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; Laws 1994, c. 360, § 3, eff. July 1, 1994.



**Historical and Statutory Notes**

The 1989 amendment, in subsection A, added the second and fourth sentences.

The 1994 amendment, in subsection A, in the first sentence, inserted "resided in the district for at least six (6) months

preceding the first day of the filing period, and have", and in the third sentence, inserted "resided in the district for at least six (6) months preceding the first day of the filing period and have".

**§ 13A-107. [Blank]****§ 13A-108. School district maps**

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 State Department of Education with maps of precincts within the county, then the 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; Laws 1993, c. 239, § 17, eff. July 1, 1993.

**Historical and Statutory Notes**

The 1993 amendment, in the first sentence, substituted "State Department of Education" for "county superintendent of schools, or in counties with no county superintendent of schools, the State De-

partment of Education,"; and in the second sentence, deleted "the county superintendent of schools or" following "provides" and "then the".

**United States Supreme Court**

Elections, redistricting plans, vote dilution, see *Grove v. Emison*, 1993, 113 S.Ct. 1075, 122 L.Ed.2d 388.

**§ 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 second Tuesday in February.

D. Resolutions calling for special elections shall be delivered to the secretary of the county election board no fewer than sixty (60) days preceding the election.

Laws 1988, c. 296, § 9, eff. June 1, 1990; Laws 1989, c. 132, § 3, eff. June 1, 1990; Laws 1992, c. 247, § 20, emerg. eff. May 21, 1992.

#### 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.

The 1992 amendment, in subsection C, in the second sentence, substituted "second Tuesday in February" for "first Tuesday in May"; and in subsection D, substituted "sixty (60)" for "forty-five (45)".

### § 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. No person shall be appointed to a board of education who does not meet the eligibility qualifications needed to be a candidate for such position as provided for in Sections 13A-106 of this title and Sections 5-110, 5-110.1 and 5-113 of Title 70 of the Oklahoma Statutes.

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; Laws 1994, c. 360, § 4, eff. July 1, 1994.

### 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.

The 1994 amendment, in subsection A, added the fifth sentence.

### Source:

Laws 1913, c. 219, p. 526, art. 6, § 7.  
Comp.St.1921, § 10411.  
Laws 1921, c. 96, p. 122, § 1.  
St.1931, § 6866.  
Laws 1931, p. 126, § 1.  
Laws 1937, p. 169, § 2.  
Laws 1949, p. 530, art. 4, § 14.  
Laws 1955, p. 420, § 9.  
70 O.S.1961, § 4-14.  
70 O.S.1981, § 5-112.

## § 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 Title 26, § 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."

**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 ab-

sentee 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 Title 26, § 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**

The 1981 amendment rewrote the section, which prior thereto read:

"Absentee ballots shall not be authorized for any other election, unless specifically provided for by law."

Section 11 of Laws 1981, c. 344, as amended by 1982 S.J.R. No. 29, § 1, provides:

"This act shall become effective July 1, 1983."

Section 11 of Laws 1981, c. 344, as amended by 1982 S.J.R. No. 29, § 1, as amended by § 22 of Laws 1983, c. 171, provides:

"This act shall become effective January 1, 1984."

The 1984 amendment rewrote the section, which prior thereto read:

"Absentee ballots shall be designated as 'mail absentee ballots' and 'in-person absentee ballots'."

**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 Title 26, 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".

For provisions of 1982 S.J.R. No. 29, § 1, and Laws 1983, c. 171, § 22, relating to the effective date of this section, see Historical and Statutory Notes following Title 26, § 14-102.

**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 Title 26, § 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**

The 1979 amendment rewrote the section, which prior thereto 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 1981 amendment inserted "Mail" preceding "absentee ballots".

The 1984 amendment deleted "Mail" preceding "absentee ballots".

For provisions of 1982 S.J.R. No. 29, § 1, and Laws 1983, c. 171, § 22, relating to the effective date of this section, see Historical and Statutory Notes following Title 26, § 14-102.

**Library References**

Elections ¶216.1.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 210.

**§ 14-105. Application for absentee ballot**

Any registered voter may apply for an absentee ballot in person at the county election board, by United States mail, by telegraph or by

facsimile device as defined in Section 1862 of Title 21 of the Oklahoma Statutes. The Secretary of the State Election Board shall prescribe a form to be used for said application, although any application setting forth substantially the same facts shall be valid. Laws 1974, c. 201, § 5, operative July 1, 1974. Renumbered from Title 26, § 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. Oct. 1, 1982; Laws 1984, c. 204, § 4, operative July 1, 1984; Laws 1985, c. 78, § 1, eff. July 1, 1985; Laws 1991, c. 277, § 1, eff. Sept. 1, 1991; Laws 1995, c. 290, § 14, eff. Nov. 1, 1995.

### Historical and Statutory Notes

The 1979 amendment rewrote the section, which prior thereto 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 1981 amendment rewrote the section, which prior thereto 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 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".

The 1991 amendment, in the first sentence, substituted "Any registered voter" 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".

The 1995 amendment, in the first sentence, substituted "in person at the county election board, by the United States mail, by telegraph or by facsimile device as defined in Section 1862 of Title 21 of the Oklahoma Statutes" for "either in person at the county election board, by United States mail, or by telegraph"; and in the second sentence, deleted "written or telegraphed" following "any".

For provisions of 1982 S.J.R. No. 29, § 1, and Laws 1983, c. 171, § 22, relating to the effective date of this section, see Historical and Statutory Notes following Title 26, § 14-102.

### 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*, U.S.N.Y.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 Title 26, § 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 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 Title 26, § 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 or other manner as prescribed by the Secretary of the State Election Board; 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 Title 26, § 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; Laws 1991, c. 321, § 37, eff. March 1, 1992.

### Historical and Statutory Notes

The 1981 amendment added the second sentence.

The 1984 amendment, in the first sentence, deleted "or witnessed by two other registered voters of the same precinct" following "a notary public"; and deleted the 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 be-

ing witnessed are those of voters registered at a single address."

The 1991 amendment inserted "or other manner as prescribed by the Secretary of the State Election Board".

For provisions of 1982 S.J.R. No. 29, § 1, and Laws 1983, c. 171, § 22, relating to the effective date of this section, see Historical and Statutory Notes following Title 26, § 14-102.

### Library References

Elections ⇨216.1.

WESTLAW Topic No. 144.

C.J.S. Elections § 210.

## § 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 in-

stances, 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 1974, c. 201, § 10.

Laws 1976, c. 90, § 11.

Laws 1981, c. 154, § 1.

See Title 26, § 14-110.1.

## § 14-110.1. Physically incapacitated persons—Absentee ballot

A registered voter who swears or affirms that the voter is physically unable to vote in person at the precinct on the day of the election because the voter is:

1. Physically incapacitated; or
2. 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, by telegraph or by facsimile device as defined by Section 1862 of Title 21 of the Oklahoma Statutes. The Secretary of the State Election Board shall prescribe a form to be used for said application, although any 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; Laws 1995, c. 290, § 15, eff. Nov. 1, 1995.



**Historical and Statutory Notes**

The 1985 amendment, in the first sentence, inserted "or by telegraph"; and in the second sentence, inserted "or telegraphed".

The 1995 amendment rewrote the section, which prior thereto read:

"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."

**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 Title 26, § 14-111.1.

**§ 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 Title 26, § 14-112.1.

**§ 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**

Repealed § 14-113, relating to the return of ballots, was derived from Laws 1974, c. 201, § 13; Laws 1976, c. 90, § 11. more than ten miles from the polling place to vote by absentee ballot.

See Title 26, § 14-113.2.

Repealed § 14-113.1, derived from Laws 1979, c. 240, § 28, allowed voters

**§ 14-113.2. Marking and return of ballot**

The voter shall be required to mark his ballots in ink or other manner as prescribed by the Secretary of the State Election Board; 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; Laws 1991, c. 321, § 38, eff. March 1, 1992.

**Historical and Statutory Notes**

The 1991 amendment inserted "or other manner as prescribed by the Secretary of the State Election Board".

**§ 14-113.3. Repealed by Laws 1991, c. 277, § 5, eff. Sept. 1, 1991**

**Historical and Statutory Notes**

Repealed § 14-113.3, derived from Laws 1984, c. 204, § 10, allowed voters more than ten miles from the polling place to vote by absentee ballot.

**§ 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 Title 26, § 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. On the Friday, Saturday or Monday preceding the election, the 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.

2. 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.

3. 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.

4. 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.

5. Ballots cast in said manner shall be counted in the same manner as regular mail absentee ballots.

Laws 1974, c. 201, § 15, operative July 1, 1974. Renumbered from Title 26, § 327.15 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976. Laws 1991, c. 277, § 2, eff. Sept. 1, 1991.

**Historical and Statutory Notes**

The 1991 amendment deleted paragraph 1, which read:

"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."

; redesignated former paragraphs 2 through 5 as paragraphs 1 through 4; in paragraph 1, substituted "the absentee" for "said absentee"; added paragraph 5; and deleted paragraph 6, which read:

"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."

### **Library References**

Elections  $\S$  216.1.  
WESTLAW Topic No. 144.  
C.J.S. Elections  $\S$  210.

## **§ 14-115.1. Incapacitated voter unable to vote in person—Procedure**

A registered voter who becomes incapacitated after 5:00 p.m. on Tuesday preceding an election, is unable to vote in person at the appropriate precinct on the day of the election may make a written request for an absentee ballot. The request shall be signed by the voter, or signed by a witness at the voter's direction if the voter is unable to sign his or her name, and shall be transmitted 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. The 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. Expected or likely confinement for childbirth on election day is sufficient cause to entitle a voter to vote absentee pursuant to this section. The statement must attest to the fact that the voter is in fact unable to vote in person at the appropriate 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. The 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; Laws 1991, c. 129, § 4, eff. Sept. 1, 1991.

#### Historical and Statutory Notes

The 1991 amendment rewrote the section, which prior thereto read:

"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."

#### 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, relating to application for and casting in-person absentee ballots, respectively, were derived from

Laws 1981, c. 344, §§ 6, 7; Laws 1983, c. 171, §§ 18, 19.

### § 14-115.4. In-person absentee voting

A. A registered voter may apply for an in-person absentee ballot at a location designated by the secretary of the county election board from 9 a.m. to 5 p.m. on Thursday, Friday and Monday immediately preceding any statewide election and on Monday only for all other elections. As part of the application for an in-person absentee ballot

such registered voter shall swear or affirm that he or she has not voted a regular mail absentee ballot and that he or she will not vote at the regular polling place in the election for which the in-person absentee ballot is requested.

B. One or more absentee voting boards shall be on duty from 9 a.m. to 5 p.m. at the in-person absentee polling place on Thursday, Friday and Monday immediately preceding any statewide election and on Monday only for all other elections. If the secretary of a county election board receives an application from a registered voter requesting to vote by in-person absentee ballot the secretary shall cause to be implemented the following procedures:

1. An absentee voting board shall provide to each registered voter who applies for an in-person absentee ballot appropriate ballots and materials as may be necessary to vote;

2. The voter must sign an in-person absentee voter record, and his signature on such record must be certified by both members of the absentee voting board;

3. The voter must mark his ballots in the manner provided by law 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 deposit the ballot in a voting device designated for in-person absentee voting by the secretary of the county election board;

5. When the in-person polling place is closed on each day of in-person absentee voting the in-person absentee voting board shall, without obtaining a printout of results, remove the vote data pack from the voting device and seal ballots counted that day in a transfer case which shall be secured by the sheriff of the county in the same manner as provided in Section 8-110 of this title. The vote data pack shall be sealed in a container prescribed by the Secretary of the State Election Board. The sheriff shall secure the sealed vote data pack container and return it to the in-person absentee voting board no later than 8:45 a.m. on the next day of the in-person absentee voting or to the secretary of the county election board at the time of the county election board meeting to count absentee ballots on the Tuesday election day;

6. The vote data pack or packs used for in-person absentee voting shall be used by the county election board to count absentee ballots on election day as provided in Section 14-125 of this title; and

7. If there is a malfunction in such a way that the vote data pack used for in-person absentee voting will not function, the sheriff is authorized to return the transfer cases containing in-person absentee ballots to the county election board to be recounted as provided in Section 7-134.1 of this title.

Laws 1991, c. 277, § 3, eff. Sept. 1, 1991; Laws 1992, c. 247, § 21, emerg. eff. May 21, 1992; Laws 1993, c. 316, § 11, eff. Sept. 1, 1993.

### Historical and Statutory Notes

The 1992 amendment, in subsection A, in the first sentence, substituted "at the office of the county election board from 9 a.m. to 5 p.m." for "during regular office hours at the office of the county election board", and in the second sentence, substituted "voted" for "applied for"; and in subsection B, in the introductory paragraph, in the first sentence, substituted "from 9 a.m. to 5 p.m. at" for "during regular office hours in", inserted paragraph 2, redesignated former paragraph 2 as paragraph 3, and rewrote as paragraph 4 former paragraphs 3 and 4, which prior thereto read:

"3. 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 the same must be witnessed by both members of the absentee voting board;

"4. The envelope bearing an affidavit then must be sealed in another envelope,

which shall be deposited in the locked ballot box provided for regular mail absentee ballots; and".

The 1993 amendment, in subsection A, in the first sentence, substituted "a location designated by the secretary of the county election board" for "the office of the county election board"; and in subsection B, in the introductory paragraph, in the first sentence, substituted "in-person absentee polling place" for "office of the county election board", rewrote paragraphs 4 and 5, which prior thereto read:

"4. The voter shall then seal said ballots in an opaque envelope prescribed by the Secretary of the State Election Board which shall be deposited in the locked ballot box provided for regular mail absentee ballots; and

"5. Ballots cast in said manner shall be counted in the same manner as regular mail absentee ballots."

, and added paragraphs 6 and 7.

## § 14-115.5. Absentee voting boards

To carry out the provisions of Section 14-115 of this title and Section 14-115.4 of this title, the secretary of the county election board shall designate one or more absentee voting boards, to be composed of two (2) members each, with each member to be of a different political affiliation. No later than August 1 in each even-numbered year, 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. Members of an absentee voting board shall be reimbursed for their expenses at the rate of Forty Dollars (40.00) per day. One member of each such board serving a nursing home or convalescent hospital shall be allowed mileage reimbursement at the rate prescribed for travel by state employees according to the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes. Laws 1991, c. 277, § 4, eff. Sept. 1, 1991; Laws 1992, c. 247, § 22, emerg. eff. May 21, 1992; Laws 1995, c. 315, § 4, eff. July 1, 1995.

### **Historical and Statutory Notes**

The 1992 amendment, in the first sentence, substituted "this title and Section 14-115.4 of this title" for "Title 26 of the Oklahoma Statutes and Section 3 of this act"; in the second sentence, substituted "in each even-numbered year" for "

1974, and each two (2) years thereafter"; and added the eighth sentence.

The 1995 amendment, in the seventh sentence, substituted "Forty Dollars (40.00)" for "Thirty Dollars (\$30.00)".

## **§ 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 territorial 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 Title 26, § 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 second sentence.

**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 as provided for in the Federal Uniformed and Overseas Citizens Voting Act of 1986, as amended,<sup>1</sup> or by letter setting forth substantially the same facts. Said application shall be transmitted by United States mail or by facsimile device as defined in Section 1862 of Title 21 of the Oklahoma Statutes to the secretary of the county election board of the elector's residence.

Laws 1974, c. 201, § 17, operative July 1, 1974. Renumbered from Title 26, § 327.17 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976. Laws 1992, c. 247, § 23, emerg. eff. May 21, 1992; Laws 1995, c. 290, § 17, eff. Nov. 1, 1995.

<sup>1</sup> 42 U.S.C.A. § 1973ff et seq.

**Historical and Statutory Notes**

The 1992 amendment, in the first sentence, substituted "Federal Uniformed and Overseas Citizens Voting Act of 1986" for "Federal Voting Assistance Act of 1955".

The 1995 amendment, in the first sentence, deleted "by using Standard Form

76, Post Card Application for Absentee Ballot," following "ballots"; and in the second sentence, inserted "or by facsimile device as defined in Section 1862 of Title 21 of the Oklahoma Statutes".

**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 Title 26, § 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 or other manner as prescribed by the Secretary of the State Election Board, 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 Title 26, § 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; Laws 1991, c. 321, § 39, eff. March 1, 1992.

## Historical and Statutory Notes

The 1984 amendment, in the first paragraph, substituted “,” for “;” following “ink”, “envelope” and “affidavit”, and substituted “attest if the voter is in the Armed Forces of the United States,” for “attest;” ; and added the second paragraph.

The 1987 amendment, in the first paragraph, 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,” preceding “seal”; and deleted the 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 1991 amendment inserted “or other manner as prescribed by the Secretary of the State Election Board”.

## 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 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 Uniformed and Overseas Citizens Absentee Voting Act of 1986<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; Laws 1995, c. 290, § 16, eff. Nov. 1, 1995.

<sup>1</sup> 42 U.S.C.A. § 1973ff et seq.

### Historical and Statutory Notes


The 1995 amendment, in subsection B, in the first sentence, substituted "Uniformed and Overseas Citizens Absentee Voting Act of 1986" for "Voting Assistance Act of 1955, as amended."

## § 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 Title 26, § 327.21 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.

## § 14-121.1. 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, al-

though 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 Title 26, § 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 and remove properly executed affidavits and place the plain opaque envelopes 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 Title 26, § 327.23 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976. Laws 1993, c. 316, § 12, eff. Sept. 1, 1993.

#### Historical and Statutory Notes

The 1993 amendment, in the first sentence, substituted "and remove properly executed affidavits and place the plain opaque envelopes" for "the affidavits and place the properly executed envelopes bearing affidavits".

### 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 Title 26, § 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. On the day of the election at such time as the secretary of the county election board may prescribe, the county election board 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:

The ballot box containing the plain opaque envelopes shall be shaken to mix the envelopes, after which the box shall be opened, the envelopes removed, and the ballots counted by a voting device assigned to count absentee ballots and operated by persons appointed by the secretary of the county election board.

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 ballot cards be counted at any time, unless fewer than twelve ballot cards 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 Title 26, § 327.25 by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976. Laws 1983, c. 45, § 1, operative July 1, 1983; Laws 1991, c. 321, § 40, eff. March 1, 1992; Laws 1993, c. 316, § 13, eff. Sept. 1, 1993.

### Historical and Statutory Notes

The 1983 amendment designated the former introductory paragraph and paragraphs 1 to 3 as subsection A and former paragraph 4 as subsection B; in subsection A, introductory paragraph, substitut-

ed "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 subsection 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.

The 1991 amendment, in subsection A, in the introductory paragraph, substituted "On the day of the election at such time as the secretary of the county election board may prescribe, the county election board" for "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", and in paragraph 3, substituted "by a voting device assigned to count absentee ballots and operated by persons appointed by the secretary of the county election board" for "according to law"; and in subsection B, in the second sentence, twice substituted "ballot cards" for "ballots".

The 1993 amendment rewrote subsection A, which prior thereto read:

"A. On the day of the election at such time as the secretary of the county election board may prescribe, the county election board 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 by a voting device assigned to count absentee ballots and operated by persons appointed by the secretary of the county election board."

### Cross References

Election emergencies, absentee ballots, counting procedure, see Title 26, § 22-115.

### Library References

Elections ⇨ 239, 241.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 224, 227.

## § 14-126. Repealed by Laws 1991, c. 321, § 57, eff. March 1, 1992

### Historical and Statutory Notes

See, now, Title 26, § 22-116.

## § 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 Title 26, § 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 Title 26, § 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 Title 26, § 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 Title 26, § 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 election board on the day preceding the election."

**§ 14-131. Repealed by Laws 1990, c. 331, § 21, eff. July 1, 1990**

**Historical and Statutory Notes**

See, now, Title 26, § 7-138.



**§ 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 Title 26, § 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, relating to exemption as to age limitations of members of county and precinct election boards, was derived from:

Laws 1974, c. 201, § 34.  
Laws 1975, c. 363, § 3.  
24 O.S.Supp.1975, § 327.34.  
Laws 1976, c. 90, § 11.

**ARTICLE XV. CAMPAIGN CONTRIBUTIONS  
AND EXPENDITURES****§§ 15-101, 15-102. Repealed by Laws 1986, c. 255, § 33, emerg. eff. June 13, 1986****Historical and Statutory Notes**

Repealed § 15-101, relating to the short title of the Campaign Contributions and Expenditures act, was derived from:

Laws 1968, c. 403, § 1.  
26 O.S.1971, § 423.1.  
Laws 1974, c. 154, § 1.

26 O.S.Supp.1975, § 424.1.  
Laws 1976, c. 90, § 12.

For subject matter of repealed § 15-102, see, now, Title 51, § 304 and Title 74, § 4249.

**§ 15-103. Renumbered as Title 74, § 4211 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.  
26 O.S.Supp.1975, § 424.4.  
Laws 1976, c. 90, § 12.

**§§ 15-105 to 15-112.** Renumbered as Title 74, §§ 4213 to 4221 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.

Laws 1916, c. 24, p. 50, § 20.  
Comp.St.1921, §§ 6109, 6268.  
St.1931, §§ 5670, 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.  
Comp.St.1921, §§ 1535, 1537, 1539, 6109, 6203, 6290.  
St.1931, §§ 2015, 2017, 2019, 5776, 5842.  
21 O.S.1971, §§ 195, 197, 199.  
26 O.S.1971, §§ 131, 433, 475.

## Library References

Elections § 313, 318.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 325, 331.

## United States Supreme Court

Disenfranchising convicted felons who have completed their sentences and paroles, see *Richardson v. Ramirez*, U.S.Cal.1974, 94 S.Ct. 2655, 418 U.S. 24,

41 L.Ed.2d 551, 72 O.O.2d 232, on remand 12 Cal.3d 912, 117 Cal.Rptr. 562, 528 P.2d 378.

## Notes of Decisions

## Construction and application 1

## Defenses 2

## Intent 3

## 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*, Okla.Crim.App., 11 Okla. Crim. 37, 141 P. 804 (1914).

## 2. Defenses

Honest ignorance of the disqualifying fact excused one charged with unlawfully

attempting to vote at a primary election in violation of Laws 1913, c. 157, § 23 (repealed; now this section). *Bell v. State*, Okla.Crim.App., 11 Okla.Crim. 37, 141 P. 804 (1914).

## 3. Intent

In a prosecution for unlawfully attempting to vote in violation of statute, 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*, Okla.Crim.App., 11 Okla.Crim. 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.

## Notes of Decisions

## Construction and application 1

v. State, Okla.Crim.App., 275 P.2d 334 (1954).

## 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*, Okla. Crim.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. *Ingram*

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 prepared 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. *Ingram v. State*, Okla.Crim.App., 275 P.2d 334 (1954).

## § 16-103.1. Unauthorized registration of voters

Anyone who knowingly causes any qualified elector to be invalidly registered or anyone who knowingly causes any unqualified person to be registered shall be deemed guilty of a felony.

Laws 1991, c. 52, § 2, emerg. eff. April 9, 1991; Laws 1994, c. 260, § 24, eff. Jan. 1, 1995.

## Historical and Statutory Notes

The 1994 amendment rewrote the section, which prior thereto read:

"Anyone not authorized to register voters who represents himself as a voter

registrar and knowingly causes any qualified elector to be invalidly registered shall be deemed guilty of a felony."

## § 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**

<b>Source:</b>	R.L.1910, §§ 2112, 3040, 3134, 3136, 3146, 3149.
Comp.Laws Dak.1887, § 6261.	Laws 1913, c. 157, pp. 321, 322, §§ 15, 17, 18.
St.1890, § 1909.	Comp.St.1921, §§ 1529, 6109, 6205, 6207, 6217, 6220, 6289, 6291, 6292.
St.1893, § 1898.	St.1931, §§ 5776, 5835, 5838, 5841, 5845, 5846, 5856, 5864.
St.1903, § 1983.	26 O.S.1971, §§ 131, 435, 437, 447, 450, 474, 476, 477.
Laws 1907-08, pp. 347, 348, 351, 368.	
Laws 1909, p. 274.	
Comp.Laws 1909, §§ 2083, 3207, 3209, 3219, 3222, 3290.	

**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>	Comp.St.1921, §§ 6109, 6210, 6211, 6214, 6215.
Laws 1907-08, pp. 349, 350, 351, 368.	St.1931, §§ 5776, 5859 to 5862.
Laws 1909, p. 274.	26 O.S.1971, §§ 131, 440, 441, 444, 445.
Comp.Laws 1909, §§ 3212, 3213, 3216, 3217, 3290.	
R.L.1910, §§ 3040, 3139, 3140, 3143, 3144.	

**Constitutional Provisions**

Article 17, § 7 provides:

"Any person or corporation offering money or other thing of value, either di-

rectly or indirectly, for the purpose of influencing any voter for or against any competing town in such election, shall be deemed guilty of bribery."

## Library References

Elections Ⓒ316.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 332.

## Notes of Decisions

**Bribery, effect of** 1  
**Campaign expenses** 2

kirk, Okla., 31 Okla. 304, 121 P. 260 (1912).

## 2. Campaign expenses

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, Okla.*, 148 Okla. 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. *City of Tecumseh v. City of Shawnee, Okla.*, 148 Okla. 128, 297 P. 285 (1931).

## 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 be rejected. *City of Blackwell v. City of New-*

## § 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

## Source:

Laws 1907-08, pp. 351, 368.  
 Laws 1909, p. 274.  
 Comp.Laws 1909, §§ 3220, 3290.

R.L.1910, §§ 3040, 3147.  
 Comp.St.1921, §§ 6109, 6218.  
 St.1931, §§ 5776, 5865.  
 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>	R.L.1910, §§ 2128, 2129, 3040, 3139, 3140.
Comp.Laws Dak.1887, §§ 6277, 6278.	Comp.St.1921, §§ 1545, 1546, 6109, 6210, 6211.
St.1890, §§ 1925, 1926.	St.1931, §§ 2025, 2026, 5776, 5859, 5860.
St.1893, §§ 1914, 1915.	21 O.S.1971, §§ 214, 215.
St.1903, §§ 1999, 2000.	26 O.S.1971, §§ 131, 440, 441.
Laws 1907-08, pp. 349, 368.	
Laws 1909, p. 274.	
Comp.Laws 1909, §§ 2099, 2100, 3212, 3213, 3290.	

**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**

<b>Source:</b>	R.L.1910, §§ 3040, 3055.
Laws 1907-08, pp. 368, 376.	Comp.St.1921, §§ 6109, 6124.
Laws 1909, p. 274.	St.1931, §§ 5776, 5797.
Comp.Laws 1909, §§ 3290, 3304.	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 ( $\frac{1}{2}$ ) 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.

### Notes of Decisions

#### Construction and application 1

##### 1. Construction and application

If any persons were influenced by a partisan dispensing liquor, such votes

should be rejected, but not the entire box of the precinct. *City of Blackwell v. City of Newkirk, Okla.*, 31 Okla. 304, 121 P. 260 (1912).



**§ 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.

**United States Supreme Court**

First Amendment, election day prohibition on solicitation of votes, displays, or distribution of campaign materials near polling place, see *Burson v. Freeman*, 1992, 112 S.Ct. 1846, 504 U.S. 191, 119 L.Ed.2d 5.

**§ 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****Source:**

Laws 1907-08, pp. 346, 351, 368.  
 Laws 1909, p. 274.  
 Comp.Laws 1909, §§ 3203, 3204, 3219, 3290.  
 R.L.1910, §§ 3040, 3130, 3131, 3146.

Laws 1913, c. 157, p. 320, § 12.  
 Comp.St.1921, §§ 6109, 6201, 6202, 6217, 6286.  
 St.1931, §§ 5776, 5834, 5850, 5851, 5864.  
 26 O.S.1971, §§ 131, 431, 432, 447, 471.

**Cross References**

Crimes against elective franchise, see Title 21, § 181 et seq.

## Library References

Elections  $\S$  314.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections  $\S$  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,  $\S$  16-115, operative Jan. 1, 1975.

## Historical and Statutory Notes

<b>Source:</b>	Comp.St.1921, $\S\S$ 6109, 6206.
Laws 1907-08, pp. 347, 368.	Laws 1931, p. 108, $\S$ 17.
Laws 1909, p. 274.	St.1931, $\S\S$ 5776, 5855.
Comp.Laws 1909, $\S\S$ 3208, 3290.	Laws 1971, c. 93, $\S$ 1.
R.L.1910, $\S\S$ 3040, 3135.	26 O.S.1971, $\S\S$ 131, 436.

## Library References

Elections  $\S$  309.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections  $\S\S$  324, 334.

## Comments.

Topical privileges, political vote, see  
 Whinery, 2 Oklahoma Evidence  
 $\S$  42.02.

## Notes of Decisions

**Construction and application** 1  
**Purpose** 2

**1. Construction and application**

Provision of St.1903, c. 33,  $\S$  44, para. 2949 as to disclosure of ballot was mandatory. Board v. Dill, Okla., 26 Okla. 104, 110 P. 1107 (1910).

**2. Purpose**

Purpose of Laws 1905, c. 17,  $\S$  5 forbidding disclosure was to make secret the ballot and to reject it where section violated. Harris v. Palmer, Okla., 25 Okla. 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,  $\S$  16-116, operative Jan. 1, 1975.

## Historical and Statutory Notes

<b>Source:</b>	R.L.1910, $\S$ 3040.
Laws 1907-08, p. 368.	Laws 1913, c. 157, p. 322, $\S$ 19.
Laws 1909, p. 274.	Comp.St.1921, $\S\S$ 6109, 6293.
Comp.Laws 1909, $\S$ 3290.	St.1931, $\S\S$ 5776, 5847.
	26 O.S.1971, $\S\S$ 131, 478.

## Library References

Elections  $\S$  314.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections  $\S$  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

<b>Source:</b>	Comp.St.1921, §§ 6109, 6149, 6151, 6299.
Laws 1907-08, pp. 325, 326, 368.	Laws 1927, c. 100, p. 161, § 1.
Laws 1909, p. 274.	Laws 1931, p. 104, § 10.
Comp.Laws 1909, §§ 3134, 3136, 3290.	St.1931, §§ 5776, 5802, 5804, 5809.
R.L.1910, §§ 3040, 3082, 3084.	Laws 1935, p. 121, § 1.
Laws 1910-11, c. 106, p. 227, § 7.	Laws 1963, c. 109, § 2.
Laws 1913, c. 157, p. 324, § 25.	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

<b>Source:</b>	Laws 1913, c. 157, p. 321, § 14.
Laws 1907-08, p. 368.	Laws 1913, c. 157, p. 323, § 21.
Laws 1909, p. 274.	Comp.St.1921, §§ 6109, 6288, 6295.
Comp.Laws 1909, § 3290.	St.1931, §§ 5776, 5837, 5840.
R.L.1910, § 3040.	26 O.S.1971, §§ 131, 473, 480.

#### Library References

Elections ⇨309.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 324, 334.

#### Notes of Decisions

##### Construction and application 1

##### 1. Construction and application

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*, Okla.Crim.App., 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 autho-

rized 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.

### Notes of Decisions

**Bond elections 4**  
**Construction and application 1**  
**Expenditure 2**  
**Jury trial 8**  
**Penalties 5, 6**  
    **In general 5**  
    **Vacation of office 6**  
**Reimbursement of funds 7**  
**Representative of public officer 3**  
**Vacation of office, penalties 6**

tive or referendum is specifically prohibited by statute. Op.Atty.Gen. No. 91-27 (June 23, 1992).

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).

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. Op.Atty.Gen. Nos. 80-241 and 80-249 (Nov. 18, 1980).

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).

#### 2. Expenditure

It is not unlawful under 26 O.S.1991, § 16-119 for the board of a school dis-

#### 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, Okla.*, 777 P.2d 1331 (1989).

No state statutory or constitutional provisions specifically authorize the use of public funds by state agencies for officials to advocate a specific election result but generally, public funds cannot be used to promote a specific election result unless there are particular factual circumstances which create an exception. Op.Atty.Gen. No. 91-27 (June 23, 1992).

Use of public funds to oppose or support matters referred to voters by initia-

strict whose funding will be affected by the outcome of an initiative or referendum election to make the expenditure of the school district's funds for employee compensation contingent on the outcome of the election. Op.Atty.Gen. No. 96-23 (May 22, 1996).

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).

### 3. Representative of public officer

A private association representing school board members may not expend association funds partially derived from membership dues paid to support or oppose an initiative or referendum question if the dues were paid and received with this intent. Op.Atty.Gen. No. 95-14 (May 13, 1996).

### 4. Bond elections

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, Okla.*, 777 P.2d 1331 (1989).

The statute specifically prohibiting the use of public funds to oppose or support matters referred to voters by initiative or referendum is only applicable to school bond elections that are referred to the voters by means of initiative or referendum and does not necessarily apply to all school bond elections. Op.Atty.Gen. No. 91-27 (June 23, 1992).

### 5. Penalties—In general

A public officer and an individual who conspire to violate Title 26, § 16-119, which prohibits the expenditure of public funds by an official of the state on an initiative or referendum, may both be subject to criminal prosecution for conspiracy under Title 26, § 421. Op.Atty. Gen. No. 95-14 (May 13, 1996).

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).

### 6. — Vacation of office, penalties

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).

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).

### 7. 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).

### 8. Jury trial

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).

**§ 16-120. Illegal printing or possession of certain voting materials**

Any person who causes to be printed, or who has in his possession ballots or blank voter identification cards not authorized by law shall be deemed guilty of a misdemeanor.

Laws 1974, c. 153, § 16-120, operative Jan. 1, 1975; Laws 1991, c. 52, § 3, emerg. eff. April 9, 1991; Laws 1994, c. 260, § 25, eff. Jan. 1, 1995.

**Historical and Statutory Notes**

The 1991 amendment deleted “,” following “possession” and inserted “, blank voter identification cards or blank voter registration materials”.

The 1994 amendment substituted “or blank voter identification cards” for “, blank voter identification cards or blank voter registration materials”.

**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.

**§ 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.

See Title 21, § 1840.

Repealed

## ARTICLE XVII. MISCELLANEOUS

**§ 17-111. Repealed by Laws 1980, c. 68, § 1, emerg. eff. April 10, 1980**

**Historical and Statutory Notes**

The repealed section, derived from Laws 1974, c. 153, § 17-111, provided for the codification of Articles I through XVI of Laws 1974, c. 153.

**§ 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, derived from Laws 1974, c. 153, § 17-113, provided for the severability of the provisions of Laws 1974, c. 153.

**§§ 17-114 to 17-116. Repealed by Laws 1980, c. 68, § 1, emerg. eff. April 10, 1980**

**Historical and Statutory Notes**

The repealed sections, derived from Laws 1974, c. 153, §§ 17-114 to 17-116, related to repealer, operative date and emergency clause, respectively, for Laws 1974, c. 153.

## 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**

The repealed sections, derived from Laws 1979, c. 180, §§ 1 to 13, related to campaign finance. See Title 74, § 4200 et seq.

## 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, derived from Laws 1985, c. 44, § 1, related to the short title of the Financial Disclosure Act.

**§§ 19-102 to 19-106.** Renumbered as Title 74, §§ 4222 to 4226 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, Title 51, § 507.

**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.

**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.

## Notes of Decisions

## Validity 1

mine date upon which the Oklahoma Presidential Preferential Primary shall be conducted. Op. Atty. Gen. No. 86-73 (1-9-87).

## 1. Validity

Legislature has lawfully reposed discretion in the State Election Board to deter-

## § 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 qualifications, 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> Title 26, § 20-101 et seq.

## § 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 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, either 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.

### Notes of Decisions

#### Validity 1

#### 1. Validity

Oklahoma Presidential Preferential Primary Act of 1986, Title 26, § 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 constitution-

al 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> Title 26, § 20-104.

## 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 im-

plement" 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 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.

## **ARTICLE XXII. ELECTION EMERGENCY**

### **§ 22-101. Declaration of election emergency**

The Secretary of the State Election Board is authorized to declare an election emergency for any area of the state if it becomes impossible to conduct one or more elections using voting devices. Said declaration must be in writing and specify the county or counties, election or elections and dates covered by the emergency. The Secretary of the State Election Board is authorized to prescribe procedures for elections conducted under said declaration consistent with purposes of the General Election laws.<sup>1</sup>

Laws 1991, c. 321, § 41, eff. March 1, 1992.

<sup>1</sup> Title 26, § 1-101 et seq.

### **Historical and Statutory Notes**

**Title of Act:**

An Act relating to elections; amending 26 O.S.1981, Sections 2-121, 3-104, as amended by Section 3, Chapter 331, O.S.L.1990, 3-113, 3-119, 3-121, 4-120.2, as last amended by Section 8, Chapter 331, O.S.L.1990, 6-103, 6-104, 6-105, 6-106, 6-107, 6-110, 6-113, 6-116, 6-117, 6-120, 7-107, 7-119, 7-120, 7-122, 7-125, 7-127, as amended by Section 11, Chapter 171, O.S.L.1983, Section 2, Chapter 38, O.S.L.1984, 7-130, as last amended by Section 5, Chapter 306, O.S.L.1990, 7-132, 7-133,

7-134, 7-136, 8-110, 8-111, as last amended by Section 2, Chapter 289, O.S.L.1989, 8-114, as amended by Section 5, Chapter 289, O.S.L.1989, 9-115, 9-118, 11-109, as amended by Section 7, Chapter 33, O.S.L.1987, 14-108, as last amended by Section 5, Chapter 204, O.S.L.1984, Section 9, Chapter 204, O.S.L.1984, 14-120, as last amended by Section 1, Chapter 56, O.S.L.1987, and 14-125, as amended by Section 1, Chapter 45, O.S.L.1983 (26 O.S. Supp.1990, Sections 3-104, 4-120.2, 7-127, 7-129.2, 7-130, 8-111, 8-114, 11-109, 14-108, 14-113.2, 14-120 and 14-125), which

relate to Oklahoma Election Laws; providing for storage of voting devices and ballot boxes; providing for payment for certain voting devices; providing for voting instructions; deleting reference to voting boxes; authorizing voting devices for each precinct; authorizing secretary of county election board to correct certain errors in the Oklahoma Election Management System; stating procedures regarding inactive voters; requiring state election board to print certain election ballots; requiring county election board to print certain ballots; providing for separate ballot cards to be used in certain elections; stating positions for candidates names on certain ballots; providing for certain emblems to represent political parties; stating positions of emblems on ballot cards; providing method for determining the order of names of candidates on ballots; stating procedure for printing state question ballot cards; providing for county election boards to print ballots in certain manner; providing for sample ballot cards; authorizing the state election board to contract with the office of public affairs for certain ballots; stating alternate procedure for printing certain ballots; stating procedures for readying ballot boxes for elections; providing for ballots to be marked in certain manner; stating procedures for voters to use voting devices and ballot cards; providing procedures for spoiled ballots; stating procedures for counting of ballots in certain elections; authorizing the Secretary of the State Election Board to prescribe valid markings of ballots; providing procedures for counting mutilated

ballot cards; providing procedures for watchers in elections using voting devices; stating procedures for certifying election results and transferring cases and election materials to the county election board; providing for transfer case to remain sealed for certain time period; providing for county election board to transmit election results to state election board; stating procedures for election recounts; stating costs of recounts; providing for recounts of elections using electronic voting devices; providing for experimental use of voting devices and equipment; providing procedures for notification to certain parties before preparation of voting devices; declaring violations of voting devices a felony; providing manner of printing ballot cards for judicial elections; providing procedures for counting absentee ballots; authorizing Secretary of State Election Board to declare election emergencies; stating election procedures to be used in declared election emergencies; repealing 26 O.S.1981, Sections 3-106, 6-118, 7-126, 7-128, 7-129, as amended by Section 12, Chapter 171, O.S.L.1983, 7-135, Section 1, Chapter 29, O.S.L. 1987, as amended by Section 3, Chapter 289, O.S.L.1989, Section 2, Chapter 29, O.S.L.1987, 9-101, 9-102, 9-103, Section 7, Chapter 225, O.S.L.1983, 9-104, 9-105, 9-106, 9-107, 9-108, 9-109, 9-110, 9-111, 9-112, 9-113, 9-114, 9-116, 9-117, 9-119, 9-120 and 14-126 (26 O.S.Supp.1990, Sections 7-129, 8-111.1, 8-114.1 and 9-m03.1), which relate to Oklahoma Election Laws; providing for codification; and providing an effective date. Laws 1991, c. 321.

## § 22-102. Ballot printing—Party emblems

In a declared election emergency the Secretary of the State Election Board shall declare that either this section or Section 6-106 of this title shall govern General Election ballot printing. 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 position 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 recognized party; directly below the name of the party the emblem of said party; and directly below said emblem a circle at least one-half ( $\frac{1}{2}$ ) inch in diameter. 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 names of the party's nominees for such office, preceded by a square one-fourth ( $\frac{1}{4}$ ) 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 1991, c. 321, § 42, eff. March 1, 1992.

### **§ 22-103. Opening ballot box**

In a declared election emergency, 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 1991, c. 321, § 43, eff. March 1, 1992.

**§ 22-104. Method of counting**

In a declared election emergency, the counting of ballots shall be conducted in accordance with the procedure prescribed by the Secretary of the State Election Board so as to ensure accuracy and promptness in determining the result. 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 1991, c. 321, § 44, eff. March 1, 1992.

**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.

Laws 1974, c. 153, § 7-126.

26 O.S.Supp.1990, § 7-126.

**§ 22-105. Rules governing counting**

In a declared election emergency, the Secretary of the State Election Board shall declare that either this section or Section 7-107 of this title 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 card, 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 1991, c. 321, § 45, eff. March 1, 1992.

### **§ 22-106. Reason for failure to count to be noted**

In a declared election emergency, 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 1991, c. 321, § 46, eff. March 1, 1992.

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

**Source:**

Laws 1974, c. 153, § 7-128.

26 O.S.Supp.1990, § 7-128.

### **§ 22-107. Mutilated ballots**

In a declared election emergency, 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 1991, c. 321, § 47, eff. March 1, 1992.

## Historical and Statutory Notes

## Source:

Laws 1974, c. 153, § 7-129.

Laws 1983, c. 171, § 12.

26 O.S.Supp.1990, § 7-129.

**§ 22-108. Watchers—Appointment—Duties**

In a declared election emergency, 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. Laws 1991, c. 321, § 48, eff. March 1, 1992.

**§ 22-109. Certificate of vote**

In a declared election emergency, 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 1991, c. 321, § 49, eff. March 1, 1992.

**§ 22-110. Ballots and materials placed in ballot box—Return to county election board**

In a declared election emergency, 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 1991, c. 321, § 50, eff. March 1, 1992.

**§ 22-111. Retention of ballot box**

In a declared election emergency, 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 ballot cards be destroyed until thirty (30) days after the election at which they were cast. Provided, however, if the certificate of vote or precinct registry 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 precinct registry and relock the ballot box.

Laws 1991, c. 321, § 51, eff. March 1, 1992.

**§ 22-112. Retention of keys**

In a declared election emergency, 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 1991, c. 321, § 52, eff. March 1, 1992.

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

Laws 1974, c. 153, § 7-135.

26 O.S.Supp.1990, § 7-135.

**§ 22-113. Petition for recount—Deposit required—Service of notice—Recounts of issue or question elections**

In a declared election emergency:

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 1991, c. 321, § 53, eff. March 1, 1992.

### **§ 22-114. Procedure for counting ballots—Watchers**

In a declared election emergency, 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 precinct judges and clerks are paid for Primary, Runoff Primary or General Elections.

Laws 1991, c. 321, § 54, eff. March 1, 1992.

### **§ 22-115. Absentee ballots—Counting procedure**

In a declared election emergency:

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 1991, c. 321, § 55, eff. March 1, 1992.

### **§ 22-116. Counting by county election board in certain cases**

In an election emergency, 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 1991, c. 321, § 56, eff. March 1, 1992.

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

**Source:**

Laws 1974, c. 201, § 26.

26 O.S.Supp.1975, § 327.26.

26 O.S.1991, § 14-126.

## CHAPTER 1

### GENERAL PROVISIONS [REPEALED]

**§§ 1, 2. Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975**

#### Historical and Statutory Notes

For subject matter of repealed § 1, see, now, Title 26, § 1-101.

For subject matter of repealed § 2, see, now, Title 26, § 1-106.

#### PARTIES AFFILIATED WITH FOREIGN OR REVOLUTIONARY AGENCIES

**§§ 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.

#### CONSTITUTIONAL AMENDMENTS

**§ 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 peo-

ple on a proposed constitutional amendment.

#### QUALIFICATIONS OF CANDIDATES

**§ 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 Title 26, § 5-101 et seq.

## CHAPTER 2

### ELECTION BOARDS [REPEALED]

#### STATE BOARD

**§§ 11 to 13. Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975**

#### Historical and Statutory Notes

#### DISPOSITION TABLE

Showing where the subject matter of §§ 11 to 13, repealed by Laws 1974, c. 153, § 17-114, was incorporated in the 1974 enactment.

Repealed Section	1974 Enactment	Repealed Section	1974 Enactment
11.....	2-101, 2-103, 2-104	12.....	2-102
		13.....	2-105, 2-107, 2-108, 2-109

#### COUNTY BOARDS

**§ 21. Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975**

#### Historical and Statutory Notes

See, now, Title 26, §§ 2-110, 2-111, 2-112.

**§ 22. Repealed by Laws 1961, p. 241, § 1**

#### Historical and Statutory Notes

The repealed section, relating to the expiration of initial terms of county election board, was derived from:

Laws 1913, c. 157, p. 316, § 2.  
Comp.St.1921, § 6276.  
St.1931, § 5674.

**§ 23. Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975**

#### Historical and Statutory Notes

See, now, Title 26, § 2-113.



**§ 24. Repealed by Laws 1937, p. 143, § 3, emerg. eff. May 11, 1937**

**Historical and Statutory Notes**

See, now, Title 26, §§ 2-115, 2-118.

**§ 24a. Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975**

**Historical and Statutory Notes**

See, now, Title 26, §§ 2-115, 2-118.

**§ 24b. Repealed by Laws 1968, c. 389, § 4, emerg. eff. May 17, 1968**

**Historical and Statutory Notes**

The repealed section, relating to compensation of election board members, was derived from Laws 1953, p. 102, § 2; Laws 1967, c. 254, §§ 1, 2.

**§§ 24c to 27. Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975**

**Historical and Statutory Notes**

**DISPOSITION TABLE**

Showing where the subject matter of §§ 24c to 27, repealed by Laws 1974, c. 153, § 17-114, was incorporated in the 1974 enactment.

Repealed Section	1974 Enactment	
24c.....	None	Repealed § 24c, derived from Laws 1953, p. 103, § 2, related to fees of county registrars in counties having a population of 325,000 or more.
25.....	3-115	
25a.....	3-119	Repealed § 27, derived from Laws 1957, p. 564, § 2, related to election law study conferences.
26.....	3-116	
27.....	None	

**PRECINCT BOARDS**

**§§ 31 to 37. Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975**

**Historical and Statutory Notes**

**DISPOSITION TABLE**

Showing where the subject matter of §§ 31 to 37, repealed by Laws 1974, c. 153, § 17-114, was incorporated in the 1974 enactment.

Repealed Section	1974 Enactment	Repealed Section	1974 Enactment
31.....	2-123	33.....	2-124
32.....	2-124		

## ELECTION BOARDS

26 § 57  
Repealed

Repealed Section	1974 Enactment	Repealed § 35, relating to notification of appointment and meeting of precinct board, was derived from:
34.....	2-124	Laws 1907-08, p. 323.
35.....	None	R.L.1910, § 3071.
36.....	2-124	Comp.St.1921, § 6138.
37.....	2-126	St.1931, § 5687.

### GENERAL PROVISIONS

**§§ 51 to 55.** Repealed by Laws 1974, c. 153, § 17-114, operative  
Jan. 1, 1975

#### Historical and Statutory Notes

#### DISPOSITION TABLE

Showing where the subject matter of §§ 51 to 55, repealed by  
Laws 1974, c. 153, § 17-114, was incorporated in the 1974 enact-  
ment.

Repealed Section	1974 Enactment	Repealed § 54, relating to removal of members of county and precinct boards, was derived from:
51.....	2-132	Laws 1913, c. 157, p. 317, § 7.
52.....	3-125	Comp.St.1921, § 6281.
53.....	3-125	St.1931, § 5695.
54.....	None	
55.....	2-102	

**§ 56.** Repealed by Laws 1941, p. 462, § 1, emerg. eff. June 7,  
1941

#### Historical and Statutory Notes

The repealed section, relating to deter-  
mination of nomination petition objec-  
tions by election board, was derived  
from:

Laws 1907-08, p. 324.  
R.L.1910, § 3076.  
Comp.St.1921, § 6143.  
St.1931, § 5692.

**§ 57.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1,  
1975

#### Historical and Statutory Notes

See, now, Title 26, § 7-130.

## CHAPTER 3

### ELECTORS [REPEALED]

#### § 61. Repealed by Laws 1965, c. 84, § 1, emerg. 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; Title 26,  
§ 4-101 et seq.

#### § 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.  
St.1931, § 5821.

See Const. Art. 3, § 2.

#### § 63. Repealed by Laws 1967, c. 27, § 1, emerg. 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.  
St.1931, § 5644.

See Title 26, § 7-114.

#### §§ 64, 65. Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

##### Historical and Statutory Notes

Repealed § 64, relating to the immediate arrest of illegal voters, was derived from:

Laws 1910, p. 244.

R.L.1910, § 3121.  
Comp.St.1921, § 6188.  
St.1931, § 5646.

For subject matter of repealed § 65, see, now, Title 26, § 16-103.

# CHAPTER 4

## REGISTRATION [Repealed]

**§§ 71 to 92. Repealed by Laws 1957, p. 178, § 24, emerg. eff. May 25, 1957**

### Historical and Statutory Notes

#### DISPOSITION TABLE

Showing where the subject matter of §§ 71 to 92, as repealed by Laws 1957, p. 178, § 24, was incorporated in the 1957 enactment.

Repealed Section	1957 Enactment	
71.....	93.2	St.1931, § 5660.
72.....	93.7	Repealed § 84, relating to lost or mutilated certificates, was derived from:
73.....	93.3	Laws 1916, c. 24, p. 47, § 14.
74.....	93.5	Comp.St.1921, § 6262.
75.....	93.7,	St.1931, § 5664.
	93.8,	
	93.10	Repealed § 85, relating to registration of voters becoming qualified after the registration period, was derived from:
76.....	93.7	
77.....	93.7,	Laws 1916, c. 24, p. 47, § 15.
	93.8,	Comp.St.1921, § 6263.
	93.12,	St.1931, § 5665.
	93.20	
78.....	93.16,	Repealed § 86, relating to re-registration of electors upon change of qualifications by constitutional amendment, was derived from:
	93.18	
79.....	93.1	
80.....	None	
81.....	93.11	Laws 1916, c. 24, p. 48, § 16.
82.....	93.9	Comp.St.1921, § 6264.
83.....	93.18	St.1931, § 5666.
84.....	None	
85.....	None	Repealed § 89, relating to return of duplicate certificates and precinct registration books, was derived from:
86.....	None	
87.....	93.14	
88.....	93.17	Laws 1916, c. 24, p. 50, § 19.
89.....	None	Comp.St.1921, § 6267.
90.....	93.23	St.1931, § 5669.
91.....	None	
92.....	None	Repealed § 91, derived from Laws 1943, p. 99, § 1, related to voting by members of the armed services.

Repealed § 80, relating to delivery of precinct registration records to the inspector, was derived from:

Laws 1916, c. 24, p. 43, § 10.  
Comp.St.1921, § 6258.

Repealed § 92, relating to registration or reinstatement of cancelled certificates by absent voters, was derived from Laws 1944, Ex.Sess., p. 1, § 1; Laws 1945, p. 100, § 1.

§§ 93.1 to 93.12. Repealed by Laws 1974, c. 75, § 25, emerg. eff. April 19, 1974

# Historical and Statutory Notes

## DISPOSITION TABLE

Showing where the subject matter of §§ 93.1 to 93.12, repealed by Laws 1974, c. 75, was enacted thereby.

Repealed Section	1974 Enactment	Repealed § 93.5, relating to the duty to effect requested registration, was derived from:
93.1 .....	93.31,	
	93.33	Laws 1916, c. 24, p. 34, § 4.
93.2 .....	None	Comp.St.1921, § 6252.
93.3 .....	93.34,	St.1931, § 5654.
	93.35,	26 O.S.1951, § 74.
	93.36,	Laws 1957, p. 173, § 5.
	93.39,	Repealed § 93.6, derived from Laws
	93.40	1957, p. 173, § 6, related to conversion to
93.4 .....	93.38,	a central card registration.
	93.39,	Repealed § 93.10, relating to furnish-
	93.40	ing of registration forms to and registra-
93.5 .....	None	tion by precinct registrars, was derived
93.6 .....	None	from:
93.7 .....	93.32,	Laws 1916, c. 24, p. 36, § 5.
	93.41,	Comp.St.1921, § 6253.
	93.42	St.1931, § 5655.
93.8 .....	93.44,	26 O.S.1951, § 75.
	93.45,	Laws 1957, p. 176, § 10.
	93.51,	Repealed § 93.11, relating to challenge
	93.52,	of applicants and challenge affidavits,
	93.54	was derived from:
93.9 .....	93.43	Laws 1916, c. 24, p. 43, § 11.
93.10 .....	None	Comp.St.1921, § 6259.
93.11 .....	None	St.1931, § 5661.
93.12 .....	None	26 O.S.1951, § 81.
		Laws 1957, p. 176, § 11.
		Repealed § 93.12, relating to delivery
		and return of precinct records, was derived
		from:
		Laws 1916, c. 24, p. 38, § 7.
		Comp.St.1921, § 6255.
		St.1931, § 5657.
		Laws 1949, p. 214, § 2.
		26 O.S.1951, § 77.
		Laws 1957, p. 176, § 12.

Repealed § 93.2, defining "elections", was derived from:

Laws 1916, c. 24, p. 33, § 1.  
Comp.St.1921, § 6249.  
St.1931, § 5651.  
26 O.S.1951, § 71.  
Laws 1957, p. 172, § 2.

§ 93.13. Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

# Historical and Statutory Notes

See, now, Title 26, § 7-117.

§ 93.14. Repealed by Laws 1974, c. 75, § 25, emerg. eff. April 19, 1974

## REGISTRATION

26 § 93.24  
Repealed

### Historical and Statutory Notes

See, now, Title 26, § 4-120.

## § 93.15. Repealed by Laws 1961, p. 256, § 8

### Historical and Statutory Notes

The repealed section, derived from Laws 1957, p. 177, § 15, related to procedures for absentee voting.

## §§ 93.16 to 93.19. Repealed by Laws 1974, c. 75, § 25, emerg. eff. April 19, 1974

### Historical and Statutory Notes

#### DISPOSITION TABLE

Showing where the subject matter of §§ 93.16 to 93.19, repealed by Laws 1974, c. 75, was enacted thereby.

Repealed Section	1974 Enactment	Repealed § 93.17, relating to abolition or alteration of precinct boundaries, was derived from:
93.16 .....	93.46, 93.47, 93.48	Laws 1916, c. 24, p. 49, § 18. Comp.St.1921, § 6266.
93.17 .....	None	St.1931, § 5668.
93.18 .....	93.49	26 O.S.1951, § 88.
93.19 .....	93.53	Laws 1957, p. 177, § 17.

## §§ 93.20 to 93.23. Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

### Historical and Statutory Notes

#### DISPOSITION TABLE

Showing where the subject matter of §§ 93.20 to 93.23, repealed by Laws 1974, c. 153, was enacted thereby.

Repealed Section	1974 Enactment	Repealed Section	1974 Enactment
93.20 .....	2-117, 2-118	93.21 .....	2-119
		93.22 .....	2-121
		93.23 .....	16-101

## § 93.24. Repealed by Laws 1974, c. 75, § 25, emerg. eff. April 19, 1974

### Historical and Statutory Notes

The repealed section, derived from Laws 1957, p. 178, § 26, provided that certain specified laws be unaffected by the 1957 act.

**§ 93.25. Repealed by Laws 1967, c. 27, § 1, emerg. eff. March 13, 1967**

**Historical and Statutory Notes**

The repealed section, relating to the functions and compensation of deputy registrars in cities and towns without central registration offices, was derived from Laws 1959, p. 119, § 1; Laws 1961, p. 243, § 2.

**§§ 93.26 to 93.30. Repealed by Laws 1974, c. 75, § 25, emerg. eff. April 19, 1974**

**Historical and Statutory Notes**

**DISPOSITION TABLE**

Showing where the subject matter of §§ 93.26 to 93.30, as repealed by Laws 1974, c. 75, was enacted thereby.

<b>Repealed Section</b>	<b>1974 Enactment</b>	
93.26 .....	None	and deputy registrars were not officeholders.
93.27 .....	93.50	Repealed § 93.30, derived from 1971 H.J.R. No. 1027, § 2, directed the establishment of special procedures for voting in national elections by persons who were qualified to vote except for the state's minimum age requirement but who were entitled to vote in national elections by virtue of the Voting Rights Act Amendments of 1970.
93.28 .....	93.50	
93.29 .....	93.35	
93.30 .....	None	

Repealed § 93.26, derived from Laws 1959, p. 119, § 2, provided that precinct

**§§ 93.31 to 93.54. Renumbered as §§ 4-101 to 4-124 by Laws 1976, c. 90, § 10, emerg. eff. May 6, 1976**

**RE-REGISTRATION**

**§§ 94.1 to 94.6. Repealed by Laws 1957, p. 178, § 24, emerg. eff. May 25, 1957**

**Historical and Statutory Notes**

The repealed sections, derived from Laws 1953, p. 113, §§ 1 to 6, related to reregistration.

**ADDITIONAL REGISTRARS**

**§ 96.1. Repealed by Laws 1957, p. 178, § 24, emerg. eff. May 25, 1957**

**Historical and Statutory Notes**

The repealed section, derived from Laws 1947, p. 236, § 1, related to the appointment and compensation of town and city registrars.

## REGISTRATION

26 §§ 101b to 101p  
Repealed

**§§ 96.2 to 96.4. Repealed by Laws 1965, c. 504, § 4, emerg. eff. July 20, 1965**

### Historical and Statutory Notes

Repealed § 96.2, derived from Laws 1947, p. 236, § 2, related to the office of Registrar of Electors in counties having a population in excess of 225,000.

Repealed § 96.3, derived from Laws 1947, p. 237, § 3, provided that the provi-

sions of the 1947 act were not to repeal certain sections.

Repealed § 96.4, derived from Laws 1947, p. 237, § 4, was a severability provision.

## REDISTRICTING AND REREGISTRATION—COUNTIES OF 200,000–450,000 POPULATION

**§ 101. Repealed by Laws 1974, c. 75, § 25, emerg. eff. April 19, 1974**

### Historical and Statutory Notes

The repealed section, relating to re-registration of electors and redistricting in counties having a population over 200,000 and less than 450,000, was derived from:

Laws 1937, p. 143, § 1.

Laws 1953, p. 115, § 1.

Laws 1965, c. 504, § 1.

Laws 1972, c. 226, § 1.

**§ 101a. Repealed by Laws 1963, c. 141, § 1, emerg. eff. June 4, 1963**

### Historical and Statutory Notes

The repealed section, derived from Laws 1937, p. 144, § 2, authorized redistricting.

**§§ 101b to 101p. Repealed by Laws 1974, c. 75, § 25, emerg. eff. April 19, 1974**

### Historical and Statutory Notes

#### DISPOSITION TABLE

Showing where the subject matter of §§ 101b to 101p, repealed by Laws 1974, c. 75, was enacted thereby.

Repealed Section	1974 Enactment	Repealed Section	1974 Enactment
101b	93.38, 93.39, 93.40	101d	93.41, 93.42
101c	93.41, 93.44, 93.45, 93.50, 93.51	101e	93.31, 93.32, 93.33, 93.43
		101f	93.46
		101g	None
		101h	None



**26 §§ 101b to 101p  
Repealed**

**ELECTIONS**

<b>Repealed Section</b>	<b>1974 Enactment</b>
101i .....	93.54
101j .....	93.54
101k .....	None
101l .....	None
101m .....	93.34, 93.35
101n .....	None
101o .....	None
101p .....	None

Repealed § 101g, derived from Laws 1937, p. 147, § 8, related to challenge of applicants and challenge affidavits.

Repealed § 101h, derived from Laws 1937, p. 147, § 9, related to the contents of registration cards and their preservation by the County Election Board.

Repealed § 101k, derived from Laws 1937, p. 148, § 12, related to delivery of original precinct records at time of election and return.

Repealed § 101l, relating to rules and regulations for checking voters against registration at time of election, was derived from Laws 1937, p. 148, § 13; Laws 1941, p. 96, § 4.

Repealed § 101n, derived from Laws 1937, p. 149, § 15, related to cancellation of old certificates and registration books on re-registration.

Repealed § 101o, derived from Laws 1937, p. 149, § 16, related to expenses for supplies, records and compensation.

Repealed § 101p, derived from Laws 1937, p. 149, § 17, provided for severability.

**REDISTRICTING AND REREGISTRATION—COUNTIES  
OF 56,000–80,000 POPULATION**

**§§ 102.1 to 102.17. Repealed by Laws 1974, c. 75, § 25,  
emerg. eff. April 19, 1974**

**Historical and Statutory Notes**

**DISPOSITION TABLE**

Showing where the subject matter of §§ 102.1 to 102.17, repealed by Laws 1974, c. 75, was enacted thereby.

<b>Repealed Section</b>	<b>1974 Enactment</b>	<b>Repealed Section</b>	<b>1974 Enactment</b>
102.1 .....	None	102.11 .....	93.54
102.2 .....	None	102.12 .....	None
102.3 .....	93.38, 93.39, 93.40	102.13 .....	None
102.4 .....	93.41, 93.44, 93.45, 93.50, 93.51	102.14 .....	93.34, 93.35
102.5 .....	93.41, 93.42	102.15 .....	None
102.6 .....	93.31, 93.32, 93.33, 93.43	102.16 .....	None
102.7 .....	93.47	102.17 .....	None
102.8 .....	None	Repealed § 102.1, authorizing redistricting and re-registration by the county election board, was derived from:	
102.9 .....	None	Laws 1953, p. 563, § 1.	
102.10 .....	93.54	Laws 1961, p. 247, § 1.	
		Laws 1972, c. 154, § 1.	
		Laws 1973, c. 10, § 1.	
		Repealed § 102.2, derived from Laws 1953, p. 563, § 2, related to redistricting of counties into voting precincts and notice of redistricting.	

## REGISTRATION

## 26 §§ 103.5 to 103.19 Repealed

Repealed § 102.8, derived from Laws 1953, p. 567, § 8, related to challenge of applicants and challenge affidavits.

Repealed § 102.9, derived from Laws 1953, p. 567, § 9, related to the contents of registration cards and their preservation by the County Election Board.

Repealed § 102.12, derived from Laws 1953, p. 568, § 12, related to delivery of original precinct records at time of election and return.

Repealed § 102.13, derived from Laws 1953, p. 568, § 13, related to rules and

regulations for checking voters against registration at time of election.

Repealed § 102.15, derived from Laws 1953, p. 568, § 15, related to cancellation of old certificates and registration books on re-registration.

Repealed § 102.16, derived from Laws 1953, p. 568, § 16, related to expenses for supplies, records and compensation.

Repealed § 102.17, derived from Laws 1953, p. 568, § 17, provided for severability.

## COUNTIES WITH POPULATION EXCEEDING 450,000

### § 103.1. Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

#### Historical and Statutory Notes

The repealed section, relating to counties to which § 103.1 et seq. were applicable, was derived from:

Laws 1953, p. 104, § 1.

Laws 1965, c. 504, § 2.

Laws 1972, c. 226, § 2.

### §§ 103.2, 103.3. Repealed by Laws 1974, c. 75, § 25, emerg. eff. April 19, 1974

#### Historical and Statutory Notes

Repealed § 103.2, derived from Laws 1953, p. 104, § 2, directed re-registration in certain counties and provided for waiver.

Repealed § 103.3, relating to division of counties into voting precincts and notice of changes, was derived from Laws 1953, p. 104, § 3; Laws 1972, c. 226, § 3

### § 103.4. Repealed by Laws 1974, c. 153, § 17-114, eff. Jan. 1, 1975

#### Historical and Statutory Notes

See, now, Title 26, § 3-128.

### §§ 103.5 to 103.19. Repealed by Laws 1974, c. 75, § 25, emerg. eff. April 19, 1974

#### Historical and Statutory Notes

#### DISPOSITION TABLE

Showing where the subject matter of §§ 103.5 to 103.19, repealed by Laws 1974, c. 75, was enacted thereby.

## Repealed

Repealed Section	1974 Enactment
103.5 .....	93.38, 93.39, 93.40
103.6 .....	None
103.7 .....	93.41, 93.42, 93.44, 93.45, 93.50, 93.51
103.8 .....	93.41, 93.42
103.9 .....	None
103.10 .....	93.50
103.11 .....	93.50
103.12 .....	93.31, 93.32, 93.33, 93.43
103.13 .....	93.46
103.14 .....	None
103.15 .....	None
103.16 .....	None
103.17 .....	None
103.18 .....	None
103.19 .....	None

Repealed § 103.6, relating to forms and supplies, was derived from:

Laws 1953, p. 105, § 6.  
Laws 1959, p. 117, § 6.  
Laws 1972, c. 226, § 6.

Repealed § 103.9, relating to the general and precinct registers and lists of voters, was derived from:

Laws 1953, p. 108, § 9.  
Laws 1957, p. 179, § 4.  
Laws 1959, p. 117, § 9.  
Laws 1967, c. 182, § 3.  
Laws 1972, c. 226, § 9.

Repealed § 103.14, derived from Laws 1953, p. 110, § 14, related to challenges and challenge affidavits.

Repealed § 103.15, derived from Laws 1953, p. 110, § 15, related to delivery and custody of precinct registers.

Repealed § 103.16, relating to rules and regulations, and searches for duplicate registrations, was derived from:

Laws 1953, p. 111, § 16.  
Laws 1959, p. 118, § 12.  
Laws 1972, c. 226, § 10.

Repealed § 103.17, granting authority to employ clerks, was derived from:

Laws 1953, p. 111, § 17.  
Laws 1957, p. 181, § 9.  
Laws 1959, p. 118, § 13.

Repealed § 103.18, derived from Laws 1953, p. 111, § 18, required the Board of County Commissioners to provide an office for the County Registrar and his clerks.

Repealed § 103.19, derived from Laws 1953, p. 111, § 19, cancelled old certificates and books of registration.

## § 103.20. Repealed by Laws 1974, c. 153, § 17-114, eff. Jan. 1, 1975

### Historical and Statutory Notes

The repealed section, relating to fees of registrars, was derived from:

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.

## § 103.21. Repealed by Laws 1974, c. 75, § 25, emerg. eff. April 19, 1974

### Historical and Statutory Notes

The repealed section, relating to appropriations in county budgets for compensation and expenses, was derived from

Laws 1953, p. 111, § 21; Laws 1972, c. 226, § 12.

## § 103.22. Repealed by Laws 1967, c. 27, § 1, emerg. eff. March 13, 1967

**Historical and Statutory Notes**

The repealed section, derived from Laws 1953, p. 112, § 23, made it unlawful to register without the required residence.

# CHAPTER 5

## PRIMARIES [REPEALED]

### GENERAL PROVISIONS

**§ 111.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

#### Historical and Statutory Notes

See, now, Title 26, § 1-107 to 1-109.

**§ 112.** Repealed by Laws 1943, p. 100, § 1, emerg. eff. April 13, 1943

#### Historical and Statutory Notes

The repealed section, relating to per cent of vote in primary to maintain party identity, was derived from:

Laws 1915, c. 169, § 1.  
Comp.St.1921, § 6125.  
St.1931, § 5649.

**§§ 112a to 120.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

#### Historical and Statutory Notes

#### DISPOSITION TABLE

Showing where the subject matter of §§ 112a to 120, as repealed by Laws 1974, c. 153, was enacted thereby.

Repealed Section	1974 Enactment	Repealed Section	1974 Enactment
112a .....	1-102	119 .....	6-117
113 .....	1-102	120 .....	7-107
114 .....	3-114	Repealed § 115, relating to selection of primary voting place and officers in accordance with general election laws, was derived from:	
115 .....	None	Laws 1907-08, p. 359.	
116 .....	3-115, 3-116, 3-118	R.L.1910, § 3026.	
117 .....	7-102	Comp.St.1921, § 6095.	
118 .....	6-109	St.1931, § 5765.	

**§ 121.** Repealed by Laws 1970, c. 268, § 1, emerg. eff. April 27, 1970

#### Historical and Statutory Notes

The repealed section, relating to persons qualified to vote in primaries, was derived from:

Laws 1913, c. 157, p. 318, § 10.  
Comp.St.1921, § 6284.  
St.1931, § 5645.

## PRIMARIES

26 §§ 161, 162  
Repealed

**§§ 122 to 127.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

### Historical and Statutory Notes

#### DISPOSITION TABLE

Showing where the subject matter of §§ 122 to 127, as repealed by Laws 1974, c. 153, was enacted thereby.

Repealed Section	1974 Enactment	
122 .....	1-104	Repealed § 126, relating to counting of ballots and making of return in primary in accordance with general election laws, was derived from:  Laws 1907-08, p. 366. R.L.1910, § 3035. Comp.St.1921, § 6104. St.1931, § 5772.
123 .....	1-104	
124 .....	7-117	
125 .....	7-123	
126 .....	None	
127 .....	2-128	

**§§ 128 to 130.** Repealed by Laws 1941, pp. 462, 466, §§ 1, 13, emerg. eff. June 7, 1941

### Historical and Statutory Notes

The repealed sections, relating to official counters, certificates of nomination, challenge of correctness of ballots, recount of ballots, and contests arising out of primary elections, were derived from:  
Laws 1907-08, pp. 367, 376.

Laws 1909, p. 272.  
R.L.1910, §§ 3037, 3038, 3054.  
Comp.St.1921, §§ 6106, 6107, 6123.  
Laws 1929, c. 241, p. 308, § 6.  
St.1931, §§ 5774, 5778.

**§§ 131, 132.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

### Historical and Statutory Notes

For subject matter of repealed § 131, see, now, Title 26, §§ 16-101 to 16-122.

For subject matter of repealed § 132, see, now, Title 26, § 16-110.

## CANDIDATES

**§§ 161, 162.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

### Historical and Statutory Notes

For subject matter of repealed § 161, see, now, Title 26, § 5-101.

For subject matter of repealed § 162, see, now, Title 26, § 5-111.

**§ 162a.** Repealed by Laws 1961, p. 249, § 1, emerg. eff. July 12, 1961

**Historical and Statutory Notes**

The repealed section, derived from Laws 1937, p. 138, § 5, related to state-ment of race in notification, declaration and on ballot.

**§§ 162b to 162m.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

**Historical and Statutory Notes**

**DISPOSITION TABLE**

Showing where the subject matter of §§ 162b to 162m, as repealed by Laws 1974, c. 153, was enacted thereby.

Repealed Section	1974 Enactment	Repealed Section	1974 Enactment
162b .....	None		11-111
162c .....	5-107, 5-108	162m .....	None
162d .....	11-108	Repealed § 162b, derived from Laws 1941, p. 102, § 2, related to the ineligibility of persons affiliated with the Communist Party, etc. for political office.	
162e .....	11-101	Repealed § 162h, derived from Laws 1968, c. 387, § 7, related to persons entitled to vote for and time of election of associate district judges.	
	to	Repealed § 162j, derived from Laws 1968, c. 387, § 9, related to numbering offices of district judge candidates.	
162f .....	11-107	Repealed § 162m, requiring separate ballots without political designation for certain judicial positions, was derived from Laws 1968, c. 387, § 12; Laws 1970, c. 274, § 14.	
	11-108,		
	11-109		
162g .....	11-108		
162h .....	None		
162i .....	11-102		
162j .....	None		
162k .....	11-101,		
	11-102		
162l .....	11-110,		

**§ 162n.** Repealed by Laws 1971, c. 86, § 2, emerg. eff. April 16, 1971

**Historical and Statutory Notes**

The repealed section, derived from Laws 1968, c. 387, § 13, prohibited certain political activity by judges, justices and candidates for judicial office. See Title 20, § 1404.

**§§ 162o to 164.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

**Historical and Statutory Notes**

**DISPOSITION TABLE**

Showing where the subject matter of §§ 162o to 164, as repealed by Laws 1974, c. 153, was enacted thereby.

## PRIMARIES

26 § 171  
Repealed

Repealed Section	1974 Enactment	Repealed Section	1974 Enactment
162o .....	None	164 .....	5-114
162p .....	11-103	Repealed § 162o, relating to applicability of election laws to certain judicial elections, was derived from Laws 1968, c. 387, § 15; Laws 1970, c. 247, § 17.	
163 .....	5-110		
163a .....	12-101, 12-102		

**§ 165.** Repealed by Laws 1937, p. 138, § 7; Laws 1943, p. 100, § 1, emerg. eff. April 13, 1943

### Historical and Statutory Notes

The repealed section, relating to challenge by electors of filing of a person as a candidate for nomination by a political party and in run-off primary elections, was derived from Laws 1927, c. 98, p. 158, § 1, St.1931, § 5763.

**§§ 165a to 168.2.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

### Historical and Statutory Notes

#### DISPOSITION TABLE

Showing where the subject matter of §§ 165a to 168.2, as repealed by Laws 1974, c. 153, was enacted thereby.

Repealed Section	1974 Enactment	Repealed Section	1974 Enactment
165a .....	5-118	166 .....	6-102
	to	167 .....	6-102
	5-131	168.1 .....	8-101
		168.2 .....	8-101

## RUNOFF PRIMARIES

**§ 171.** Repealed by Laws 1937, p. 138, § 7; Laws 1947, p. 246, § 18, emerg. eff. Feb. 13, 1947

### Historical and Statutory Notes

The repealed section, relating to runoff primary elections, was derived from:

Laws 1929, c. 241, p. 306, § 4.

Laws 1931, p. 96, § 5.

St.1931, § 5760.

Laws 1943, p. 90, § 4, adopted at special election July 11, 1944, amended

Laws 1937, p. 138, § 7, repealing this section. As so amended, the section was a literal re-enactment of the provisions of Laws 1929, c. 241, p. 306, § 4, as amended by Laws 1931, p. 96, § 5.



Repealed

§ 171.1. Repealed by Laws 1947, p. 246, § 18, emerg. eff. Feb. 13, 1947

Historical and Statutory Notes

The repealed section, relating to runoff primary elections, was derived from:

89, adopted special election July 11, 1944.

Laws 1937, p. 138, § 7.

Laws 1945, p. 113, § 10.

Laws 1943, p. 90, § 4, State Question No. 311, Referendum Petition No.

§ 172. Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

Historical and Statutory Notes

See, now, Title 26, § 1-103.

## CHAPTER 6

### ELECTION SUPPLIES [REPEALED]

**§§ 181 to 196.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

#### Historical and Statutory Notes

##### DISPOSITION TABLE

Showing where the subject matter of §§ 181 to 196, repealed by Laws 1974, c. 153, was enacted thereby.

Repealed Section	1974 Enactment	Repealed Section	1974 Enactment
181 .....	6-103, 6-120	186 .....	6-114
182 .....	6-104, 6-120	187 .....	3-124
183 .....	6-103	188 .....	7-137
184 .....	7-102, 7-103, 7-105	189 .....	2-126, 2-119
184.1 .....	7-102, 7-103	190 .....	3-122, 3-123
185 .....	7-102, 7-103	191 .....	6-117
		192 .....	6-114
		193 .....	7-103
		194 .....	7-102
		195 .....	3-121
		196 .....	7-133

**§ 197.** Repealed by Laws 1968, c. 55, § 1, emerg. eff. March 18, 1968

#### Historical and Statutory Notes

The repealed section, providing for space upon official ballots for candidates nominated by petition, was derived from:

Laws 1907-08, p. 334.

R.L.1910, § 3104.

Comp.St.1921, § 6171.

St.1931, § 5714.

**§ 198.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

#### Historical and Statutory Notes

The repealed section, requiring each precinct to have a copy of the election laws, was derived from:

Laws 1907-08, p. 334.

R.L.1910, § 3105.

Comp.St.1921, § 6172.

St.1931, § 5715.

## CHAPTER 7

### BALLOTS AND RETURNS [REPEALED]

**§§ 221 to 231.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

#### Historical and Statutory Notes

#### DISPOSITION TABLE

Showing where the subject matter of §§ 221 to 231, as repealed by Laws 1974, c. 153, was enacted thereby.

Repealed Section	1974 Enactment	Repealed Section	1974 Enactment
221 .....	6-103, 6-104, 6-120	224 .....	6-106
222 .....	6-103, 6-104, 6-114, 6-115	224a .....	6-101
223 .....	6-103, 6-104	225 .....	6-106
		226 .....	6-106
		227 .....	6-111
		227.1 .....	6-105
		228 .....	6-106
		229 .....	5-112
		230 .....	6-113
		231 .....	7-132

**§ 232.** Repealed by Laws 1941, p. 462, § 1, emerg. eff. June 7, 1941

#### Historical and Statutory Notes

The repealed section, providing for the precinct inspector to receive supplies, was derived from:

Laws 1907-08, c. 31, art. 4, § 10.

R.L.1910, § 3115.

Comp.St.1921, § 6182.

St.1931, § 5725.

**§§ 233, 234.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

#### Historical and Statutory Notes

For subject matter of repealed § 233, see, now, Title 26, §§ 1-105, 5-115, 5-116.

For subject matter of repealed § 234, see, now, Title 26, §§ 8-103, 8-104, 8-108.

## CHAPTER 8

### CONDUCT OF ELECTIONS [REPEALED]

**§§ 251 to 257.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

#### Historical and Statutory Notes

#### DISPOSITION TABLE

Showing where the subject matter of §§ 251 to 257, repealed by Laws 1974, c. 153, was enacted thereby.

Repealed Section	1974 Enactment	
251 .....	7-104	Repealed § 257, permitting preparation of written ballots where election supplies were not received, was derived from:
252 .....	7-107	
253 .....	7-112	
254 .....	7-123	Laws 1907-08, p. 345.
255 .....	7-122	R.L.1910, § 3129.
256 .....	7-131	Comp.St.1921, § 6200.
257 .....	None	St.1931, § 5732.

**§ 258.** Repealed by Laws 1967, c. 27, § 1, emerg. eff. March 13, 1967

#### Historical and Statutory Notes

The repealed section, derived from Laws 1957, p. 185, § 1, related to the opening and closing of polls in counties with 43,500 to 44,500 population.

**§§ 259, 260.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

#### Historical and Statutory Notes

For subject matter of repealed § 259, see, now, Title 26, § 7-111.

For subject matter of repealed § 260, see, now, Title 26, § 7-104.

## CHAPTER 9

### VOTING MACHINES [REPEALED]

**§§ 271 to 294.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

#### Historical and Statutory Notes

#### DISPOSITION TABLE

Showing where the subject matter of §§ 271 to 294, repealed by Laws 1974, c. 153, was enacted thereby.

Laws 1927, c. 203, p. 251, § 10.  
St.1931, § 5742.  
Laws 1955, p. 206, § 10.

Repealed Section	1974 Enactment
271 .....	9-101
272 .....	9-102
273 .....	9-103
274 .....	9-104
275 .....	9-105
276 .....	9-106
277 .....	9-107
278 .....	3-114, 6-114
279 .....	9-104, 9-107, 9-108
280 .....	None
281 .....	None
282 .....	7-105
283 .....	9-116
284 .....	None
285 .....	9-110
286 .....	9-118
287 .....	7-130, 9-111
288 .....	9-111
288.1 .....	None
289 .....	9-113
290 .....	None
291 .....	None
292 .....	9-110
293 .....	None
294 .....	9-118

Repealed § 281, relating to instruction of officials by custodian of voting machines, was derived from:

Laws 1927, c. 203, p. 251, § 11.  
St.1931, § 5743.  
Laws 1955, p. 206, § 11.

Repealed § 284, relating to placement of voting machines, was derived from:

Laws 1927, c. 203, p. 252, § 14.  
St.1931, § 5746.  
Laws 1955, p. 207, § 14.  
Laws 1959, p. 122, § 4.

Repealed § 288.1, derived from Laws 1959, p. 123, § 8, related to procedures for voting machines using ballots or ballot cards, directions to election officers, certificates and central canvass of votes.

Repealed § 290, relating to application of election laws to use of voting machines, was derived from:

Laws 1927, c. 203, p. 254, § 20.  
St.1931, § 5752.  
Laws 1955, p. 209, § 20.

Repealed § 291, relating to absentee voters' ballots, was derived from:

Laws 1927, c. 203, p. 254, § 21.  
St.1931, § 5753.  
Laws 1955, p. 209, § 21.

Repealed § 280, providing that no counters shall be appointed in precincts where voting machines are used, was derived from:

Section 293, prohibiting party voting levers on voting machines under certain conditions, was derived from Laws 1968, c. 305, § 1, and defeated at referendum November 3, 1970.

# CHAPTER 10

## ABSENTEE VOTING

### GENERAL PROVISIONS

**§§ 321 to 323. Repealed by Laws 1937, p. 141, § 15**

#### Historical and Statutory Notes

The repealed sections, relating to the authorization of absentee voting, mailing and counting of ballots, and false affidavits, were derived from:

Laws 1919, c. 88, p. 141, § 1.  
Comp.St.1921, §§ 6190, 6191, 6193.  
St.1931, §§ 5794 to 5796.

Laws 1916, c. 25, pp. 51 to 54, §§ 1 to 4.

See Title 26, § 324 et seq.

**§§ 324 to 324m. Repealed by Laws 1945, p. 106, § 12, emerg. eff. March 29, 1945**

#### Historical and Statutory Notes

#### DISPOSITION TABLE

Showing where the subject matter of §§ 324 to 324m, repealed by Laws 1945, p. 106, § 12, was enacted thereby.

Repealed Section	1945 Enactment	Repealed Section	1945 Enactment
324 .....	325	324m .....	325j
324a .....	325a	Repealed § 324b, derived from Laws 1937, p. 139, § 3, related to execution of instrument authorizing elector to cast ballot for absentee.	
324b .....	None	Repealed § 324g, derived from Laws 1937, p. 140, § 8, related to oath or affirmation of person casting ballot.	
324c .....	325e	Repealed § 324i, derived from Laws 1937, p. 141, § 10, related to penalty for forgery or alteration of ballot.	
324d .....	325d	Repealed § 324l, derived from Laws 1937, p. 141, § 13, related to illegal voting.	
324e .....	325f		
324f .....	325g		
324g .....	None		
324h .....	325h		
324i .....	None		
324j .....	325i		
324k .....	325b		
324l .....	None		

**§§ 325 to 325k. Repealed by Laws 1957, p. 192, § 16, emerg. eff. April 2, 1957**

#### Historical and Statutory Notes

#### DISPOSITION TABLE

Showing where the subject matter of §§ 325 to 325k, repealed by Laws 1957, p. 192, § 16, was enacted thereby.

**26 §§ 325 to 325k****Repealed****ELECTIONS**

<b>Repealed Section</b>	<b>1957 Enactment</b>
325 .....	326
325a .....	326, 326a
325b .....	326b
325c .....	None
325d .....	None
325e .....	326c
325f .....	326d
325g .....	326m
325h .....	326g
325i .....	326h
325j .....	326i
325k .....	None

Repealed § 325c, relating to transmission of ballots to electors, was derived from Laws 1945, p. 104, § 4; Laws 1947, p. 240, § 4.

Repealed § 325d, relating to preparation of ballot by absent elector, was derived from:

Laws 1937, p. 140, § 5.

26 O.S.1941, § 324d.

Laws 1945, p. 104, § 5.

Laws 1947, p. 240, § 5.

Repealed § 325k, derived from Laws 1945, p. 106, § 12, repealed certain prior laws.

**§ 325l. Repealed by Laws 1945, p. 108, § 3, emerg. eff. May 5, 1945**

**Historical and Statutory Notes**

The repealed 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, emerg. eff. April 2, 1957**

**Historical and Statutory Notes**

See, now, Title 26 § 326n.

**§§ 326 to 326n. Repealed by Laws 1974, c. 201, § 35, operative July 1, 1974**

**Historical and Statutory Notes**

The repealed sections, regulating absentee voting, were derived from:

Laws 1937, p. 139, §§ 1, 2, 4, 6, 7, 9, 11, 12, 14.

26 O.S.1941, §§ 324, 324c, 324e, 324f, 324h, 324j, 324k, 324m.

Laws 1944, Ex.Sess., p. 3, § 1.

26 O.S.Supp.1944, § 324a.

Laws 1945, pp. 102, 103, 105, 106, §§ 1 to 3, 6 to 11.

Laws 1945, p. 107, § 1.

Laws 1947, pp. 238 to 240, §§ 1 to 3, 6.

Laws 1949, pp. 217, 218, §§ 5, 6.

26 O.S.1951, §§ 325 to 325b, 325e to 325j.

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 Title 26, § 327.1 et seq.

**§§ 327.1 to 327.34. Renumbered as §§ 14-101 to 14-134, by Laws 1976, c. 90, § 11, emerg. eff. May 6, 1976**

**SOLDIERS AND SAILORS**

**§§ 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:

Laws 1919, c. 65, pp. 102 to 105,  
§§ 1 to 12.

Comp.St.1921, §§ 6304 to 6315.  
St.1931, §§ 5823 to 5833.

**§ 343. Repealed by Laws 1974, c. 201, § 35, operative July 1, 1974**

**Historical and Statutory Notes**

The repealed section, derived from Laws 1943, p. 100, § 2, related to absentee voting by members of the armed forces.

See Title 26, § 14-116 et seq.

**ABSENT ELECTORS IN MILITARY OR NAVAL SERVICE  
AND CITIZENS TEMPORARILY RESIDING  
OUTSIDE TERRITORIAL LIMITS**

**§§ 344 to 344t. Repealed by Laws 1945, p. 114, § 11, emerg. eff. April 2, 1945; Laws 1947, p. 246, § 18, emerg. eff. Feb. 13, 1947**

**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 Title 26, § 14-116 et seq.

**§§ 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 Title 26, § 14-101 et seq.

**§ 345.3. Repealed by Laws 1972, c. 224, § 6, emerg. 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 Title 26, § 14-101 et seq.



Repealed

**§ 345.4. Repealed by Laws 1961, p. 258, § 5, emerg. eff. March 29, 1961****Historical and Statutory Notes**

The repealed section, derived from Laws 1947, p. 243, § 4, related to absentee voting.

See Title 26, § 14-101 et seq.

**§§ 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 Title 26, § 14-101 et seq.

**§ 345.11. Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975****Historical and Statutory Notes**

See, now, Title 26, § 1-103.

**§§ 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 Title 26, § 14-101 et seq.

# CHAPTER 11

## COUNTING [REPEALED]

**§§ 361 to 374.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

### Historical and Statutory Notes

#### DISPOSITION TABLE

Showing where the subject matter of §§ 361 to 374, repealed by Laws 1974, c. 153, was enacted thereby.

Repealed Section	1974 Enactment	Repealed Section	1974 Enactment
361 .....	2-128		7-134
361.1 .....	7-125	374 .....	2-128, 2-129
362 .....	None		
363 .....	7-125		Repealed § 362, relating to notice of appointment and oath of counters, was derived from:
364 .....	7-126		Laws 1907-08, p. 325.
364.1 .....	6-102		Comp.Laws 1909, § 3130.
365 .....	None		R.L.1910, § 3078.
366 .....	16-117, 7-126		Comp.St.1921, § 6145.
367 .....	7-125		St.1931, § 5798.
368 .....	16-117, 7-132		Laws 1969, c. 216, § 1.
369 .....	16-117, 7-130, 7-132		Repealed § 365, providing for tally of ballots by political party in primaries, was derived from:
370 .....	7-137		Laws 1907-08, p. 325.
371 .....	8-114, 7-127		Comp.Laws 1909, § 3133.
372 .....	8-114		R.L.1910, § 3081.
373 .....	7-133,		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:	St.1931, §§ 5812, 5813.
	Laws 1944, Ex. Sess., p. 11, § 1.
Laws 1927, c. 63, p. 82, § 1.	Laws 1957, p. 194, § 1.
Laws 1929, c. 241, p. 309, § 7.	Laws 1957, p. 198, §§ 2, 3.
Laws 1931, pp. 97 to 101, §§ 8, 9.	See Title 26 § 8-101 et seq.

**§§ 395.1 to 395.3.** Repealed by Laws 1976, c. 90, § 9, emerg. eff. May 6, 1976

#### Historical and Statutory Notes

The repealed sections, derived from Laws 1974, c. 65, §§ 1 to 3, related to the contest of election results and recounts.	See Title 26 § 8-101 et seq.
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## CHAPTER 13

### CAMPAIGN CONTRIBUTIONS AND EXPENDITURES

- § 401.** Repealed by Laws 1968, c. 403, § 10, emerg. eff. May 17, 1968; Laws 1974, c. 153, § 17-113, operative Jan. 1, 1975; Laws 1974, c. 154, § 13, emerg. eff. May 4, 1974

#### Historical and Statutory Notes

See, now, Title 51, § 313.

- § 402.** Repealed by Laws 1955, p. 211, § 9; Laws 1967, c. 27, § 1, emerg. eff. March 13, 1967; Laws 1974, c. 153, § 17-113, operative Jan. 1, 1975; Laws 1974, c. 154, § 13, emerg. eff. May 4, 1974

#### Historical and Statutory Notes

The repealed section, relating to filing of sworn statements of expenditures, was derived from:

Laws 1907-08, p. 369.

R.L.1910, § 3043.

Comp.St.1921, § 6112.

St.1931, § 5781.

Laws 1955, p. 211, § 1.

- § 403.** Repealed by Laws 1955, p. 211, § 9; Laws 1974, c. 153, § 17-113, operative Jan. 1, 1975; Laws 1974, c. 154, § 13, emerg. eff. May 4, 1974

#### Historical and Statutory Notes

See, now, Title 74, § 4256.

- § 404.** Repealed by Laws 1967, c. 27, § 1, emerg. eff. March 13, 1967; Laws 1974, c. 153, § 17-113, operative Jan. 1, 1975; Laws 1974, c. 154, § 13, emerg. eff. May 4, 1974

#### Historical and Statutory Notes

The repealed section, requiring nominees to file names of persons authorized to make expenditures, was derived from:

Laws 1907-08, p. 371.

R.L.1910, § 3045.

Comp.St.1921, § 6114.

St.1931, § 5783.

- §§ 405 to 408.** Repealed by Laws 1968, c. 403, § 10, emerg. eff. May 17, 1968; Laws 1974, c. 153, § 17-113, operative Jan. 1, 1975; Laws 1974, c. 154, § 13, emerg. eff. May 4, 1974

**Historical and Statutory Notes**

Repealed § 405, requiring reports to remain on file and subject to inspection, was derived from:

Laws 1907-08, p. 371.  
Laws 1909, p. 274.  
R.L.1910, § 3046.  
Comp.St.1921, § 6115.  
St.1931, § 5784.

For subject matter of repealed §§ 406 and 407, see, now, Title 51, §§ 313 and 314, respectively.

Repealed § 408, defining "itemized statement", was derived from:

Laws 1907-08, p. 372.  
R.L.1910, § 3049.  
Comp.St.1921, § 6118.  
St.1931, § 5787.

**§ 409. Repealed by Laws 1955, p. 211, § 9; Laws 1974, c. 153, § 17-113, operative Jan. 1, 1975; Laws 1974, c. 154, § 13, emerg. eff. May 4, 1974**

**Historical and Statutory Notes**

See, now, Title 26, § 414.

**§§ 410, 411. Repealed by Laws 1968, c. 403, § 10, emerg. eff. May 17, 1968; Laws 1974, c. 153, § 17-113, operative Jan. 1, 1975; Laws 1974, c. 154, § 13, emerg. eff. May 4, 1974**

**Historical and Statutory Notes**

For subject matter of the repealed sections, see, now, Title 74, § 4256.

**§ 412. Repealed by Laws 1957, p. 200, § 2, emerg. eff. May, 24, 1957; Laws 1974, c. 153, § 17-113, operative Jan. 1, 1975; Laws 1974, c. 154, § 13, emerg. eff. May 4, 1974**

**Historical and Statutory Notes**

The repealed section, making the provisions of this chapter applicable to candidates placed on ballots by petition, was derived from:

Laws 1907-08, p. 374.  
R.L.1910, § 3053.  
Comp.St.1921, § 6122.  
St.1931, § 5791.

**§§ 413, 414. Repealed by Laws 1968, c. 403, § 10, emerg. eff. May 17, 1968; Laws 1974, c. 153, § 17-113, operative Jan. 1, 1975; Laws 1974, c. 154, § 13, emerg. eff. May 4, 1974**

**Historical and Statutory Notes**

For subject matter of repealed § 413, see, now, Title 51, § 304 and Title 74, § 4249.

Repealed § 414, limiting expenditures by candidates in primaries, was derived from:

Laws 1907-08, p. 373.

## CAMPAIGN CONTRIBUTIONS

26 §§ 424.1 to 424.12  
Renumbered

R.L.1910, § 3050.  
Comp.St.1921, § 6119.  
St.1931, § 5788.

26 O.S.1951, § 409.  
Laws 1955, p. 210, § 2.  
Laws 1957, p. 199, § 1.

**§ 415.** Repealed by Laws 1957, p. 200, § 2, emerg. eff. June 1, 1957; Laws 1974, c. 153, § 17-113, operative Jan. 1, 1975; Laws 1974, c. 154, § 13, emerg. eff. May 4, 1974

### Historical and Statutory Notes

The repealed section, derived from Laws 1955, p. 210, § 3, related to limitations on expenditures on behalf of candidates.

**§§ 416 to 422.** Repealed by Laws 1968, c. 403, § 10, emerg. eff. May 17, 1968; Laws 1974, c. 153, § 17-113, operative Jan. 1, 1975; Laws 1974, c. 154, § 13, emerg. eff. May 4, 1974

### Historical and Statutory Notes

Repealed § 416, relating to filing report of expenditures, was derived from Laws 1955, p. 210, § 4; Laws 1957, p. 200, § 1.

Repealed § 417, derived from Laws 1955, p. 210, § 5, related to duties of election board secretary in respect to reports and the disqualification or removal of candidates.

For subject matter of repealed §§ 418 and 419, see, now, Title 74, § 4256.

Repealed § 420, derived from Laws 1955, p. 211, § 8, related to duty of county attorney.

Repealed § 421, derived from Laws 1955, p. 211, § 10, related to cumulative and non-repealing provisions.

For subject matter of repealed § 422, see, now, Title 26, § 423.10.

**§§ 423.1 to 423.10.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975; Laws 1974, c. 154, § 13, emerg. eff. May 4, 1974

### Historical and Statutory Notes

#### DISPOSITION TABLE

Showing where the subject matter of §§ 423.1 to 423.10, repealed by Laws 1974, c. 154, was enacted thereby.

Repealed Section	1974 Enactment	Repealed Section	1974 Enactment
423.1	424.1	423.8	424.9
423.2	424.2	423.9	424.12
423.3	424.3	423.10	None
423.4	424.5	Repealed § 423.10, relating to severability, was derived from:	
423.5	424.6	Laws 1955, p. 211, § 11.	
423.6	424.7	26 O.S.1961, § 422.	
423.7	424.8	Laws 1968, c. 403, § 11.	

**§§ 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]

ACT OF 1908

**§§ 431 to 438.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

### Historical and Statutory Notes

#### DISPOSITION TABLE

Showing where the subject matter of §§ 431 to 438, repealed by Laws 1974, c. 153, was enacted thereby.

Repealed Section	1974 Enactment	Repealed Section	1974 Enactment
431 .....	16-114	435 .....	16-105
432 .....	16-114	436 .....	16-111
433 .....	16-102		16-115
434 .....	16-103	437 .....	16-105
		438 .....	7-101

**§§ 439 to 441.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975; Laws 1974, c. 154, § 13, emerg. eff. May 4, 1974

### Historical and Statutory Notes

For subject matter of repealed § 439, see, now, Title 21 § 187.2.

For subject matter of repealed §§ 440 and 441, see, now, Title 26 §§ 16-106 and 16-109.

**§§ 442 to 451.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

### Historical and Statutory Notes

#### DISPOSITION TABLE

Showing where the subject matter of §§ 442 to 451, repealed by Laws 1974, c. 153, was enacted thereby.

Repealed Section	1974 Enactment	Repealed Section	1974 Enactment
442 .....	16-112	448 .....	16-107
443 .....	16-113	449 .....	16-108
444 .....	16-106	450 .....	16-105
445 .....	16-106	451 .....	16-113
446 .....	None	Repealed § 446, relating to witnesses' rights before grand juries, was derived from:	
447 .....	16-105		
	16-114		

## PENALTIES

26 § 501  
Repealed

Laws 1907-08, p. 351.  
R.L.1910, § 3145.

Comp.St.1921, § 6216.  
St.1931, § 5863.

## ACT OF 1913

**§§ 471 to 481.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

### Historical and Statutory Notes

#### DISPOSITION TABLE

Showing where the subject matter of §§ 471 to 481, repealed by Laws 1974, c. 153, was enacted thereby.

Repealed Section	1974 Enactment	Repealed Section	1974 Enactment
471 .....	16-114	476 .....	16-105
472 .....	16-113	477 .....	16-105
473 .....	16-118	478 .....	16-116
474 .....	16-105	479 .....	16-113
475 .....	16-102	480 .....	16-118
		481 .....	16-103

**§ 482.** Repealed by Laws 1961, p. 258, § 1

### Historical and Statutory Notes

The repealed section, relating to illegal voting, was derived from:

Comp.St.1921, § 6297.  
St.1931, § 5844.

Laws 1913, c. 157, p. 323, § 23.

See Title 26, § 16-102.

## LITERATURE

**§§ 491, 492.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975; Laws 1974, c. 154, § 13, emerg. eff. May 4, 1974

### Historical and Statutory Notes

See, now, Title 21, § 1840 and Title 26, § 16-122.

## INITIATIVE AND REFERENDUM ELECTIONS

**§ 501.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

### Historical and Statutory Notes

See, now, Title 26 § 16-119.



## CHAPTER 15

### PRESIDENTIAL ELECTORS [REPEALED]

**§§ 511 to 513.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

#### Historical and Statutory Notes

##### DISPOSITION TABLE

Showing where the subject matter of §§ 511 to 513, as repealed by Laws 1974, c. 153, § 17-114, was incorporated in the 1974 enactment.

Repealed Section	1974 Enactment	Repealed Section	1974 Enactment
511 .....	10-103	512 .....	10-105
		513 .....	10-105

**§§ 514, 515.** Repealed by Laws 1937, p. 143, § 1

#### Historical and Statutory Notes

See, now, Title 26, § 10-106.

**§§ 516 to 522.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

#### Historical and Statutory Notes

##### DISPOSITION TABLE

Showing where the subject matter of §§ 511 to 513, as repealed by Laws 1974, c. 153, § 17-114, was incorporated in the 1974 enactment.

Repealed Section	1974 Enactment	Repealed Section	1974 Enactment
516 .....	10-107	519 .....	10-102
517 .....	10-108		10-108
518 .....	10-106	520 .....	10-102
		521 .....	10-109
		522 .....	10-101

## CHAPTER 16

# ELECTIONS TO FILL VACANCIES IN LEGISLATURE AND CONGRESS [REPEALED]

### LEGISLATURE

**§§ 541 to 545.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

#### Historical and Statutory Notes

##### DISPOSITION TABLE

Showing where the subject matter of §§ 541 to 545, as repealed by Laws 1974, c. 153, § 17-114, was incorporated in the 1974 enactment.

Repealed Section	1974 Enactment	Repealed Section	1974 Enactment
541 .....	12-106	543 .....	12-108
542 .....	12-107	544 .....	12-109
	12-108	545 .....	12-109

### CONGRESS

**§ 548.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

#### Historical and Statutory Notes

See, now, Title 26 §§ 12-101 to 12-103.

## 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 statewide 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 Title 26, § 3-104 et seq.

**§ 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 Title 26, §§ 3-104 et seq. and 12-101 et seq.

**§§ 553 to 555.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

#### Historical and Statutory Notes

Repealed § 553, derived from Laws 1933, c. 199, p. 470, § 3, related to issuance of warrants for payment of itemized county claims for election expenses.

Repealed § 554, which related to a special fund for the safekeeping and payment of election expense moneys, was derived

from Laws 1933, c. 199, p. 471; Laws 1935, p. 120, § 1.

Repealed § 555, derived from Laws 1933, c. 199, p. 471, § 5, related to counters and watchers in special elections.

See Title 26, § 3-104 et seq.

**§ 556.** Repealed by Laws 1937, p. 143, § 3, emerg. eff. May 11, 1937

#### Historical and Statutory Notes

See, now, Title 26, § 2-129.

**§ 556a.** Repealed by Laws 1974, c. 153, § 17-114, operative Jan. 1, 1975

#### Historical and Statutory Notes

See, now, Title 26, § 2-129.

**§ 557.** Obsolete

## **ELECTION EXPENSES**

**26 § 559**  
**Repealed**

### **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. eff. 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, derived from Laws 1933, c. 199, p. 472, § 8, provided for severability.

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 Title 26, § 4-101 et seq.
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# 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.
6. Private person or corporation—Eminent domain by.
7. Light, heat or power by electricity or gas—Eminent domain same as railroads.
- 7.1. Coal pipelines—Licenses and permits—Limitations on eminent domain—Compensation.
- 7.2. Coal pipelines—Eminent domain same as railroads.
- 7.3. Right-of-way of coal pipelines—Filing acceptance and plat.
- 7.4. Right-of-way—Width and route of coal pipelines.
- 7.5. Rules and regulations.
- 7.6. Water supply.
- 7.7. Use and disposal of nondischargable water.
- 7.8. Designation of coal pipelines as common carriers.
- 7.9. Contracts—Rates and charges of coal pipeline companies.
- 7.10. Public utility lines—Relocating, rerouting, construction changes, etc.—Expenses and expenditures.
- 7.11. Laws applicable.
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 or jury award exceeds Commissioners' award by at least ten percent.
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.
16. Just compensation defined.

### CONDEMNATION PROCEDURE ACT

21 to 37. Expired.

### Constitutional Provisions

Article 2, § 24 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."

U.S.C.A. Const. Amend. 5 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."

## 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.
- Conservation districts, acquisition of lands by eminent domain, see Title 27A, § 3-3-105.
- 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.
- Municipalities, powers of eminent domain, see Title 11, § 22-105.
- Oil and gas, condemning public lands for, see Title 64, § 288.
- Pipelines for natural gas, eminent domain for, see Title 52, §§ 3, 22, 27.
- Pipelines for oil, eminent domain for, see Title 52, §§ 52, 60, 61.
- Railroad corporations, power of eminent domain, see Title 66, §§ 51 et seq., 161.
- 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.

**Law Review and Journal Commentaries**

Condemnation and inverse condemnation. 3 Okla.City U.L.Rev. 375 (1978).

Constitutional problems in taking of church lands. Richard C. Howard. 31 Okla.L.Rev. 191 (1978).

Federal agency's right to exercise eminent domain in state courts. 6 Okla.L.Rev. 188 (May 1953).

Option to purchase held compensable. 1 Okla.City U.L.Rev. 203 (1976).

**United States Code Annotated**

Civil procedure, condemnation of property for use of United States, see 28 U.S.C.A. §§ 1358, 1403; Fed.Rules Civ.Proc. Rule 71A, 28 U.S.C.A.

Indian lands, condemnation under state laws, see 25 U.S.C.A. § 357.

Licensed water power projects, condemnation by federal, state, or municipal authorities, see 16 U.S.C.A. § 807.

Officials, right to condemn realty, see 40 U.S.C.A. § 257.

River and harbor improvements, condemnation proceedings, see 33 U.S.C.A. § 591.

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**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.

### Library References

Eminent Domain ⇨46.  
WESTLAW Topic No. 148.  
C.J.S. Eminent Domain § 61.

### Notes of Decisions

#### Vendor's liens 1

##### 1. Vendor's liens

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 sec-

tion 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, Okla.*, 191 Okla. 541, 131 P.2d 754 (1942).

## § 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 and Journal Commentaries**

Option to purchase condemned land held compensable. 1 Okla.City U.L.Rev. 203 (1976).

#### **Library References**

Eminent Domain ⇨166.

WESTLAW Topic No. 148.

C.J.S. Eminent Domain §§ 201, 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 appraisalment, 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.

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 § 319.

**§ 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****Source:**

Laws 1907-08, p. 261.  
 Comp.Laws 1909, § 3329.

Comp.St.1921, § 6320.  
 St.1931, § 10050.

**Law Review and Journal Commentaries**

Problems in litigating eminent domain claims involving transmission lines. Robert C. Stubbs. 9 Okla.City U.L.Rev. 431 (1984).

Tort liability under damage clauses in constitutional eminent domain provi-

sions; special grants of power of eminent domain. Henry H. Foster, Jr., 5 Okla. L.Rev. 1, 19 (Feb.1952).

**Library References**

Eminent Domain Ⓒ10(1), 35. .  
 WESTLAW Topic No. 148.  
 C.J.S. Eminent Domain §§ 25, 49.

**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 statute. Tuttle v. Jefferson Power & Imp. Co., Okla., 31 Okla. 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.

Cemeteries, exemption from appropriation, see Title 8, § 7.

Counties, aid to cities, towns, and federal government in acquiring land for forest reserves, parks, and other purposes, see Title 19, § 349.

Power of city to condemn land for particular purposes,

Hospitals, etc., 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 and Journal Commentaries

Cemeteries, developing in Oklahoma for oil and gas purposes. 8 Okla.L.Rev. 474 (Nov.1955).

Condemnation and inverse condemnation. 3 Okla.City U.L.Rev. 375 (1978).

Tort liability under damage clauses in constitutional eminent domain provisions; special grants of power of eminent domain. Henry H. Foster, Jr., 5 Okla. L.Rev. 1, 19 (Feb.1952).

## Library References

Eminent Domain ¶9, 17.

WESTLAW Topic No. 148.

C.J.S. Eminent Domain §§ 24, 52, 55.

## Notes of Decisions

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 Elimination of public nuisances, uses or purposes 8  
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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, Okla., 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, Okla., 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*, Okla., 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*, Okla., 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*, Okla., 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*, Okla., 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. *Rollow v. West*, Okla., 479 P.2d 962 (1971).

Municipality, as condemner, owes no greater duty to its condemnee than any other condemner owes to condemnee. *Oklahoma City v. Shadid*, Okla., 439 P.2d 190 (1966), certiorari denied 87 S.Ct. 1486, 386 U.S. 1034, 18 L.Ed.2d 597.

## 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, Okla.*, 208 Okla. 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*, Okla., 200 Okla. 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*, Okla., 184 Okla. 306, 87 P.2d 127 (1939).

## 4. 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*, Okla., 208 Okla. 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. *City of Cushing v. Gillespie*, Okla., 208 Okla. 359, 256 P.2d 418 (1953).

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*, Okla., 200 Okla. 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, Okla.*, 199 Okla. 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, Okla.*, 192 Okla. 470, 137 P.2d 233 (1941).

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 Sav. & Loan Ass'n of Oklahoma City, Okla.*, 192 Okla. 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, Okla.*, 141 Okla. 172, 284 P. 3 (1929).

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).

## 5. Railroad property

A municipality is not authorized to condemn railroad property for park purposes. *Oklahoma City v. Local Federal Sav. & Loan Ass'n of Oklahoma City,*

*Okla.*, 192 Okla. 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. *Oklahoma City v. Local Federal Sav. & Loan Ass'n of Oklahoma City, Okla.*, 192 Okla. 188, 134 P.2d 565 (1943).

Under this section and Title 66, §§ 53 and 57, railroads and municipalities are granted equal powers of eminent domain for their respective requirements. *Oklahoma City v. Local Federal Sav. & Loan Ass'n of Oklahoma City, Okla.*, 192 Okla. 188, 134 P.2d 565 (1943).

## 6. 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, Okla.*, 206 Okla. 611, 245 P.2d 730 (1952).

## 7. 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 Sav. & Loan Ass'n of Oklahoma City, Okla.*, 192 Okla. 188, 134 P.2d 565 (1943).

## 8. — Elimination of public nuisances, uses or purposes

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 hydrocarbons, 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, Okla.*, 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, Okla.*, 439 P.2d 190 (1966), certiorari denied 87 S.Ct. 1486, 386 U.S. 1034, 18 L.Ed.2d 597.

#### 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 unsold portions of land. *Landree v. City of Mangum, Okla.*, 196 Okla. 281, 164 P.2d 630 (1945).

#### 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, Okla.*, 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. *City of Pryor Creek v. Public Service Co. of Oklahoma, Okla.*, 536 P.2d 343 (1975).

A charter provision which attempts to designate authority to a city to condemn a public utility is void. *City of Pryor Creek v. Public Service Co. of Oklahoma, Okla.*, 536 P.2d 343 (1975).

#### 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, Okla.*, 199 Okla. 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, Okla.*, 27 Okla. 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, Okla.*, 206 Okla. 611, 245 P.2d 730 (1952).

#### 13. Estoppel and waiver

Condemnees who appeared and fully participated in eminent domain proceedings, which resulted in condemnnees 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 condemnnees had waived any deficiencies in the proceedings, including erroneous description of property in the petition and subsequent filings. *Oklahoma City v. Lockert, Okla.*, 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 ejectment, but is entitled to damages for value of land at time of appropriation. *Vinson v. Oklahoma City, Okla.*, 179 Okla. 590, 66 P.2d 933 (1937).

#### 14. Pleadings

Where condemnor city and condemnnees proceeded upon the assumption that property was correctly described in petition and subsequent filings and where condemnnees 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*, Okla., 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. *Oklahoma City v. Lockert*, Okla., 484 P.2d 523 (1971).

#### 15. Evidence

In condemnation proceeding, evidence of adaptability of land to particular use could be considered, and for such pur-

pose 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*, Okla., 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. *Del City v. Haynes*, Okla., 483 P.2d 1152 (1971).

In eminent domain proceeding wherein 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. *Del City v. Haynes*, Okla., 483 P.2d 1152 (1971).

### § 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.

#### Historical and Statutory Notes

##### Source:

Laws 1907-08, p. 261.

Comp.Laws 1909, § 3331.

Comp.St.1921, § 6322.

St.1931, § 10052.

#### 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 and Journal Commentaries

Constitutional problems in taking of church lands. Richard C. Howard. 31 Okla.L.Rev. 191 (1978).

Option to purchase held compensable. 1 Okla.City U.L.Rev. 203 (1976).

Tort liability under damage clauses in constitutional eminent domain provisions; special grants of power of eminent domain. Henry H. Foster, Jr., 5 Okla.L.Rev. 1, 19 (Feb.1952).



## Library References

Eminent Domain §§ 10, 11, 17, 32, 33.  
WESTLAW Topic No. 148.

C.J.S. Eminent Domain §§ 24, 25, 44  
to 55.

## Notes of Decisions

**Damages** 5  
**Evidence** 4  
**Injunction** 3  
**Review** 6  
**Sanitation** 2  
**Way of necessity** 1

U.S. v. Hardage, C.A.10 (Okla.)1995, 58  
F.3d 569.

## 3. 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.*, Okla., 616 P.2d 1157 (1980).

## 4. 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*, Okla. App., 531 P.2d 1067 (1974).

## 5. 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*, Okla.App., 531 P.2d 1067 (1974).

## 6. Review

Decision of district court in condemnation proceedings adjudicating the question of right to condemn an easement by necessity is a final order from which an appeal will lie. *Blankenship v. Bone*, Okla.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. *Blankenship v. Bone*, Okla.App., 530 P.2d 578 (1974).

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. *Blankenship v. Bone*, Okla.App., 530 P.2d 578 (1974).

## 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*, Okla.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. *Blankenship v. Bone*, Okla.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. *Blankenship v. Bone*, Okla.App., 530 P.2d 578 (1974).

## 2. Sanitation

Oklahoma law, particularly portion permitting private condemnation of property for "sanitation" purposes, was inapplicable in CERCLA litigation in which district court sought to compel condemnation of land adjacent to CERCLA cleanup site due to landowner's alleged frustration of district court's institutional controls order by not accepting final offer for property; if district court had to divest landowner's interest in property, in part or in whole, court had to do so within panoply of due process rights vested in landowner by Fifth Amendment.

**§ 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, p. 431, § 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.

**Law Review and Journal Commentaries**

Condemnation and inverse condemnation. 3 Okla.City U.L.Rev. 375 (1978).

Constitutional problems in taking of church lands. Richard C. Howard. 31 Okla.L.Rev. 191 (1978).

Tort liability under damage clauses in constitutional eminent domain provi-

sions; special grants of power of eminent domain. Henry H. Foster. Jr., 5 Okla. L.Rev. 1, 19 (Feb.1952).

Transmission lines: Problems in litigating eminent domain claims. Robert C. Stubbs. 9 Okla.City U.L.Rev. 431 (1984).

**Library References**

Eminent Domain ⇨10(1), 35.

WESTLAW Topic No. 148.

C.J.S. Eminent Domain §§ 25, 49.

**Notes of Decisions**

Admissibility of evidence 3

Construction and application 1

Damages or compensation 5-7

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Matters to be considered 7

Measure of damages 6

Estoppel 2

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Inverse condemnation 9

Matters to be considered, damages or compensation 7

Measure of damages 6

**1. Construction and application**

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., Okla., 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, Okla., 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 & Elec. Co. v. Miller Bros. 101 Ranch Trust, Okla., 173 Okla. 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 interest. Consolidated Gas Service Co. v. Tyler, Okla., 178 Okla. 325, 63 P.2d 88 (1936).

## 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, Okla.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, Okla., 393 P.2d 503 (1963).

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, Okla., 178 Okla. 325, 63 P.2d 88 (1936).

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. Consolidated Gas Service Co. v. Tyler, Okla., 178 Okla. 325, 63 P.2d 88 (1936).

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. Consolidated Gas Service Co. v. Tyler, Okla., 178 Okla. 325, 63 P.2d 88 (1936).

In action to condemn right of way for gas pipe line previously installed, admission of testimony, on question of damages, that parties who had offered to lease part of premises refused to lease when they learned of gas line was not error. Consolidated Gas Service Co. v. Tyler, Okla., 178 Okla. 325, 63 P.2d 88 (1936).

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, Okla., 162 Okla. 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, Okla., 200 Okla. 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. Cities Service Gas Co. v. Williams, Okla., 200 Okla. 525, 198 P.2d 204 (1948).

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. *Cities Service Gas Co. v. Williams, Okla.*, 200 Okla. 525, 198 P.2d 204 (1948).

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. *Cities Service Gas Co. v. Williams, Okla.*, 200 Okla. 525, 198 P.2d 204 (1948).

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, Okla.*, 200 Okla. 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, Okla.*, 200 Okla. 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 & Elec. Co. v. Kelly, Okla.*, 177 Okla. 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., Okla.*, 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, Okla.*, 393 P.2d 503 (1963).

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, Okla.*, 200 Okla. 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, Okla.*, 192 Okla. 338, 136 P.2d 879 (1943).

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 consid-

## Note 7

ered. *Oklahoma Gas & Elec. Co. v. Kelly*, Okla., 177 Okla. 206, 58 P.2d 328 (1936).

In proceedings to condemn right of way for high-voltage electric transmission line running near farmhouse and out-buildings, danger from greater likelihood of lightning could be considered as affecting market value of land. *Oklahoma Gas & Elec. Co. v. Kelly*, Okla., 177 Okla. 206, 58 P.2d 328 (1936).

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*, Okla., 162 Okla. 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*, Okla., 200 Okla. 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.*, Okla., 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.

### Library References

Carriers ⇨8.

Eminent Domain ⇨10(1), 17, 69.

WESTLAW Topic Nos. 70, 148.

C.J.S. Carriers §§ 356 to 384.

C.J.S. Eminent Domain §§ 25, 52, 55, 71, 72, 198, 199.

### 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, Okla.*, 712 P.2d 40 (1985).

#### 1. Validity

Regulation of coal pipelines by corporation commission under authority of this section and Title 27, §§ 7.2 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, Okla.*, 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, Okla.*, 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> Title 27, § 7.1.

**Library References**

Eminent Domain ⇨10(1).  
WESTLAW Topic No. 148.  
C.J.S. Eminent Domain § 25.

**§ 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<sup>1</sup> 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.

<sup>1</sup> Title 27, § 7.1 et seq.

**Library References**

Eminent Domain ⇨166, 169.	C.J.S. Eminent Domain §§ 201, 209,
WESTLAW Topic No. 148.	213, 214, 219.

**§ 7.4. Right-of-way—Width and route of coal pipelines**

The right-of-way requirements under this act<sup>1</sup> 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.

<sup>1</sup> Title 27, § 7.1 et seq.

**Library References**

Eminent Domain ⇨10(1).  
WESTLAW Topic No. 148.  
C.J.S. Eminent Domain § 25.

**§ 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 § 351.

Notes of Decisions

Construction and application 2  
Validity 1

1. Validity

Regulation of coal pipelines by state Corporation Commission under authority of Title 27, §§ 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, Okla., 712 P.2d 40 (1985).

State statutes, Title 27, §§ 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, Okla., 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, Title 27, §§ 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, Okla., 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 § 351.

Notes of Decisions

Construction and application 2  
Validity 1

1. Validity

Regulation of coal pipelines by state Corporation Commission under authority of Title 27, §§ 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, Okla., 712 P.2d 40 (1985).

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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, Okla., 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, Title 27, §§ 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, Okla., 712 P.2d 40 (1985).

## § 7.7. Use and disposal of nondischageable water

The Corporation Commission shall consider recommendations from the Department of Environmental Quality and shall specify the proper use and disposal of any nondischageable water.

Laws 1977, c. 25, § 7, eff. Oct. 1, 1977; Laws 1993, c. 145, § 261, eff. July 1, 1993.

### Historical and Statutory Notes

The 1993 amendment rewrote the section, which prior thereto read:

"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 nondischageable water."

### Library References

Carriers ⇨ 1.

Health and Environment ⇨ 6, 28.

WESTLAW Topic Nos. 70, 199.

C.J.S. Carriers § 351.

C.J.S. Health and Environment §§ 13, 26, 45.

### Notes of Decisions

#### Construction and application 2 Validity 1

##### 1. Validity

Regulation of coal pipelines by state Corporation Commission under authority of Title 27, §§ 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, Okla., 712 P.2d 40 (1985).

State statutes, Title 27, §§ 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, Okla., 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, Title 27, §§ 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, Okla., 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 § 2.

Notes of Decisions

Construction and application 2  
Validity 1

1. Validity

Regulation of coal pipelines by state Corporation Commission under authority of Title 27, §§ 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, Okla.*, 712 P.2d 40 (1985).

State statutes, Title 27, §§ 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, Okla.*, 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, Title 27, §§ 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, Okla.*, 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<sup>1</sup> 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>2</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> Title 27, § 7.1 et seq.

<sup>2</sup> Probably should read "of".

Library References

Carriers ⇨ 12(1) to 12(11).

WESTLAW Topic No. 70.

C.J.S. Carriers §§ 367, 368, 369.

Notes of Decisions

Construction and application 2  
Validity 1

1. Validity

Regulation of coal pipelines by state Corporation Commission under authority of Title 27, §§ 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, Okla.*, 712 P.2d 40 (1985).

State statutes, Title 27, §§ 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, Okla.*, 712 P.2d 40 (1985).

2. Construction and application

Joint venture formed to operate coal pipeline was a "company" upon which

## Note 2

right of eminent domain could be conferred under statute, Title 27, §§ 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, Okla.*, 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.  
WESTLAW Topic No. 148.

C.J.S. Eminent Domain §§ 71, 72, 198, 199.

#### Notes of Decisions

##### Construction and application 2 Validity 1

##### 1. Validity

Regulation of coal pipelines by state Corporation Commission under authority of Title 27, §§ 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, Okla.*, 712 P.2d 40 (1985).

State statutes, Title 27, §§ 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, Okla.*, 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, Title 27, §§ 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, Okla.*, 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 ~~§~~ 1, 2.  
WESTLAW Topic No. 70.  
C.J.S. Carriers § 351.

### Notes of Decisions

#### Construction and application 2 Validity 1

##### 1. Validity

Regulation of coal pipelines by state Corporation Commission under authority of Title 27, §§ 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, Okla., 712 P.2d 40 (1985).

State statutes, Title 27, §§ 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, Okla., 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, Title 27, §§ 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, Okla., 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, emerg. eff. April 11, 1951.

### 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 and Journal Commentaries

Constitutional problems in taking of church lands. Richard C. Howard. 31 Okla.L.Rev. 191 (1978).

**Library References**

Eminent Domain ⇨ 10(1), 17, 20(2).  
WESTLAW Topic No. 148.

C.J.S. Eminent Domain §§ 25, 33, 52,  
55.

**§ 9. Application**

The provisions of this act <sup>1</sup> 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.

<sup>1</sup> Title 27, § 9 et seq.

**Cross References**

Municipalities, redevelopment trusts, power of eminent domain, see Title 11, § 40-115.

**Law Review and Journal Commentaries**

Option to purchase held compensable.

1 Okla.City U.L.Rev. 203 (1976).

**Library References**

Eminent Domain ⇨ 166.

WESTLAW Topic No. 148.

C.J.S. Eminent Domain §§ 201, 209.

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

The Oklahoma Turnpike Authority is subject to the terms of Title 27 §§ 9 to 15,

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, §§ 2804, 2806.  
Recording fees, see Title 28, § 32.  
Transfer tax, see Title 68, § 802.

### Law Review and Journal Commentaries

Condemnation and inverse condemnation. 3 Okla.City U.L.Rev. 375 (1978).

### Library References

Eminent Domain ⇨302, 316.  
WESTLAW Topic No. 148.  
C.J.S. Eminent Domain §§ 413, 414.

### 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, Okla., 540 P.2d 558 (1975).

## § 11. Reimbursement of expenses when property not acquired or jury award exceeds Commissioners' award by at least ten percent

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 and Journal Commentaries

Condemnation and inverse condemnation. 3 Okla.City U.L.Rev. 375 (1978).

Gregory J. Graham. 4 Okla.City U.L.Rev. 256 (1979).

Insurance—Retroactive application of attorney fee statutes: Analysis of Cox v. American Fidelity Assurance Company.

Legal profession—determining statutory attorney's fees. 6 Okla.City U.L.Rev. 238 (1981).

### Library References

Eminent Domain ⇐ 149(7).

WESTLAW Topic No. 148.

C.J.S. Eminent Domain §§ 163, 164.

### Notes of Decisions

#### Appeals 3

#### Construction and application 1

#### Interest 4

#### Litigation expenses 2

#### Reasonableness of fees 5

#### 1. Construction and application

Attorney fees, appraisal, engineering fees, expert witness fees, and court costs were assessable against state in condemnation action to acquire land for turnpike where jury award exceeded court appointed commissioners' award by more than ten percent. Oklahoma Turnpike Authority v. New Life Pentecostal Church of Jenks, Okla., 870 P.2d 762 (1994).

Landowners were entitled to recover attorney fees, engineering fees, and appraisal fees in condemnation actions involving Oklahoma Turnpike Authority (OTA); court-appointed commissioners determined \$13,420 to be just compensation and jury returned verdict of \$23,000. Oklahoma Turnpike Authority v. Asher, Okla., 863 P.2d 1205 (1993).

Landowners could recover attorney fees, engineering fees, and appraisal fees but could not recover litigation expenses in condemnation proceeding. Oklahoma Turnpike Authority v. Horn, Okla., 861 P.2d 304 (1993).

Even if fee splitting agreement violated Rules of Professional Conduct, condemning authority was not relieved of its responsibility to reimburse landowners for their attorney fees in eminent domain proceeding. Oklahoma Turnpike Authority v. Horn, Okla., 861 P.2d 304 (1993).

Reasonable expert witness fees incurred during hearing on attorney fees following condemnation proceedings are reimbursable, under condemnation statutes, as expert witness fees "actually incurred because of" the proceedings. Oklahoma Turnpike Authority v. Little, Okla., 860 P.2d 226 (1993).

Trial court did not abuse its discretion in condemnation action when it awarded attorney fees to landowners for attorney's aerial photography and travel time incurred in photographing and traveling to

property condemned by Oklahoma Turnpike Authority (OTA). Oklahoma Turnpike Authority v. Little, Okla., 860 P.2d 226 (1993).

Defendants in condemnation action brought by Oklahoma Turnpike Authority (OTA) were entitled to recover attorney, appraisal, and engineering fees where OTA abandoned condemnation proceedings. Oklahoma Turnpike Authority v. Cockrell, Okla., 859 P.2d 1099 (1993).

Oklahoma Turnpike Authority (OTA) was liable for landowners' reasonable attorney, appraisal and engineering fees in condemnation action, as jury award was more than 10% above court-appointed commissioners' award. Oklahoma Turnpike Authority v. New, Okla., 853 P.2d 765 (1993), as amended on grant of rehearing.

Provisions of this section, and of Title 27, § 12, providing for reimbursement of plaintiff for reasonable attorney fees incurred because of inverse condemnation proceedings, are not in conflict with or inconsistent with Title 11, § 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, Okla., 521 P.2d 823 (1974).

## 2. Litigation expenses

Landowner could not recover litigation expenses, including court reporter fees and witness travel expenses, in condemnation action to acquire land for turnpike, even though jury award exceeded court-appointed commissioners' award by more than ten percent. Oklahoma Turnpike Authority v. New Life Pentecostal Church of Jenks, Okla., 870 P.2d 762 (1994).

Cost of developing photos by appraiser was part of appraiser's overhead and litigation expenses and was not recoverable in eminent domain proceeding. Oklahoma Turnpike Authority v. Garner, Okla., 863 P.2d 1208 (1993).

Landowners were not entitled to recover litigation expenses against Oklahoma Turnpike Authority (OTA) in condemnation action. Oklahoma Turnpike Authority v. Asher, Okla., 863 P.2d 1205 (1993).

Landowners were not entitled to recover attorney fees related to Oklahoma Turnpike Authority's (OTA) appeal of trial court's award of litigation expenses in condemnation action; trial court was reversed on that issue as there was no statutory basis for award. Oklahoma Turnpike Authority v. Asher, Okla., 863 P.2d 1205 (1993).

Landowners were not entitled, in condemnation action, to recover against Oklahoma Turnpike Authority (OTA) cost of developing film as part of appraisal; landowners cannot recover litigation expenses in condemnation actions involving OTA, and film developing was part of appraiser's overhead. Oklahoma Turnpike Authority v. Asher, Okla., 863 P.2d 1205 (1993).

Landowners could recover attorney, appraisal, engineering, and expert witness fees, as well as court costs, in condemnation proceeding, but could not recover litigation expenses as a separate item. Oklahoma Turnpike Authority v. Little, Okla., 860 P.2d 226 (1993).

## 3. Appeals

Landowners were entitled to appeal-related attorney fees to defend award of attorney, engineering, and appraisal fees in trial court in eminent domain case, but they were not entitled to appeal-related attorney fees associated with defending reimbursement of litigation expenses. Oklahoma Turnpike Authority v. Garner, Okla., 863 P.2d 1208 (1993).

Landowners were entitled to recover attorney fees related to Oklahoma Turnpike Authority's (OTA) appeal of trial court's award of attorney, engineering, and appraisal fees in condemnation action; there was statutory basis for trial court's award. Oklahoma Turnpike Authority v. Asher, Okla., 863 P.2d 1205 (1993).

Landowners who were awarded attorney fees in eminent domain proceeding were entitled to appeal-related attorney fees. Oklahoma Turnpike Authority v. Horn, Okla., 861 P.2d 304 (1993).

Appeal-related attorney fees are recoverable in condemnation proceedings. Oklahoma Turnpike Authority v. Little, Okla., 860 P.2d 226 (1993).

Landowners were entitled to appeal-related attorney fees in condemnation ac-



tion brought by Oklahoma Turnpike Authority (OTA) which was abandoned; there was statutory basis for award of attorney fees and, thus, additional fees may be allowed to prevailing party for legal services rendered in appellate court. *Oklahoma Turnpike Authority v. Cockrell*, Okla., 859 P.2d 1099 (1993).

#### 4. Interest

Reimbursement expenses, awarded in eminent domain cases under this section and Title 27, § 12 are not part of the "judgment" so as to be subject to post-judgment interest under Title 12, § 727. Op. Atty. Gen. No. 84-176, Feb. 4, 1985.

#### 5. Reasonableness of fees

Remand of condemnation action for re-examination of award of appraisal fees against Oklahoma Turnpike Authority (OTA) was warranted; it appeared that appraisal fees which included fees for 22 hours for viewing 20-acre tract containing only mobile home and hours billed for preparation for deposition were excessive. *Oklahoma Turnpike Authority v. Asher*, Okla., 863 P.2d 1205 (1993).

In determining whether attorney, appraisal, and engineering fees awarded in eminent domain proceeding are reasonable, Supreme Court must affirm trial court's decision unless it finds an "abuse of discretion"; to find an abuse of discretion, it must be found that the trial judge made a clearly erroneous conclusion and judgment, against reason and evidence. *Oklahoma Turnpike Authority v. Horn*, Okla., 861 P.2d 304 (1993).

Landowners must offer evidence relating to relevant factors in order to establish reasonableness of attorney fees, engineering fees, and appraisal fees awarded in eminent domain proceeding, and the facts and computations in support of the requested fees must be set forth with specificity; attorneys must submit to the court detailed time records showing the work performed and offer evidence as to the reasonable value of the services performed for different types of legal work. *Oklahoma Turnpike Authority v. Horn*, Okla., 861 P.2d 304 (1993).

Award of \$28,314 in attorney fees to landowners in eminent domain proceeding in which they received \$25,000 for the taking was supported by detailed time records, by fact that there existed an argument at trial that property had suffered no loss, that law firm was precluded from taking other types of plaintiff litigation because of demand placed on the firm by the instant case and related cases, that \$125 an hour was standard fee, and that attorney was recognized as one of the most experienced condemnation lawyers in the area, and by time constraints due to temporary taking of land which closed landowners' business. *Oklahoma Turnpike Authority v. Horn*, Okla., 861 P.2d 304 (1993).

Award of appraisal fees of \$10,246 in engineering fees of \$5,630 in eminent domain proceeding which landowners recovered \$25,000 was supported by un-rebutted evidence that the fees were reasonable. *Oklahoma Turnpike Authority v. Horn*, Okla., 861 P.2d 304 (1993).

Factors relevant to determining whether appraisal fees in condemnation proceeding are reasonable are: time and labor required; uniqueness of property; skill necessary to appraise particular property; usual fee charged for similar appraisals; urgency of getting appraisal submitted; value of property involved; and experience, reputation, and ability of appraisers. *Oklahoma Turnpike Authority v. Little*, Okla., 860 P.2d 226 (1993).

Appraisal fees of \$9,802 awarded in condemnation proceeding were not excessive or unreasonable, though parcel condemned by Oklahoma Turnpike Authority (OTA) was less than ten acres, given appraiser's testimony regarding his experience, time normally spent in similar cases, and reasonableness of bills. *Oklahoma Turnpike Authority v. Little*, Okla., 860 P.2d 226 (1993).

Award of attorney fees to defendants in condemnation action was reasonable; hourly fee assessed was \$104.59 and included litigation expenses. *Oklahoma Turnpike Authority v. Cockrell*, Okla., 859 P.2d 1099 (1993).

## § 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> Title 27, § 9.

### **Cross References**

Appeal of final order to Supreme Court, see Title 12, §§ 952, 953.

### **Law Review and Journal Commentaries**

Condemnation and inverse condemnation. 3 Okla.City U.L.Rev. 375 (1978).

Decisions of interest pertaining to real property. R. Clark Musser. 50 Okla.B.J. 1616 (1979); 53 Okla.B.J. 501 (1982).

Eminent domain and police power. 2 Okla.City U.L.Rev. 403 (1977).

Insurance—Retroactive application of attorney fee statutes: Analysis of Cox v. American Fidelity Assurance Company. 4 Okla.City U.L.Rev. 256 (1979).

Landowners' remedies under Article II, Oklahoma Constitution, section 24. Floyd W. Taylor. 51 Okla.B.J. 2178 (1980).

### **Notes of Decisions**

**Abandonment of condemnation proceedings 2**

**Attorneys' fees 6**

**Construction and application 1**

**Damages 5**

**Election of remedies 4**

**Evidence 8**

**Interest 7**

**Title of plaintiff 3**

**Trial 9**

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*, Okla., 484 P.2d 505 (1971).

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. *Pe-*

#### **1. Construction and application**

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.*, Okla., 550 P.2d 1324 (1976).

tition of Grand River Dam Authority, Okla., 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*, Okla., 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. *Elk City v. Rice*, Okla., 286 P.2d 275 (1955).

## 2. Abandonment of condemnation 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*, Okla., 192 Okla. 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. *Board of Com'rs of Pontotoc County v. Rayburn*, Okla., 192 Okla. 624, 138 P.2d 820 (1943).

Right of abandonment or dismissal of condemnation proceedings is not lost by mere wrongful taking of possession by condemner. *Board of Com'rs of Pontotoc County v. Rayburn*, Okla., 192 Okla. 624, 138 P.2d 820 (1943).

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. *Board of Com'rs of Pontotoc County v. Rayburn*, Okla., 192 Okla. 624, 138 P.2d 820 (1943).

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. *Board of Com'rs of Pontotoc County v. Rayburn*, Okla., 192 Okla. 624, 138 P.2d 820 (1943).

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. *Board of Com'rs of Pontotoc County v. Rayburn*, Okla., 192 Okla. 624, 138 P.2d 820 (1943).

## 3. Title of plaintiff

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*, Okla., 200 Okla. 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. *Incorporated Town of Pittsburg v. Cochrane*, Okla., 200 Okla. 497, 197 P.2d 287 (1948).

## 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*, Okla., 200 Okla. 497, 197 P.2d 287 (1948).

### 5. Damages

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*, Okla., 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*, Okla., 173 Okla. 527, 49 P.2d 208 (1935).

### 6. Attorneys' fees

Award of attorney's fees in inverse condemnation proceeding was appropriate although jury's award was less than court-appointed commissioners' appraisal of property's value; fee awards in such cases were governed by statute specific to inverse condemnation proceedings and not by statutes regarding condemnation actions generally. *Carter v. City of Oklahoma City*, Okla., 862 P.2d 77 (1993).

Incentive or bonus fee awarded to landowners' counsel in inverse condemnation proceeding was not prohibited by law. *Corbell v. State ex rel. Dept. of Transp.*, Okla.App., 856 P.2d 575 (1993), certiorari denied.

Provisions of Title 27, § 11 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 Title 11, § 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*, Okla., 521 P.2d 823 (1974).

### 7. Interest

Reimbursement expenses, awarded in eminent domain cases under Title 27, § 11 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.

### 8. Evidence

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*, Okla., 527 P.2d 1134 (1974).

### 9. Trial

It is improper to argue to jury in condemnation proceeding that it is the taxpayers who will ultimately bear cost of condemnation damages awarded. *State ex rel. Department of Highways v. Collins*, Okla., 482 P.2d 583 (1971).

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*, Okla., 482 P.2d 583 (1971).

## § 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> Title 63, § 1092.1 et seq.

### 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 and Journal Commentaries

Constitutional problems in taking of church lands. Richard C. Howard. 31 Okla.L.Rev. 191 (1978).

### Library References

Eminent Domain ⇨ 167(1).  
WESTLAW Topic No. 148.  
C.J.S. Eminent Domain §§ 202, 204.

### Notes of Decisions

**Burden of proof and presumptions** 7  
**Construction and application** 1  
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**Taking** 2  
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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*, Okla., 184 Okla. 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.*, Okla., 159 Okla. 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. Board of Com'rs of Choctaw County*, Okla., 43 Okla. 174, 141 P. 1 (1914).

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*.

### 2. Taking

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. *Frost v. Ponca City*, Okla., 541 P.2d 1321 (1975).

### 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*, Okla.App., 726 P.2d 361 (1986).

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*, Okla., 555 P.2d 587 (1976).

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*, Okla., 536 P.2d 343 (1975).

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*, Okla., 536 P.2d 343 (1975).

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. *Frost v. Ponca City, Okla.*, 541 P.2d 1321 (1975).

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, Okla.*, 541 P.2d 1321 (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, Okla.*, 499 P.2d 925 (1972).

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, Okla.*, 484 P.2d 505 (1971).

### **3. Title or estate taken**

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, Okla.*, 555 P.2d 587 (1976).

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, Okla.*, 184 Okla. 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. *Harn v. State ex rel. Williamson, Okla.*, 184 Okla. 306, 87 P.2d 127 (1939).

### **4. Power of court**

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, Okla.*, 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. *State ex rel. Dept. of Highways v. O'Dea, Okla.*, 555 P.2d 587 (1976).

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. *Arthur v. Board of Com'rs of Choctaw County, Okla.*, 43 Okla. 174, 141 P. 1 (1914).

### **5. Dismissal of proceeding**

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. *State ex rel. Dept. of Highways v. O'Dea, Okla.*, 555 P.2d 587 (1976).

### **6. 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 commissioners. *Gaylord v. State ex rel. Dept. of Highways, Okla.*, 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, Okla.*, 499 P.2d 925 (1972).

### **7. 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 ne-



cessity 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, Okla.*, 527 P.2d 165 (1974).

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, Okla.*, 499 P.2d 925 (1972).

#### 8. 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

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, Okla. App.*, 477 P.2d 851 (1970).

### § 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 §§ 161 to 163.

**§ 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> Title 27, § 13.

**§ 16. Just compensation defined**

A. In every case wherein private property is taken or damaged for public use, the person whose property is taken or damaged shall be entitled to just compensation.

B. "Just compensation", as used in subsection A of this section, 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. If only a part of a tract is taken, just compensation shall be ascertained by determining the difference between the fair market value of the whole tract immediately before the taking and the fair market value of that portion left remaining immediately after the taking.

Laws 1991, c. 175, § 1, emerg. eff. May 8, 1991.

**Notes of Decisions**

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**Instructions** 6

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**Substitute facilities, valuation** 3

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**Valuation** 2-4

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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, Okla.*, 541 P.2d 1321 (1975).

**2. Valuation—In general**

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

**1. Construction and application**

In exercise of eminent domain, private property is taken for public use and owner is invariably entitled to compensation

effect on school was admissible. *City of Tulsa v. Mingo School Dist. No. 16., Okla. App.*, 559 P.2d 487 (1976).

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, Okla.*, 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. *Gaylord v. State ex rel. Dept. of Highways, Okla.*, 540 P.2d 558 (1975).

Evidence of unaccepted offers to purchase is generally inadmissible for purpose of establishing market value in condemnation proceedings. *McAlester Urban Renewal Authority v. Watts, Okla.*, 516 P.2d 261 (1973).

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, Okla.*, 516 P.2d 261 (1973).

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, Okla.*, 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 neighbor-

hood and zoning ordinances are matters of evidentiary significance for jury to consider in determining fair market value of the condemned property. *McAlester Urban Renewal Authority v. Lorince, Okla.*, 499 P.2d 925 (1972).

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 probably bring to attention of buyer with whom he was negotiating a sale. *McAlester Urban Renewal Authority v. Lorince, Okla.*, 499 P.2d 925 (1972).

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, Okla. 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, Okla.*, 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. *State ex rel. Dept. of Highways v. Robb, Okla.*, 454 P.2d 313 (1969).

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, Okla., 283 P.2d 827 (1954), 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*, Okla., 195 Okla. 246, 156 P.2d 802 (1945).

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*, Okla., 195 Okla. 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. *State ex rel. City of Ardmore v. Winters*, Okla., 195 Okla. 243, 156 P.2d 798 (1945).

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. *State ex rel. City of Ardmore v. Winters*, Okla., 195 Okla. 243, 156 P.2d 798 (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*, Okla., 195 Okla. 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*, Okla., 195 Okla. 243, 156 P.2d 798 (1945).

### 3. — Substitute facilities, valuation

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. Mingo School Dist. No. 16.*, Okla.App., 559 P.2d 487 (1976).

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. *City of Tulsa v. Mingo School Dist. No. 16.*, Okla.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.*, Okla.App., 559 P.2d 487 (1976).

### 4. — Tax burden, valuation

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, Okla.*, 483 P.2d 324 (1971).

## 5. Nuisance

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, Okla.*, 453 P.2d 1019 (1969).

## 6. 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., Okla. App.*, 559 P.2d 487 (1976).

Omission of word "reasonable" from city's requested instruction, in condemnation proceeding, to effect that proposed 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, Okla.*, 483 P.2d 1152 (1971).

Where, considering other instructions, purpose of damage instruction given in eminent domain proceeding wherein city sought permanent easement across prop-

erty 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, Okla.*, 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, Okla.*, 195 Okla. 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, Okla.*, 195 Okla. 243, 156 P.2d 798 (1945).

## 7. New trial

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 trial, following jury verdict setting total damages at \$45,000. *State ex rel. Dept. of Highways v. Owen, Okla.*, 548 P.2d 212 (1976).

CONDEMNATION PROCEDURE ACT

§§ 21 to 37. Expired July 1, 1943

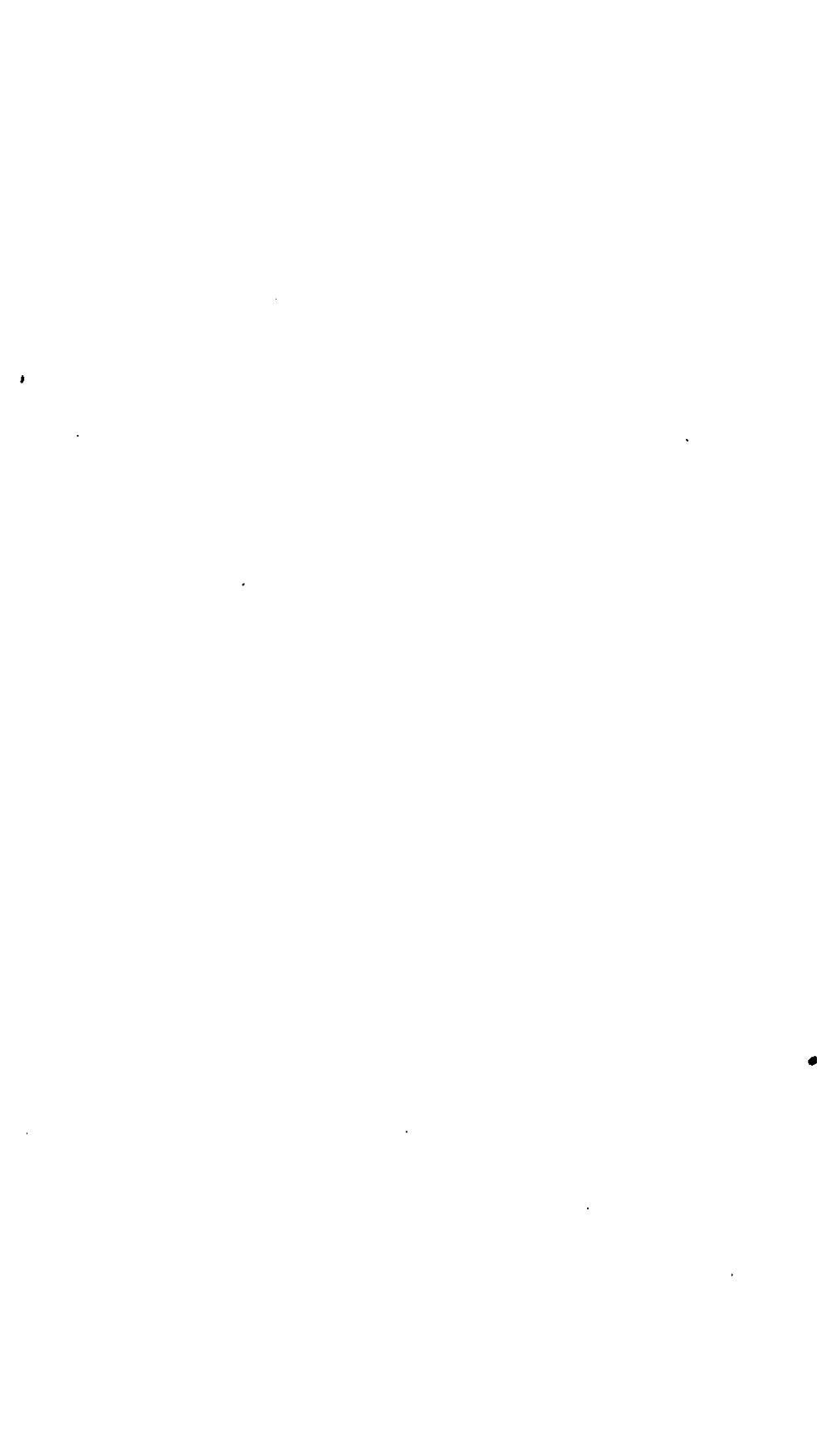
Historical and Statutory Notes

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."

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## COMBINED INDEX TO TITLES 26 — 27

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### ABANDONMENT

Eminent domain proceeding, attorney, appraisal and engineering fees, reimbursement of owner, 27 § 11

### ABSENCE AND ABSENTEES

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### ABSENTEE VOTING

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