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LEGISLATION

SURVEY OF LEGISLATION ENACTED BY THE OKLAHOMA LEGISLATURE AT THE 1963 REGULAR SESSION*

ADMINISTRATIVE PROCEDURE ACT

75 Okla. Stat. §§ 301-325 (Supp. 1963)

- attains a substantial degree of uniformity in procedure by defining administrative agency in all-inclusive terms, but excepts from the act the Oklahoma Tax Commission, Oklahoma Public Welfare Commission, Oklahoma Highway Commission, Oklahoma Corporation Commission, Pardon and Parole Board, Oklahoma Military Department, agencies of local government and specialized agencies, authorities and entities created by the legislature which perform essentially local functions. The agencies to which this act applies must file copies of its rules with the Secretary of State, State Librarian and Archivist in accord with 75 Okla. Stat. §§ 251-252 (1961). All rules are subject to review by the legislature.

- requires each agency to adopt well-defined courses of procedure and set forth in formal rules a description of its organization, the method of its operation, the nature and requirements of all formal and informal procedures available and a description of all forms and instructions used by the agency.

- implements the principle that agency actions should not be in the nature of secret proceedings but should be publicly known and makes available for public inspection all rules and writings, final orders, decisions and opinions formulated, adopted, used, or issued by agencies.

- provides that all interested parties have a voice in the adoption of agency rules.

- provides for publication of all administrative rules.

*This survey is designed to permit a rapid review of those Oklahoma statutes which are considered of most interest to the practicing attorney.

- makes provision for obtaining declaratory relief, so that anyone who doubts either the validity or applicability of an agency rule may obtain a speedy determination of such questions.

- makes provision for notice and hearing, presentation of evidence and argument on matters before agencies and states the right to counsel—grants subpoena power to agencies.

- recognizes the continuing right of licensees; including notice, hearing and review, with respect to issuance, renewal and revocation of licenses.

- provides for rehearing by the agency, review by the District or Superior Courts without a jury and final review by the Supreme Court.

ATTORNEYS

Residence — 5 Okla. Stat. § 18 (Supp. 1963)

- provides that foreign attorneys, not members of the Oklahoma Bar Association, may appear in Oklahoma courts or proceedings if their domiciliary state reciprocally extends the same privilege to Oklahoma attorneys.

CIVIL PROCEDURE

In Personam Jurisdiction over Nonresidents — 12 Okla. Stat. § 187 (Supp. 1963)

- represents the enactment of an omnibus longarm statute for securing in personam jurisdiction over nonresidents.

- extends implied submission to Oklahoma courts to those who:

1. transact any business within Oklahoma.
2. commit any act within Oklahoma.
3. manufacture or distribute any product which is sold in the regular course of business in Oklahoma and used in Oklahoma.
4. contracts to insure any person, property, or risk located within Oklahoma at the time of contracting.

- provides for service of process and return in the same manner as any other out-of-state personal service.

- where all defendants are nonresidents, actions may be brought in the county where the cause of action arose, or in the county where one plaintiff resides. If one defendant is a resident of Oklahoma, the action may be brought in any county where venue would be proper for that resident defendant.

Joinder of Claims — 12 Okla. Stat. § 323 (Supp. 1963)

- allows joinder of all claims (1) arising out of the transaction or occurrence on which plaintiff's claim is based and (2) which contain common questions of fact.

- any person who is liable on such a claim may be joined as a party to the action.

- the court may order a separate trial on any claim or issue.

- liability insurers may not be joined.

Joinder of Parties — 12 Okla. Stat. § 243 (Supp. 1963)

- broadens the provisions for joinder of parties by allowing a defendant to join as a party to a counter-claim, set-off, or right to relief concerning the subject of the action, any person who may be jointly or severally liable to the defendant on the counter-claim, set-off, or right to relief.

- the court may order a separate trial on the counter-claim, set-off, or right to relief, or of any issue therein to avoid delay or prejudice.

New Trial — 12 Okla. Stat. § 651 (Supp. 1963)

- broadens the basis for new trial by allowing re-examination of an issue of fact or of law, or both.

Referees — 12 Okla. Stat. §§ 622-623 (Supp. 1963)

- extended from three to ten days the time (1) for filing written objections with the court; (2) for filing a motion for new trial to appeal to the Supreme Court a ruling or decision of the court on the objections.

Time for Appealing — 12 Okla. Stat. § 972 (Supp. 1963)

- extends the time of commencement of appellate proceedings from three to six months in civil cases where proceeding is by case-made for reversing, vacating or modifying judgments or final orders.

- adds a new section requiring every proceeding for reversing, vacating or modifying a judgment or final order to have attached to it a certificate executed by a judge of the trial court specifically stating the latest date which a petition in error can be filed in the Supreme Court. The court clerk may execute the certificate if the case-made has been settled by stipulation of the parties or the appeal is upon the original record.

CONTEMPT

Indirect — 21 Okla. Stat. § 567 (Supp. 1963)

- provides for jury trial at the next term, upon demand of the defendant.

- provides for an appearance bond by the party charged.

CONVEYANCES

Marketable Record Title — 16 Okla. Stat. §§ 71-81

- provides that any person having legal capacity to own land and who has an unbroken chain of record title for 40 years or more, has a marketable record title.

- provides that there shall be excepted: (1) interests and defects inherent in the documents of title, (2) any interest preserved by filing notice in the prescribed manner, (3)

adverse possession, or (4) any interest recorded subsequent to the effective date of the root of title.

- does not apply to severed mineral or royalty interests, easements, subdivision restrictions, or interests of the United States.

- possession of land continuously for a period of 40 years or more is deemed equivalent to filing notice.

- any disability or lack of knowledge will not stay the running of the 40 year period, but notice may be filed for such persons.

- persons affected by this act have two years after its effective date to file notices.

Validation — 16 Okla. Stat. § 37 b (Supp. 1963)

- previously this statute validated executions and acknowledgments of instruments then of record relating to land situated within the state of Oklahoma, which, prior to the enactment of the 1961 statute, had been executed and acknowledged or proved in, and in conformity with the laws of any state, territory, District of Columbia, foreign country, or in conformity with Federal statutes. This statute has now been amended to apply prospectively as well as retrospectively except for the application to such matters in litigation upon the effective date of the statute.

CORPORATIONS

Certificate of Shares — 18 Okla. Stat. § 1.113 (Supp. 1963)

- permits the statutory information previously required on the certificate to be omitted and in lieu a statement that the shares are subject to rights, preferences, privileges and restrictions and that a full statement will be furnished to any shareholder, without charge, upon request.

Registered Agent — 18 Okla. Stat. § 1.17 (Supp. 1963)

- allows a domestic corporation to act as service agent for a corporation where previously only an individual could act. Applies to both domestic and foreign corporations.

- added a new section providing that service of process may now be made upon any officer or employee of the corporate service agent.

- states that the service agent is in fact an agent of the corporation by his appointment.

COURTS

Powers and Duties of Judges — 20 Okla. Stat. § 103.1 (Supp. 1963)

- extends the application of section 101.3 to Superior Court Judges thereby allowing them to hold a term of court in another district.

- allows District and Superior Judges and judges pro tempore, in regard to causes of action theretofore heard or being heard in another district to which the judge has been prop-

erly designated or appointed, to perform certain judicial functions, not requiring notice or hearing, while sitting in any county of his own district.

CRIMES

Defrauding Hotels, Restaurants — 21 Okla. Stat. § 1503 (Supp. 1963)

- adds restaurants, motels or auto camps to the enumerated establishments.

- differentiates between misdemeanors and felonies. A misdemeanor occurs if the value of the food, lodging, services or other accommodations fraudulently secured is \$20 or less, and a felony if more than \$20.

- struck the section relating to negotiable paper given for securing food, lodging, services or other accommodations.

Starting Fires — 21 Okla. Stat. § 1396 (Supp. 1963)

- increased the maximum penalty for felonious fires from \$1000 or three years imprisonment in the penitentiary, or both, to \$10,000 or ten years imprisonment in the penitentiary, or both.

Tatooing — 21 Okla. Stat. §§ 841, 843 (Supp. 1963)

- makes tatooing of any person a misdemeanor.

The statute previously applied only to minors. Punishment is now specified to be not more than \$500 fine or 90 days in the county jail, or both.

CRIMES AND PUNISHMENT

Subsequent Offenses — 21 Okla. Stat. § 51 (Supp. 1963)

- previously an "after-former" felony conviction for a crime with a penalty of five years or more carried a minimum penalty of ten years. This has been changed to provide a penalty of "not less than the minimum number of years authorized for a first conviction."

CRIMINAL PROCEDURE

Appeals — 22 Okla. Stat. § 1054 (Supp. 1963)

- allows, by order of the trial court on good cause shown, six months after judgment to appeal felony cases.

Insanity of Defendant — 22 Okla. Stat. § 1167 (Supp. 1963)

- amends the statute to indicate that if at any time during trial and before sentencing a jury finds a criminal defendant "presently" insane, the trial or judgment must be suspended.

- leaves to the jury the determination of whether the defendant's discharge from custody upon a finding of "presently" insane would be dangerous to the public peace and safety. Formerly this was a function of the court.

- states the procedure followed to determine whether or not the defendant is "presently" insane and if his discharge would be dangerous to the public peace and safety. On a finding that his discharge from the custody of the sheriff would

be dangerous to the public peace and safety, it is mandatory that the court shall order the defendant committed to one of the state hospitals for the mentally ill. Defendant is to be held in the state hospital until discharged as sane. Then he is to be released to the custody of the sheriff and trial set again. Formerly the statute merely provided the defendant was to be committed to the custody of the sheriff and did not specify what the sheriff was to do with him.

Sanity of Accused—22 Okla. Stat. §§ 1171-1174 (Supp. 1963)

- directs the procedure for medically treating a suspected insane person when held in confinement because of criminal charges pending or imminent, or when taken into custody because of a criminal act.

- specifies that if prior to trial or preliminary hearing a doubt arises as to his present sanity then either the individual or the county attorney may petition the District Court for an order committing the individual to a state mental hospital for observation and examination not exceeding 90 days.

- specifies that any criminal proceedings shall be suspended pending hearing by the District Court.

- provides that if the individual is determined sane, he may be proceeded against and his sanity may not again be raised until trial. If the individual is determined insane, the District Court, unless good cause is shown, shall order him committed to the state mental hospital. However such individual shall have the right to a jury trial on the question of his sanity as in 22 Okla. Stat. §§ 1162-1164 (1961).

Second or Subsequent Offenses—22 Okla. Stat. § 860 (Supp. 1963)

- adds a new section which prescribes the trial procedure for prosecuting a second or subsequent offender. The trial proceeds as usual through the rendering of the verdict by the jury on the offense charged. Then if the verdict is guilty, the jury is informed of prior offenses of the accused, the court instructs the jury on the law relating to second or subsequent offenses and the jury retires to determine the punishment.

Suspension of Sentence—22 Okla. Stat. § 991 (Supp. 1963)

- enlarges the statute to allow the trial judge to suspend both fine and imprisonment, or either; to order enforcement of one or the other; or to order the person convicted to serve only a part of the sentence and suspend the balance during good behavior. The judge may order the person to pay the costs.

INCOME TAX

Deductions—Depletion—68 Okla. Stat. § 880 (Supp. 1963)

- increased the percentage depletion allow-

ance for oil and gas wells from 20 per cent to 27½ per cent to become effective January 1, 1965.

INSURANCE COMPANIES

Service of Process — 12 Okla. Stat. § 164 & 39 Okla. Stat. § 106 (Supp. 1963)

- repeals these statutes because of the enactment of an omnibus longarm statute which covers securing jurisdiction over foreign insurers not licensed to do business in Oklahoma, and because of the sufficiency of 36 Okla. Stat. §§ 621-623 (1961) which covers the securing of jurisdiction over foreign insurers licensed to do business in Oklahoma.

INTOXICATING LIQUORS

Minors — 21 Okla. Stat. §§ 1215-1216 (Supp. 1963)

- adds a new section making it a misdemeanor for any person under the age of 21 years to be in possession of intoxicating beverage containing more than 3.2 per cent alcohol, by weight, while such person is upon any public street, road, or highway, or in any public building or place.

- prescribes the punishment upon conviction to be not more than 30 days in the county jail or fine of not more than \$100, or both.

MARRIAGE

Underage Applicants for License — 43 Okla. Stat. § 3 (Supp. 1963)

- provides that written consent of parents or guardian, executed before a judge or clerk of a domestic or foreign court of record, may be substituted for the consent of the parents or guardian given in the presence of the authority issuing a marriage license.

- rescinds the general written consent provisions formerly allowed when the underage applicant is a member of the armed forces.

- provides that if the parent or guardian is on active service with the Armed Forces the license may issue on written permission of such parent or guardian when the permission is acknowledged in the same manner as an acknowledgment of deeds by military personnel authorized to administer oaths. The written permission is to be accompanied by a certificate executed by a commissioned officer in command of the parent or guardian to the effect that the parent or guardian is on active duty.

OATHS

Administration of Oaths — 51 Okla. Stat. § 21 (Supp. 1963)

- extends authority to administer oaths to judges, clerks of courts of record, clerks of Boards of Education, city auditors, and city and town clerks.

PRISON SENTENCES

Parole — Indeterminate Sentence — 57 Okla. Stat. §§ 353-356 (Supp. 1963)

- provides for indeterminate sentences of imprisonment in the penitentiary.
- allows the court to fix a minimum and maximum term, within limits of the law. The minimum to be less than one third of the maximum sentence imposed by the court.
- provides for mandatory hearing of prisoners parole application at the end of the minimum sentence time.

PROBATE

Authorized Contracts — 58 Okla. Stat. §§ 931-932 (Supp. 1963)

- broadens the classes of contracts that executors or administrators may enter into to include those contracts made with conservancy districts for upstream flood control dams and lakes.

Bonds — 58 Okla. Stat. § 171 (Supp. 1963)

- eliminates the requirement that the executor or administrator must post bond of not less than twice the value of personal property or twice the probable value of the annual rents, profits and issues of real property.
- provides that the court may require no bond.

Bonds — 58 Okla. Stat. §§ 853, 863 (Supp. 1963)

- provides that bonds of guardians must run to the State of Oklahoma instead of the ward.

Certificate of Proof — 58 Okla. Stat. § 45 (Supp. 1963)

- eliminates the procedural requirement that a certificate of proof be attached to wills.

Division of Property — 58 Okla. Stat. §§ 646-647 (Supp. 1963)

- eliminates the preference of male over female and elder to younger in the division of property in partition.

Hearing — 58 Okla. Stat. § 25 (Supp. 1963)

- eliminates the requirement that the will must be produced when the petition for probate is filed.

- causes the time in which the court shall hold the hearings on the petition for probate of the will to run from the date of filing the petition instead of from the date of production of the will.

Jurisdiction — 58 Okla. Stat. § 1 (Supp. 1963)

- extends the jurisdiction of county courts to include the appointment of appraisers for the estates of minors and incompetents.

Orders — 58 Okla. Stat. § 414 (Supp. 1963)

- eliminates the requirement that the executor or administrator post notice of an order to show cause in the sale of

real estate when the petition for order of sale has been signed by all known heirs.

Petition — Contents — 58 Okla. Stat. § 23 (Supp. 1963)

- requires a petition for probate of a will to be in writing and signed by applicant or counsel.
- requires that names, ages and residence of legatees, as well as heirs and devisees be included in the petition for probate of a will.

PROPERTY

Unit Ownership Estate Act — 60 Okla. Stat. §§ 501-530 (Supp. 1963)

- permits the creation of a unit ownership estate by the owner or co-owners of a building by filing a declaration of intention in the office of the County Clerk.
- defines a unit ownership estate to be an estate in real property which is entirely independent of other unit ownership estates in the same building. Title is recorded in the same manner as other interests in property.
- defines common elements of the building.
- provides that unit owners own together and may use the common elements of the building; that their undivided interest in the common elements are in the ratio of the fair market value of their unit ownership; that liens pertaining to a unit are not effective against the whole building; that liens against the common elements are liens on all the various units according to their interest, but each unit owner may discharge such lien by payment of his proportionate share.
- provides that homestead exemptions apply to the units.
- provides that by unanimous action of the unit owners the property may be removed from the provisions of this Act.
- provides detailed directions of how to carry on the common operation of the property.

WATER RIGHTS

Property Rights — 60 Okla. Stat. § 60 & Water Rights — 82 Okla. Stat. § 1 (Supp. 1963)

- revises in a comprehensive manner the substantive and procedural law respecting water rights.
- provides a schedule of priorities for the use of water.

WILLS

Forfeiture of Inheritance — 84 Okla. Stat. § 231 (Supp. 1963)

- adds a provision that no person who is convicted of murder or manslaughter in the first degree under the laws of

Oklahoma or any other state or foreign country shall inherit from the person killed.

Revocation — 84 Okla. Stat. § 114 (Supp. 1963)

- provides upon divorce or annulment, automatic revocation of provisions in the testator's will in favor of his spouse.

- repeals 84 Okla. Stat. § 107 (1961), which provided that a will made by a male before marriage is revoked by marriage unless issue or spouse are provided for therein.

- repeals 84 Okla. Stat. § 108 (1961), which provided that a will made by a female before marriage is revoked by marriage and not revived upon the death of her husband.

WORKMEN'S COMPENSATION

Award of Commission — 85 Okla. Stat. § 29 (Supp. 1963)

- requires a transcript of record of the proceedings before the State Industrial Court to be submitted to the Supreme Court within 45 days from the date of filing of appeal or order appealed from. The Court may extend the time for appeal 90 days from the date of filing.

Employments Included — 85 Okla. Stat. § 2 (Supp. 1963)

- includes employment in milk processing plants (formerly only dairies) and custom or commercial feed lots offering livestock feeding services to the public.

Schedule — 85 Okla. Stat. § 22, sub. 5 (Supp. 1963)

- increases the compensation for temporary total disability from \$35.00 per week to \$37.50, and from \$30.00 per week to \$37.50 for permanent disability.

H. J. Steinbuechel
Legislative Editor