SHORT TITLE: Counties and county officers, crimes and punishments and criminal procedures; requiring disclosure of misuse of public funds; adding grounds for removal and ouster; making judgment of removal or ouster additional to other punishments; effective date.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

SENATE BILL NO. 1192 By: Snyder

AS INTRODUCED

An Act relating to misuse of public funds; amending 21 O.S. 1991, Sections 481 and 482, which relate to nepotism, 22 O.S. 1991, Sections 305.1 and 1181, which relate to deferred prosecution agreements and removal of public officers, and 51 O.S. 1991, Section 93, which relates to ouster of public officers; prohibiting confidentiality of indictment or information charging a public officer; requiring commencement or referral of proceedings for impeachment, removal, or ouster; adding to conduct which constitutes nepotism; clarifying and conforming language; prohibiting deferred prosecution agreements with public officers under certain circumstances; adding grounds for removal from office; making removal additional punishment; adding grounds for ouster from office; making ouster additional punishment; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 215.4a of Title 19, unless there is created a duplication in numbering, reads as follows:

In any matter in which a public officer is alleged to have committed a crime or to have engaged in conduct which would be grounds for impeachment, removal, or ouster of the public officer:

1. The district attorney shall not enter into any agreement to seal or otherwise keep confidential any indictment or information after it is filed; and

2. The district attorney shall take proper steps to commence or to refer to the proper authority for commencement of impeachment, removal, or ouster proceedings.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 481, is amended to read as follows:

Section 481. It shall be unlawful for any executive, legislative, ministerial, or judicial officer to appoint or vote for the appointment of any person related to him by affinity or

consanguinity within the third degree, to any clerkship, office, position, employment, or duty in any department of the state, district, county, city, or municipal government of which such executive, legislative, ministerial, or judicial officer is a member, when the salary, wages, pay, benefits, perquisites, or compensation of such appointee is to be paid out of the public funds or fees of such office~~. Provided~~; provided, however, that for the purposes of this chapter, a divorce of husband and wife shall terminate all relationship by affinity that existed by reason of the marriage, regardless of whether the marriage has resulted in issue who are still living.

SECTION 3. AMENDATORY 21 O.S. 1991, Section 482, is amended to read as follows:

Section 482. It shall be unlawful for any ~~such~~ executive, legislative, ministerial, or judicial officer ~~mentioned in the preceding section,~~ of any department of the state, district, county, city, or municipal government to draw or authorize the drawing of any warrant or authority for the payment out of any public fund, of the salary, wages, pay, benefits, perquisites, or compensation of any such ineligible person, and it shall be unlawful for any executive, legislative, ministerial, or judicial officer to pay out of any public funds in his custody or under his control the salary, wages, pay, benefits, or compensation of any such ineligible person.

SECTION 4. AMENDATORY 22 O.S. 1991, Section 305.1, is amended to read as follows:

Section 305.1 A. Before the filing of an information against a person accused of committing a crime, the ~~State of Oklahoma, through its~~ district attorney~~,~~ may agree with an accused to defer the filing of a criminal information for a period not to exceed two (2) years.

~~The State of Oklahoma~~ B. Except as provided in subsection C of this section, the district attorney may include any person in a deferred prosecution ~~program~~ agreement if it is in the best interests of the accused and not contrary to the public interest. Each district attorney shall adopt and promulgate guidelines which

shall indicate what factors shall be considered in including an accused in ~~the~~ a deferred prosecution ~~program~~ agreement. The guidelines shall insure that the ~~State of Oklahoma~~ district attorney considers in each case at least the following factors:

1. Whether the ~~State of Oklahoma~~ district attorney has sufficient evidence to achieve conviction;

2. The nature of the offense with priority given to first offenders and nonviolent crimes;

3. Any special characteristics of the accused;

4. Whether the accused will cooperate and benefit from a deferred prosecution program;

5. Whether available programs are appropriate to the accused person's needs;

6. Whether the services for the accused are more readily available from the community or from the corrections system;

7. Whether the accused constitutes a substantial danger to others;

8. The impact of the deferred prosecution on the community;

9. The recommendations of the law enforcement agency involved in the case;

10. The opinions of the victim; and

11. Any mitigating or aggravating circumstances.

C. The district attorney shall not enter into a deferred prosecution agreement with any public officer accused of a crime or of conduct which would be grounds for impeachment, removal, or ouster of the public officer.

SECTION 5. AMENDATORY 22 O.S. 1991, Section 1181, is amended to read as follows:

Section 1181. Any officer, not subject to impeachment, elected or appointed to any state, county, township, city, town, or other office under the laws of ~~the~~ this state may~~, in the manner provided in this article,~~ be removed from office for any of the following causes:

~~First.~~ 1. Habitual or willful neglect of duty~~.~~;

~~Second.~~ 2. Gross partiality in office~~.~~;

~~Third.~~ 3. Oppression in office~~.~~;

~~Fourth.~~ 4. Corruption in office~~.~~;

~~Fifth.~~ 5. Extortion or willful overcharge of fees in office.

~~Sixth.~~ 6. Willful maladministration~~.~~;

~~Seventh.~~ 7. Habitual drunkenness~~.~~;

~~Eighth.~~ 8. Failure to produce and account for all public funds and property in his hands, at any settlement or inspection authorized or required by law;

9. Misappropriation of public funds including, but not limited to, using or authorizing the use of public funds for the benefit of the officer or any person related to the officer within the third degree of affinity or consanguinity other than the compensation allowed by law; or

10. Violation of any nepotism law of this state.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1198 of Title 22, unless there is created a duplication in numbering, reads as follows:

Judgment of removal shall not prevent punishment of any officer removed on charges growing out of the same matter by the courts of this state.

SECTION 7. AMENDATORY 51 O.S. 1991, Section 93, is amended to read as follows:

Section 93. A. Official misconduct within the meaning of this ~~act~~ chapter is hereby defined to be:

1. Any willful failure or neglect to diligently and faithfully perform any duty enjoined upon such officer by the laws of this state.

2. Intoxication in any public place within the state produced by strong drink voluntarily taken.

3. Committing any act constituting a violation of any penal statute involving moral turpitude. Such an act has been committed, in the sense of this section, when the official involved has been convicted thereof by a court of record; and suspension from office as provided by Section 98 of this title shall be sought and is hereby authorized upon such conviction, even though the official so convicted has appealed such conviction.

4. Misappropriation of public funds including, but not limited to, using or authorizing the use of public funds for the benefit of the officer or any person related to the officer within the third degree of affinity or consanguinity other than the compensation allowed by law.

5. Violation of any nepotism law of this state.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 106 of Title 51, unless there is created a duplication in numbering, reads as follows:

Judgment of ouster shall not prevent punishment of any officer ousted on charges growing out of the same matter by the courts of this state.

SECTION 9. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

44-2-2009 MHR