

SHORT TITLE: Cities and towns; vacation of public ways or easements; codification; emergency.

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

SENATE BILL NO. 323

By: Gustafson

AS INTRODUCED

An Act relating to cities and towns; amending 11 O.S. 1991, Section 42-101, which relates to vacating plats and public ways; modifying definition; modifying procedure for vacating plats and public ways and providing procedure thereto; requiring owner to file application; authorizing governing body of municipality to alter or update platted tract; allowing title to certain vacated portion to pass to municipality for certain purposes; requiring notice and providing procedure thereto; requiring governing body of municipality to set date for hearing and provide notice of hearing; allowing persons or entities to resist application and providing procedure thereto; allowing governing body of municipality to alter and determine application under certain conditions; allowing vacation of entire plat under certain circumstances; allowing vacation of portions of plat under certain circumstances; stating circumstances under which governing body of municipality shall take action; allowing applicants to file applications in district court under certain circumstances; stating procedure for filing and hearing appeal; stating that an appeal stays certain proceedings; allowing the district court certain direction; prohibiting cost to be assessed

against municipality under certain circumstances; allowing an additional appeal; stating procedure for vacation of certain property; allowing governing body of municipality to approve and enter written order reflecting its ruling; requiring certain documents to be filed and providing procedure thereto; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 11 O.S. 1991, Section 42-101, is amended to read as follows:

Section 42-101. In Sections 42-101 through 42-115 of this title and Sections 2 through 7 of this act, the following terms shall have the meanings respectively provided for them in this section, unless the context otherwise requires:

1. "Close" means a legislative act of the governing body of a municipality discontinuing the public use of a public way or easement without affecting title to real property;

2. "Vacate" means the termination, by written instrument, as provided in Section 42-106 of this title, ~~or~~ judicial act of the district court or legislative act of a municipality, of private and/or public rights in a public way, easement or plat and vesting title in real estate in private ownership;

3. "Public way" means a street, avenue, boulevard, alley, lane or thoroughfare open for public use; and

4. "Easement" means rights in real property as set forth in Section 49 of Title 60 of the Oklahoma Statutes.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 42-116 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. If the owner of any tract of land located entirely within the corporate limits of any municipality, which is platted for municipal purposes, or the owner of any portion of such platted tract, desires to vacate the whole or some part thereof, or desires to vacate a platted street, alley, easement or portion thereof located entirely within the corporate limits of any municipality, the owner shall file an application setting forth his current address and briefly stating the reason for vacating, with the governing body of the municipality where the land is located.

B. Notwithstanding provisions in subsection A of this section, if the owner of any tract of land platted for municipal purposes for a public way desires to vacate some part thereof and the portion thus vacated would not obstruct the use of the balance of the tract as a street, avenue, alley, lane or thoroughfare open for public use, and which tract after vacation would remain bounded on all sides by land platted for municipal purposes, the owner may file an application with the governing body of the municipality where the property is located. The governing body of the municipality is authorized, upon application by such owner and upon showing that previous use of the tract as a street would remain unobstructed, to alter or vacate the platted tract or any part thereof.

C. In cases where a portion of a tract is vacated but remains bounded on all sides by public ways and public grounds, title to the portion vacated shall pass to the municipality or public entity created by the municipality for the purpose of managing, developing, maintaining or leasing, for any lawful purpose, public or private, the tract so vacated. The title to said tract shall remain with the municipality or other public entity until such time as any adjacent

tract comprising the public way or street is subsequently vacated and no longer used for a public purpose.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 42-117 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. In addition to any other requirements for notice provided by this section, notice of hearing shall be given to the public by one publication in some newspaper of general circulation in the municipality where the land is located. If there is no newspaper published in such municipality where the land is located, the publication may be in some newspaper of general circulation in the county where the land is located. Such notice shall be published at least thirty (30) days prior to the time when the application has been set for hearing by the governing body of the municipality.

B. The governing body of the municipality shall set a date for hearing on an application for vacation, not less than thirty-five (35) days nor more than sixty (60) days after the filing of the application. Notice of the hearing, with a copy of the application attached thereto, shall be served at least thirty (30) days prior to the date set for said hearing in the same manner as is provided for service of process in civil actions on:

1. The governing body of the municipality if the tract, street, alley, easement or portion thereof is inside the municipal limits;
2. The board of county commissioners; and
3. Any holder of a franchise and others having a special right or privilege granted by ordinance or legislative enactment to use the platted tract or portion thereof or street, alley, easement or portion thereof sought to be vacated.

C. Notice of the hearing shall be mailed by first class mail at least thirty (30) days prior to the date set for said hearing to:

1. All owners of land, as shown by the current year's tax rolls in the office of the county treasurer, within three hundred (300)

feet of the tract, street, alley, easement or portion thereof sought to be vacated; and

2. All persons, firms or corporations, not otherwise required to be notified, that are known by the applicant to claim an interest or right in the tract, street, alley, easement or portion thereof sought to be vacated.

Attached to any application shall be the certificate of a bonded abstractor listing the names and mailing addresses, as reflected by the current year's tax rolls in the office of the county treasurer, of all persons required to be notified herein.

D. The municipality, county, and any holder of a franchise or other special right or privilege, or any owner of any land required by this section to be notified, may resist the application by filing an objection showing the grounds therefor, as provided in Section 5 of this act. A copy of the objection shall be mailed to the applicant or applicants the date the objection is filed.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 42-118 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. If the applicant for vacation produces to the municipality satisfactory evidence that the service of notice, mailing, and notice of publication required by Section 42-103 of this title has been given, the governing body of the municipality shall proceed to hear and determine the application.

B. If the application shall be for the vacation of the entire plat, and no owner of any portion thereof or the holder of a franchise or other special right or privilege shall file a written objection to such vacation as specified in subsection A of Section 5 of this act, the entire plat may be vacated. If it shall appear that portions of the plat are not used or required for county or municipal purposes, or for the holder of a franchise or other special right or privilege, as platted, the governing body of the

municipality may vacate such portions thereof as will not injuriously affect the rights of owners of other portions of the plat or the public.

C. If the application shall be by the owner of a portion of the platted tract for the vacation of such portion only, or for the vacation of a street, alley, easement or portion thereof abutting such portion, the governing body of the municipality may vacate such portion or abutting street, alley, easement or portion thereof as will not injuriously affect the rights of owners of other portions of the plat or the public if it shall appear that:

1. The portion or abutting street, alley, easement or portion thereof desired to be vacated is either not used or not required for county or municipal purposes or for the use of the holder of a franchise or anyone having a special right or privilege granted by ordinance or legislative enactment;

2. The platted street, alley, easement or portion thereof on or across such portion has never been used by the public; or

3. The public has for more than ninety (90) days abandoned such by nonuser, or that the same has been enclosed and occupied adversely to the public for more than ninety (90) days.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 42-104.1 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. In the event a written objection to the vacation is filed with the municipality at least twenty-four (24) hours prior to the meeting at which the governing body of the municipality will consider the application for vacation excluding Saturdays, Sundays and holidays legally declared by the State of Oklahoma, the governing body of the municipality shall take no action with regard to the application. At that time, the applicant may file an application in the district court in the county where the public way is located requesting that the public way be vacated.

B. An appeal from any action, decision, ruling, judgment, or order of the governing body of the municipality as to the vacating of a public way, may be taken by any person or persons, jointly or severally aggrieved, or any taxpayer or any officer, department, board or bureau of the municipality to the district court in the county in which the situs of the municipality is located.

C. The appeal shall be taken by filing with the municipal clerk, within the time limits which may be fixed by ordinance, a notice of appeal. The notice shall specify the grounds for the appeal. No bond or deposit for cost shall be required for such appeal.

D. Upon filing the notice of appeal, the municipal clerk shall forthwith transmit to the court clerk the original, or certified copies, of all papers constituting the record in the case, together with the order, decision or ruling of the governing body of the municipality.

E. The appeal shall be heard and tried de novo in the district court. All issues in any proceedings under this section shall have preference over all other civil action and proceedings.

F. An appeal to the district court pursuant to this section stays all proceedings in furtherance of the action appealed from, unless the district orders otherwise, after notice to the municipality and all parties to the appeal, and upon due cause shown.

G. The district court may reverse or affirm, wholly or in part, or modify the decision brought up for review. Costs shall not be allowed against the municipality unless it shall appear to the district court that the municipality acted with gross negligence or in bad faith or with malice in making the decision appealed from. An appeal shall lie from the action of the district court as in all other civil actions.



SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 42-105.1 of Title 11, unless there is created a duplication in numbering, reads as follows:

If any person desires to vacate a public way, easement or right-of-way which is located, in whole or in part, outside the corporate limits of any municipality, the applicant shall file an application with the district court, and shall provide notice as required by Section 42-103 of Title 11 of the Oklahoma Statutes and the district court shall proceed to hear and determine the application, applying the provisions of Section 42-104 of Title 11 of the Oklahoma Statutes.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 42-119 of Title 11 unless there is created a duplication in numbering, reads as follows:

A. The governing body of the municipality shall approve and enter a written order reflecting its ruling, which shall be filed in duplicate with the municipal clerk. If the time to appeal expires without a notice of appeal being filed with the municipal clerk, the municipal clerk shall provide the applicant with one copy of the order, which may be filed with the county clerk's office.

B. Any decree or written instrument vacating a plat or portion thereof shall be filed and recorded in the office of the county clerk in the county where the land is situated. The clerk shall write in plain, legible letters across that part of the plat so vacated the word "Vacated". The clerk shall also note on the original plat a reference to the decree or instrument and the volume and page where recorded.

SECTION 8. 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.

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