

SHORT TITLE: Cities and towns; modifying Municipal Budget Act and prohibiting the sale of alcoholic beverage during certain time period; effective date.

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

SENATE BILL NO. 28

By: Easley

AS INTRODUCEDAn Act relating to cities and towns; amending 11 O.S. 1991, Sections 17-204, 27-104, 27-109 and 27-122.1, which relate to the Municipal Budget Act and municipal courts; modifying definitions; limiting fines imposed by certain municipal judges; allowing governing body authorize certain position; stating authority of county clerk or persons who serve as county clerk; amending 37 O.S. 1991, Sections 213, 591, as amended by Section 24, Chapter 361, O.S.L. 1994 and 592 (37 O.S. Supp. 1994, Section 591), which relate to nonintoxicating beverages and the Oklahoma Alcoholic Beverage Control Act; prohibiting certain licensed premises from remaining open or permitting certain persons to remain on the premises when sale of certain beverage is prohibited by current law and providing exception; stating hours during which premises of a mixed beverage licensee shall not remain open; prohibiting certain persons on the premises of a limited beverage licensee during certain hours and providing exception; stating hours during which premises of a bottle club licensee shall not remain open; prohibiting certain persons on the premises of a bottle club licensee during certain hours and providing exception; and providing an effective date.

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

SECTION 1. AMENDATORY 11 O.S. 1991, Section 17-204, is amended to read as follows:

Section 17-204. As used in this act:

1. "Account" means an entity for recording specific revenues or expenditures, or for grouping related or similar classes of revenues and expenditures and recording them within a fund or department;

2. "Appropriation" means an authorization and allocation of ~~money to be expended~~ revenues by the municipal governing body to provide money for a purpose the budget;

3. "Budget" means a plan of financial operations for a fiscal year, including an estimate of proposed expenditures for given purposes and the proposed means for financing them;

4. "Budget summary" means a tabular listing of revenues by source and expenditures by fund and by department within each fund for the budget year;

5. "Budget year" means the fiscal year for which a budget is prepared or being prepared;

6. "Chief executive officer" means the mayor of an aldermanic city or a strong-mayor-council city, the mayor of a town, or the city manager or chief administrative officer as it may be defined by applicable law, charter or ordinance;

7. "Current year" means the year in which the budget is prepared and adopted, or the fiscal year immediately preceding the budget year;

8. "Deficit" means the excess of the liabilities, reserves, contributions and encumbrances of a fund over its assets as reflected by its book of account;

9. "Department" means a functional unit within a fund which carries on a specific activity, such as a fire department or a police department within a general fund;

10. "Estimated revenue" means the amount of revenues estimated to be received during the budget year in each fund for which a budget is prepared. Revenue includes any appropriated fund balance in the budget of revenues for a fund for the budget year;

11. "Fiscal year" means the annual period for reporting fiscal operations which begins and ends on dates as the Legislature provides;

12. "Fund" means an independent fiscal and accounting entity with a self-balancing set of accounts to record cash and other financial resources, together with all liabilities, which are segregated for the purpose of carrying on specific activities or attaining certain objectives;

13. "Fund balance" means the excess of the assets of a fund over its liabilities, reserves, contributions and encumbrances, as reflected by its books of account;

14. "Governing body" means the city council of a city, the board of trustees of a town, or the legislative body of a municipality as it may be defined by applicable law or charter provision;

15. "Immediate prior fiscal year" means the year preceding the current year;

16. "Levy" means to impose ad valorem taxes or the total amount of ad valorem taxes for a purpose or entity;

17. "Operating reserve" means that portion of the fund balance which has not been appropriated in a budget year; and

18. "Municipality" means any incorporated city or town.

SECTION 2. AMENDATORY 11 O.S. 1991, Section 27-104, is amended to read as follows:

Section 27-104. A. The number of judges for each municipal court shall be determined by the governing body of the municipality where the court is established. The judge of each municipal court shall be appointed by the mayor of the municipality where the court is established, with the consent of the municipal governing body. The judge of any municipal court shall be licensed to practice law in Oklahoma, except as provided for in subsections B and C of this section. ~~He~~ The judge shall serve for a term of two (2) years, said

term expiring on a date fixed by ordinance, and until ~~his~~ a successor is appointed and qualified, unless removed by the vote of a majority of all members of the governing body for such cause as is provided for by law for the removal of public officers. Any appointment to fill a vacancy shall be for the unexpired term. Except in cities with a population of more than two hundred thousand (200,000), nothing in the provisions of this section shall be construed to prevent the judge from engaging in the practice of law in any other court during ~~his~~ tenure of office. The judge shall be paid a salary to be fixed by the municipal governing body. ~~He~~ The judge shall be paid in the same manner as other municipal officials.

B. In any municipality with a population of less than seven thousand five hundred (7,500), the mayor, with the consent of the governing body of the municipality, may appoint as judge:

1. An attorney licensed to practice law in Oklahoma, who resides in the county in which the municipality is located or in an adjacent county; or

2. An attorney licensed to practice law in Oklahoma who maintains a permanent office in the municipality; or

3. Any suitable person residing in the municipality or within twenty (20) miles of the boundaries of the municipality.

The mayor may be designated as judge of the municipal court upon approval of the governing body of the municipality.

C. In any municipality with a population of seven thousand five hundred (7,500) or more, if no attorney licensed to practice law in Oklahoma resides in the county or in an adjacent county in which the municipality is located, who is at the time of appointment willing to accept the appointment as judge, the mayor, with the consent of the governing body of the municipality, may appoint any suitable and proper person as judge.

D. If the judge of the municipal court is not a licensed attorney, the trial shall be to the court, and the court may not

impose a fine of more than Fifty Dollars (\$50.00), except as provided in subsection E of this section, and may not order the defendant imprisoned except for the nonpayment of fines or costs or both.

E. If the judge of the municipal court is not a licensed attorney in this state but has completed the mandatory continuing legal education courses held for municipal judges, the court may not impose a fine of more than One Hundred Dollars (\$100.00).

SECTION 3. AMENDATORY 11 O.S. 1991, Section 27-109, is amended to read as follows:

Section 27-109. The municipal clerk of any municipality where a municipal court is established, or a ~~deputy designated by him, or the chief municipal court officer, who is independent of the municipal police or judicial department, as established by the municipality~~ deputy shall be the clerk of the municipal court unless the governing body establishes or authorizes a position of chief municipal court officer to serve as court clerk.

The court clerk shall have authority to carry out the duties of the position as required by law; provided, that the person who serves as court clerk may separately perform other duties for the municipality. The clerk of the court shall:

1. Assist the judge in recording the proceedings of the court, preparation of writs, processes, or other papers;

2. Administer oaths required in judicial or other proceedings before the court;

3. Be responsible for the entry of all pleadings, processes, and proceedings in the dockets of the court;

4. Perform such other clerical duties in relation to the proceedings of the court as the judge shall direct; and

5. Receive and give receipt for and disburse or deliver to the municipal treasurer all fines, forfeitures, fees, deposits, and sums of money properly payable to the municipal court. Such funds and

sums of money while in the custody of the clerk shall be deposited and disbursed upon vouchers as directed by the municipal governing body.

SECTION 4. AMENDATORY 11 O.S. 1991, Section 27-122.1, is amended to read as follows:

Section 27-122.1 A. All sentences of imprisonment shall be executed by the chief of police of the municipality, and any person convicted of a violation of any ordinance of the municipality and sentenced to imprisonment shall be confined in the jail, farm or workhouse, of the municipality, in the discretion of the court, for the time specified in the sentence; provided, however, the court may, in lieu of imprisonment, order the defendant to engage in a term of community service without compensation. If the defendant fails to perform the required community service or if the conditions of community service are violated, the judge may impose a sentence of imprisonment, not to exceed the maximum sentence allowable for the violation for which the defendant was convicted.

B. The judge of the municipal court imposing a judgment and sentence, at ~~his~~ the judge's discretion, is empowered to modify, reduce, or suspend or defer the imposition of such sentence or any part thereof and to authorize probation for a period not to exceed six (6) months from the date of sentence, under such terms or conditions as the judge may specify. Procedures relating to suspension of the judgment or costs or both shall be as provided in Section 27-123 of Title 11 of the Oklahoma Statutes. Upon completion of the probation term, the defendant shall be discharged without a court judgment of guilt, and the verdict, judgment of guilty or plea of guilty shall be expunged from the record and said charge dismissed with prejudice to any further action. Upon a finding of the court that the conditions of probation have been violated, the municipal judge may enter a judgment of guilty.

C. The judge of the municipal court may continue or delay imposing a judgment and sentence for a period of time not to exceed six (6) months from the date of sentence. At the expiration of such period of time the judge may allow the municipal attorney to amend the charge to a lesser offense.

D. If a deferred sentence is imposed, an administrative fee of not to exceed One Hundred Dollars (\$100.00) may be imposed as costs in the case.

E. For purposes of this section, "judge of the municipal court" means a municipal court judge who is licensed to practice law in Oklahoma or a municipal court judge who is not licensed to practice law in this state but has completed the mandatory continuing legal education courses held for municipal judges; provided that the municipal court judge who is not licensed to practice law in this state may not order the defendant imprisoned.

SECTION 5. AMENDATORY 37 O.S. 1991, Section 213, is amended to read as follows:

Section 213. A. From and after the effective date of this act it shall be unlawful for any place licensed to sell beverages containing more than one-half of one percent (1/2 of 1%) of alcohol by volume and not more than three and two-tenths percent (3.2%) of alcohol by weight to sell, dispense, or serve such beverages for consumption on the premises between the hours of two o'clock a.m. and seven o'clock a.m. or allow such beverages to be consumed on the premises between the hours of two o'clock a.m. and seven o'clock a.m. excepting Saturday nights when such beverages may not be sold, dispensed, served, or consumed on the premises between the hours of two o'clock a.m. and twelve o'clock noon on Sundays; provided, the governing body of any city or town is hereby authorized to prohibit, by ordinance regularly enacted, the sale, dispensing, serving, and consumption of such beverages between the hours of two o'clock a.m. on Sunday and seven o'clock a.m. of the following Monday.

B. It shall be unlawful for any place licensed to sell beverages containing more than one-half of one percent (1/2 of 1%) of alcohol by volume and not more than three and two-tenths percent (3.2%) of alcohol by weight to remain open or permit any person other than the licensee or employee to remain on the premises during the hours that the sale, dispensing, serving, or consumption of the beverages is prohibited in subsection A of this section. Provided, however, that this prohibition shall not apply to restaurants which employ at least one full-time cook, have a menu and a fully equipped kitchen and serve food twenty-four (24) hours a day, and hotels and motels.

SECTION 6. AMENDATORY 37 O.S. 1991, Section 591, as amended by Section 24, Chapter 361, O.S.L. 1994 (37 O.S. Supp. 1994, Section 591), is amended to read as follows:

Section 591. A. No alcoholic beverages may be sold, dispensed, served or consumed on the premises of a mixed beverage or beer and wine licensee between the hours of 2:00 a.m. and 10:00 a.m.

B. No premises of a mixed beverage licensee shall remain open between the hours of 2:00 a.m. and 10:00 a.m. No mixed beverage licensee shall permit any person other than the licensee to remain on the premises between the hours of 2:00 a.m. and 10:00 a.m. Provided, however, the prohibitions within this subsection shall not apply to any hotel or motel or restaurant open and serving food twenty-four (24) hours per day.

C. Counties that elect to authorize sales of alcoholic beverages by the individual drink may designate any or all of the following days as days or portions thereof on which the sales of alcoholic beverages are not authorized:

1. On the first day of the week, commonly called Sunday;
  2. On the day of any national, state, county or city election, including primary elections, during the hours the polls are open;
- and

3. On Decoration or Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

SECTION 7. AMENDATORY 37 O.S. 1991, Section 592, is amended to read as follows:

Section 592. A. No alcoholic beverages may be dispensed, served or consumed on the premise of a bottle club licensee between the hours of 2:00 a.m. and 10:00 a.m.

B. No premises of a bottle club licensee shall remain open between the hours of 2:00 a.m. and 10:00 a.m. No bottle club licensee shall permit any person other than the licensee to remain on the premises between the hours of 2:00 a.m. and 10:00 a.m. Provided, however, the prohibitions within this subsection shall not apply to any hotel or motel or restaurant open and serving food twenty-four (24) hours per day.

SECTION 8. This act shall become effective November 1, 1995.

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