

ENGROSSED SENATE
BILL NO. 726

By: Henry of the Senate
and
Benson of the House

[Council on Judicial Complaints - Oklahoma Open
Meeting Act - Administrative Procedures Act -
emergency]

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

SECTION 1. AMENDATORY 20 O.S. 1991, Section 1651, as amended by Section 1, Chapter 368, O.S.L. 1998 (20 O.S. Supp. 1998, Section 1651), is amended to read as follows:

Section 1651. It is hereby ~~is~~ declared to be the public policy of this state:

1. To afford a means for efficiently and impartially investigating complaints by any person concerning the conduct of persons occupying positions subject to the jurisdiction of the Court on the Judiciary;

2. To provide an agency which can determine whether such complaints should:

- a. be made the subject of action before the Court on the Judiciary for the purpose of removal,
- ~~b. warrant a reprimand,~~ or admonition, or
- ~~e. b.~~ be dismissed;

3. To provide means for procuring necessary information to enable the agency to perform its functions, including the power to issue and enforce subpoenas to testify ~~and~~ or to produce tangible evidentiary materials; and

4. To better the administration of justice in this state through the means enumerated in Sections 1651 through ~~1661~~ 1662 of this title ~~and Section 10 of this act.~~

SECTION 2. AMENDATORY 20 O.S. 1991, Section 1652, as amended by Section 2, Chapter 368, O.S.L. 1998 (20 O.S. Supp. 1998, Section 1652), is amended to read as follows:

Section 1652. A. ~~There is created a~~ The Council on Judicial Complaints, is an agency in the Executive Department.

B. The Council shall not be subject to the provisions of the Oklahoma Sunset Law.

C. The Council shall not be subject to the provisions of the Oklahoma Open Meeting Act, ~~except when conducting hearings concerning complaints received and filed with the Council.~~

D. The Council shall be subject to the provisions of the Oklahoma Open Records Act to the extent provided in paragraph 2 of Section 24A.3 of Title 51 of the Oklahoma Statutes.

E. 1. Employees of the Council shall be in the unclassified service for the purposes of the Oklahoma Personnel Act.

2. Employees shall be members of the Oklahoma Public Employees Retirement System and shall be eligible to participate in employee benefit programs administered by the Oklahoma State and Education Employees Group Insurance Board.

3. Any person who is employed by the Council who is a state employee at the time he or she is hired by the Council shall retain and continue to accrue all state employee benefits without a break in service.

F. The Council shall not be subject to the provisions of the Records Management Act nor to the rules of the Archives and Records Commission.

SECTION 3. AMENDATORY 20 O.S. 1991, Section 1656, as amended by Section 5, Chapter 368, O.S.L. 1998 (20 O.S. Supp. 1998, Section 1656), is amended to read as follows:

Section 1656. A. The members of the Council on Judicial Complaints shall qualify by taking the constitutional oath of office.

B. The Council shall elect a chair and vice-chair. The chair and vice-chair shall serve for ~~such terms as~~ of office set by the Council ~~shall specify,~~ not ~~exceeding~~ to exceed their terms as members of the Council.

C. The Council shall ~~adopt rules pursuant~~ not be subject to the Administrative Procedures Act.

SECTION 4. AMENDATORY 20 O.S. 1991, Section 1658, as last amended by Section 7, Chapter 368, O.S.L. 1998 (20 O.S. Supp. 1998, Section 1658), is amended to read as follows:

Section 1658. The Council on Judicial Complaints shall promptly investigate all complaints received by it, and shall determine the proper disposition thereof, as provided in Sections 1651 through 1661 of this title. To that end, it shall have power to hold hearings, administer oaths or affirmations, receive testimony and other evidence, and issue and serve or cause to be served subpoenas requiring testimony or the production of books, records, papers or other tangible evidence ~~and, if approved by the Supreme Court, issue reprimands and admonitions.~~ Subject to funding limitations provided by law, the Council, as needed, may retain, by contract, a court reporter and, as needed, may retain an attorney by contract with either the Office of the Attorney General or other counsel. The Council is hereby authorized to require in aid of its investigatory functions the services of the Oklahoma State Bureau of Investigation as provided for in Section 150.34 of Title 74 of the Oklahoma Statutes or of any governmentally supported investigatory agency or, upon authorization of the Board of Governors of the Oklahoma Bar Association, of the services of the Oklahoma Bar Association. In the event of contemptuous refusal to obey its lawful orders, it may take ~~such steps as are~~ necessary to maintain order in its session;

as to contempt not affecting the maintenance of order, it shall certify the matter to the Chief Justice of the Supreme Court, who shall assign the case for trial and appropriate disposition to a judge of a district court. In ~~such~~ a contempt proceeding in district court, the counsel for the Council on Judicial Complaints shall act as prosecutor against the alleged contemnor. All proceedings under this section shall be held in secrecy to the same extent as proceedings before a grand jury; ~~provided however, a reprimand or admonition to a judge who shall have previously received a reprimand or admonition shall, at the discretion of the Council, be made public.~~

SECTION 5. AMENDATORY 20 O.S. 1991, Section 1659, as amended by Section 8, Chapter 368, O.S.L. 1998 (20 O.S. Supp. 1998, Section 1659), is amended to read as follows:

Section 1659. In the event the Council on Judicial Complaints finds that the complaint should be made the subject of proceedings before the Court on the Judiciary, it shall forward all papers concerning the same, together with its findings, to either the Supreme Court or the Chief Justice thereof, the Governor, the Attorney General, ~~or the Executive Secretary of the Board of Governors of the~~ Oklahoma Bar Association, or the House of Representatives, who shall promptly file a petition invoking the jurisdiction of the trial division of the Court on the Judiciary in accordance with subsection (a) of Section 4 of Article 7-A of the Constitution of Oklahoma; provided, however, filing by the Executive Secretary of the Oklahoma Bar Association shall be at the direction of the majority of the members of the Executive Council or by resolution of the House of Delegates of the Oklahoma Bar Association. Thereafter, the matter shall proceed in accordance with the applicable constitutional provisions, statutes, and rules of the ~~said~~ Court on the Judiciary.

SECTION 6. AMENDATORY 20 O.S. 1991, Section 1661, is amended to read as follows:

Section 1661. If, in any matter pending before the Council, a council member is disqualified to act for ~~the same reasons~~ a reason that would disqualify a judicial officer from sitting in a matter, the Council ~~shall so~~ may proceed to consider the matter, if a quorum is present, or may certify to the officer having the appointment of that member, who shall thereupon immediately appoint a special member to sit in that case, only. If the appointing officer makes no ~~such~~ appointment within ten (10) days after the mailing of the certification of disqualification to ~~him~~ the appointing officer, the Council shall appoint a special member.

SECTION 7. AMENDATORY 25 O.S. 1991, Section 304, as last amended by Section 3, Chapter 370, O.S.L. 1998 (25 O.S. Supp. 1998, Section 304), is amended to read as follows:

Section 304. As used in the Oklahoma Open Meeting Act:

1. "Public body" means the governing bodies of all municipalities located within the State of Oklahoma, boards of county commissioners of the counties in the State of Oklahoma, boards of public and higher education in the State of Oklahoma and all boards, bureaus, commissions, agencies, trusteeships, authorities, councils, committees, public trusts, task forces or study groups in the State of Oklahoma supported in whole or in part by public funds or entrusted with the expending of public funds, or administering public property, and shall include all committees or subcommittees of any public body. It shall not mean the state judiciary, the Council on Judicial Complaints, or the State Legislature or administrative staffs of public bodies, including, but not limited to, faculty meetings and athletic staff meetings of institutions of higher education when ~~said~~ those staffs are not meeting with the public body, or entry-year assistance committees, as defined in Section 6-152 of Title 70 of the Oklahoma Statutes.

Furthermore, it shall not mean the multidisciplinary team provided for in subsection ~~B~~ C of Section 1-502.2 of Title 63 of the Oklahoma Statutes or any school board meeting for the sole purpose of considering recommendations of said multidisciplinary team and deciding the placement of any child who is the subject of such recommendations. Furthermore, it shall not mean meetings conducted by stewards designated by the Oklahoma Horse Racing Commission pursuant to Section 203.4 of Title 3A of the Oklahoma Statutes when the stewards are officiating at races or otherwise enforcing rules of the Commission~~;~~;

2. "Meeting" means the conducting of business of a public body by a majority of its members being personally together or, as authorized by Section 307.1 of this title, together pursuant to a teleconference~~;~~;

3. "Regularly scheduled meeting" means a meeting at which the regular business of the public body is conducted~~;~~;

4. "Special meeting" means any meeting of a public body other than a regularly scheduled meeting or emergency meeting~~;~~;

5. "Emergency meeting" means any meeting called for the purpose of dealing with an emergency. For purposes of this act, an emergency is defined as a situation involving injury to persons or injury and damage to public or personal property or immediate financial loss when the time requirements for public notice of a special meeting would make such procedure impractical and increase the likelihood of injury or damage or immediate financial loss~~;~~;

6. "Continued or reconvened meeting" means a meeting which is assembled for the purpose of finishing business appearing on an agenda of a previous meeting. For the purposes of this act, only matters on the agenda of the previous meeting at which the announcement of the continuance is made may be discussed at a continued or reconvened meeting~~;~~; and

7. "Teleconference" means a conference among members of a public body remote from one another who are linked by interactive telecommunication devices permitting both visual and auditory communication between and among members of the public body and members of the public.

SECTION 8. AMENDATORY 75 O.S. 1991, Section 250.3, as last amended by Section 1, Chapter 239, O.S.L. 1998 (75 O.S. Supp. 1998, Section 250.3), is amended to read as follows:

Section 250.3 As used in the Administrative Procedures Act:

1. "Administrative head" means an official or agency body responsible pursuant to law for issuing final agency orders;

2. "Adopted" means that a proposed rule has been approved by the agency but has not been reviewed by the Legislature and the Governor;

3. "Agency" includes but is not limited to any constitutionally or statutorily created state board, bureau, commission, office, authority, public trust in which the state is a beneficiary, or interstate commission, except:

- a. the Legislature or any branch, committee or officer thereof, ~~and~~
- b. the courts, and
- c. the Council on Judicial Complaints;

4. "Final" or "finally adopted" means a rule other than an emergency rule, which has been approved by the Legislature and by the Governor, or approved by the Legislature pursuant to subsection B of Section 308 of this title and otherwise complies with the requirements of the Administrative Procedures Act but has not been published pursuant to Section 255 of this title;

5. "Final agency order" means an order that includes findings of fact and conclusions of law pursuant to Section 312 of this title, is dispositive of an individual proceeding unless there is a

request for rehearing, reopening, or reconsideration pursuant to Section 317 of this title and which is subject to judicial review;

6. "Hearing examiner" means a person meeting the qualifications specified by Article II of the Administrative Procedures Act and who has been duly appointed by an agency to hold hearings and, as required, render orders or proposed orders;

7. "Individual proceeding" means the formal process employed by an agency having jurisdiction by law to resolve issues of law or fact between parties and which results in the exercise of discretion of a judicial nature;

8. "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law;

9. "Office" means the Office of the Secretary of State;

10. "Order" means all or part of a formal or official decision made by an agency including but not limited to final agency orders;

11. "Party" means a person or agency named and participating, or properly seeking and entitled by law to participate, in an individual proceeding;

12. "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency;

13. "Political subdivision" means a county, city, incorporated town or school district within this state;

14. "Promulgated rule" means a finally adopted rule which has been filed and published in accordance with the provisions of the Administrative Procedures Act, an emergency rule or preemptory rule which has been approved by the Governor;

15. "Rule" means any agency statement or group of related statements of general applicability and future effect that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of the agency. The term "rule"

includes the amendment or revocation of an effective rule but does not include:

- a. the issuance, renewal, denial, suspension or revocation or other sanction of an individual specific license,
- b. the approval, disapproval or prescription of rates. For purposes of this subparagraph, the term "rates" shall not include fees or charges fixed by an agency for services provided by that agency including but not limited to fees charged for licensing, permitting, inspections or publications,
- c. statements and memoranda concerning only the internal management of an agency and not affecting private rights or procedures available to the public,
- d. declaratory rulings issued pursuant to Section 307 of this title,
- e. orders by an agency, or
- f. press releases or "agency news releases", provided such releases are not for the purpose of interpreting, implementing or prescribing law or agency policy;

16. "Rulemaking" means the process employed by an agency for the formulation of a rule; and

17. "Secretary" means the Secretary of 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.

Passed the Senate the 22nd day of February, 1999.

President of the Senate

Passed the House of Representatives the ____ day of _____ ,
1999.

Speaker of the House of
Representatives