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STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

HOUSE BILL 3276 By: Boles of the House

By: Boles of the House

and

Weaver of the Senate

AS INTRODUCED

An Act relating to cities and towns; amending 11 O.S. 2011, Section 34-104, as amended by Section 1, Chapter 166, O.S.L. 2012 (11 O.S. Supp. 2019, Section 34-104), which relates to disposition of property or money; modifying process for disposing of certain property or money; specifying certain notice is required; determining whether property was seized in connection to criminal investigation; specifying entity that shall file certain application; modifying required hearing timeline; modifying certain notice requirements; specifying entity to dispose of property; clarifying process involving sale or donation to third parties; authorizing transfer of certain currency; directing certain processes for disposition of property under other circumstances; authorizing certain notice; providing notice not required for property of certain value; providing that notice is effective under certain circumstances; and providing an effective date.

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

1 SECTION 1. AMENDATORY 11 O.S. 2011, Section 34-104, as
2 amended by Section 1, Chapter 166, O.S.L. 2012 (11 O.S. Supp. 2019,
3 Section 34-104), is amended to read as follows:

4 Section 34-104. A. Any chief of police or designee is
5 authorized to dispose of personal property or money or legal tender
6 as provided in this section or the ~~charter~~ ordinances of the
7 municipality, which has come into the possession of the ~~chief of~~
8 police ~~in any manner~~ department of the municipality if:

9 1. The owner of the personal property or money or legal tender
10 is unknown or has not claimed the property after any required
11 notice;

12 2. The property or money or legal tender has been in the
13 custody of the chief of police for at least ninety (90) days; and

14 3. The property or money or legal tender or any part thereof is
15 no longer needed to be held as evidence or for any other purpose in
16 connection with any litigation. In the event the property, money or
17 legal tender was seized by the police department in connection with
18 a criminal investigation or arrest, this determination shall be made
19 by the court which has jurisdiction over the criminal offense, if an
20 information or indictment is pending, pursuant to Section 1321 of
21 Title 22 of the Oklahoma Statutes, or by a prosecuting authority if
22 charges have been disposed of or have been declined.

23 B. The ~~chief of police shall~~ municipality may file an
24 application in the district court in which the situs of government

1 of the municipality is located requesting the authority of the court
2 to conduct a sale of the personal property which has a ~~fair~~ market
3 value ~~of more than its face value~~. The ~~chief of police shall attach~~
4 ~~to the application~~ shall contain a list describing the property
5 ~~including any identifying numbers and marks~~, the date the property
6 came into the possession of the ~~chief of police~~ municipality, and
7 the name of the owner and the person in last possession, if
8 different, and the address of the person, if known. The court shall
9 set the application for hearing not less than ~~ten (10)~~ fifteen (15)
10 days ~~nor more than twenty (20) days~~ after filing of the application.

11 C. In any instance where the property has an actual or apparent
12 value of more than Two Hundred Fifty Dollars (\$250.00), at least ~~ten~~
13 ~~(10)~~ eleven (11) days prior to the date of the hearing, written
14 notice of the hearing shall be sent by first-class mail, postage
15 prepaid, to each owner and person last in possession of the property
16 at the address as listed in the application. If the owner of any
17 property with an actual or apparent value exceeding Five Hundred
18 Dollars (\$500.00) is unable to be served written notice by first-
19 class mail, notice shall be provided by one publication at least
20 three (3) days prior to the hearing in a newspaper of general
21 circulation in the county where the property is in custody. The
22 notice shall contain ~~a brief description of the property of the~~
23 ~~owner and~~ the place and date of the hearing and a description of the
24 property, or the location of a list available for review during

1 business hours in which the property is described and any known
2 owner identified. The notice shall be posted at the assigned place
3 for the posting of municipal notices, and at two other public places
4 in the municipality.

5 D. If no owner appears and establishes ownership to the
6 property at the hearing, the court shall enter an order authorizing
7 the ~~chief of police~~ municipality to dispose of the property as
8 follows:

9 1. Donate the property having value of less than Five Hundred
10 Dollars (\$500.00) to a not-for-profit corporation as defined in
11 Title 18 of the Oklahoma Statutes for use by needy families;

12 2. Sell the personal property for cash to the highest bidder,
13 after at least five (5) days' notice of the sale has been published;

14 3. Transfer the property to a third-party agent under contract
15 with the ~~governing body of the chief of police~~ municipality for sale
16 by Internet or other electronic means, regardless of whether the
17 sale structure or distribution site is within the State of Oklahoma;
18 or

19 4. By any other means as determined appropriate by the court,
20 including but not limited to, destruction.

21 ~~Regardless of~~ If the means of disposition involve a sale or
22 donation to the third party, the chief of police or designee shall
23 make a return of the donation or sale and the order of the court
24 confirming the donation or sale shall vest title to the property in

1 the recipient or purchaser. After payment of court costs and other
2 expenses, the remainder of money received from the sale of the
3 personal property shall be deposited in the municipal general fund.

4 E. All money or legal tender which has come into the possession
5 of the ~~chief of police~~ municipality pursuant to the circumstances
6 provided for in subsection A of this section shall be transferred by
7 the chief of police or designee to the municipal clerk or municipal
8 treasurer for deposit in the municipal general fund. Prior to any
9 transfer, the ~~chief of police~~ municipality shall file an application
10 in the district court requesting the court to enter an order
11 authorizing the chief of police or designee to transfer the money
12 for deposit in the municipal general fund. The application shall
13 describe the money or legal tender, the date the same came into the
14 possession of the ~~chief of police~~ department, and the name of the
15 owner and the address of the owner, if known. Upon filing the
16 application which may be joined with an application as described in
17 subsection B of this section, a hearing shall be set not less than
18 ~~ten (10) days nor more than twenty (20)~~ fifteen (15) days from the
19 filing of the application. Notice of the hearing shall be given as
20 provided for in subsection C of this section. The notice shall
21 state that upon failure of anyone to appear to prove ownership to
22 the money or legal tender, the court shall order the same to be
23 deposited in the municipal general fund. The notice may be combined
24 with a notice to sell personal property as provided for in

1 subsection B of this section. If no one appears to claim and prove
2 ownership to the money or legal tender at the hearing, the court
3 shall order the same to be transferred to the municipal general fund
4 as provided in this subsection.

5 Notwithstanding any other provision of this section, if
6 authorized by ordinance, the municipality may transfer any currency
7 received into a depository account for the benefit of its known or
8 unknown owners prior to any court order for disposition of the money
9 or legal tender.

10 F. ~~The~~ Except as provided in this subsection, the provisions of
11 this section shall not apply to any dangerous or deadly weapons,
12 narcotic or poisonous drugs, explosives, or any property of any kind
13 or character, ~~which~~ the possession of which is prohibited by law.
14 By order of the trial court, any property filed as an exhibit or
15 held by the municipality as evidence or as contraband shall be
16 destroyed or sold or disposed of, pursuant to the conditions
17 prescribed in the order. To the extent the provisions of this
18 section do not apply, the court shall follow the procedures in
19 Section 1321 of Title 22 of the Oklahoma Statutes. No forfeiture
20 proceeding shall be necessary to authorize the destruction of
21 property that cannot be returned lawfully to its owner.

22 G. The municipality is hereby authorized to establish a
23 procedure for the registration of "lost and found" property. The
24 procedure shall give the finder of any property the option of

1 relinquishing any future claim to found property at the time its
2 possession is surrendered to the police or other agent of the
3 municipality, or of retaining possession of the property after
4 registering its description and the ~~finders~~ finder's identity with
5 the police department or other agent of the municipality. ~~Only~~ The
6 municipality may require that only property in which the finder
7 relinquishes any future claim to its ownership will be stored in
8 municipal police property rooms.

9 H. The municipality may provide by ordinance that a percentage
10 of the money or legal tender deposited in the municipal general fund
11 as provided in subsection D or E of this section may be paid as a
12 ~~finders~~ finder's fee for services rendered to any person who found
13 the unclaimed personal property or money or legal tender and
14 delivered it to, or registered it with, the chief of police or other
15 agent of the municipality.

16 I. The municipality may provide written notice at the time of
17 arrest or detention that certain property is available for return
18 within ninety (90) days, if the property was not seized as evidence.
19 If the property is or appears to be worth less than Two Hundred
20 Fifty Dollars (\$250.00), no further notice is required prior to
21 obtaining a court order for disposition of the property in
22 accordance with this section. A notice left with a detainee's
23 personal property at the detention facility shall be presumed to
24 have been returned to the detainee at the time of his or her release

1 and shall satisfy the officer's obligation to deliver a receipt to
2 the detainee in connection with an arrest for a public offense.

3 SECTION 2. This act shall become effective November 1, 2020.
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5 COMMITTEE REPORT BY: COMMITTEE ON COUNTY AND MUNICIPAL GOVERNMENT,
6 dated 02/27/2020 - DO PASS, As Coauthored.
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