

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 2600

By: Roberts (Sean)

COMMITTEE SUBSTITUTE

An Act relating to counties and county officers; providing for right of confidential communications with legal counsel; defining certain conduct to constitute conflict of interest; prescribing procedures for district attorney office based upon prior representation in certain matters; authorizing waiver of conflict; prescribing procedures for referral of matters to the Attorney General; providing for impeachment of district attorney for violation of requirements; providing certain conduct constitutes misuse of state funds; amending 19 O.S. 2011, Section 215.4, which relates to legal representation; providing for county to engage legal counsel; providing for approval by board of county commissioners; authorizing retention of separate counsel; amending 19 O.S. 2011, Section 215.5, which relates to advice to county officers; providing exception based on retention of separate counsel; authorizing retention of separate counsel; amending 19 O.S. 2011, Section 215.37M, which relates to contract with private attorneys; providing for discretion by board of county commissioners with respect to civil actions; providing special assistant district attorneys deemed agents of district attorney offices with respect to conflict of interest; amending 19 O.S. 2011, Section 431, which relates to certain appeals; modifying procedures related to appeals based on petition process; providing for codification; and declaring an emergency.

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

2 SECTION 1. NEW LAW A new section of law to be codified  
3 in the Oklahoma Statutes as Section 215.1A of Title 19, unless there  
4 is created a duplication in numbering, reads as follows:

5 A. All persons, in both their official capacities and their  
6 individual capacities, have a right to be able to speak  
7 confidentially to their legal counsel and receive confidential  
8 advice from that counsel. It is a conflict of interest for a  
9 district attorney's office to investigate or prosecute any person or  
10 entity, or the employees, trustees and agents of an entity, for whom  
11 the prosecutor's office has acted as legal counsel, whether that  
12 person or entity was acting in their official capacity or in their  
13 individual capacity.

14 B. If a district attorney's office becomes aware of potential  
15 criminal activity by a person or entity for whom the district  
16 attorney's office has acted at any time as legal counsel, the  
17 district attorney's office may:

18 1. Inform the person or entity, and ask if the person or entity  
19 wishes to waive the conflict of interest; or

20 2. Refer the matter to the Attorney General's office; or

21 3. Take no action.

22 C. If the person or entity waives the conflict of interest,  
23 then the district attorney's office may proceed with the  
24 investigation and/or prosecution.

1 D. If the district attorney's office refers the matter to the  
2 Attorney General, the Attorney General may:

- 3 1. Investigate and/or prosecute the matter; or
- 4 2. Refer the matter to a different district attorney's office
- 5 for investigation and/or prosecution; or
- 6 3. Take no action.

7 E. A district attorney whose office investigates and/or  
8 prosecutes a matter in violation of this act shall be subject to  
9 impeachment.

10 F. The use of state resources for an investigation and/or  
11 prosecution in violation of this act shall constitute a misuse of  
12 state funds. This section shall apply only to counties with a  
13 population exceeding two hundred fifty thousand (250,000).

14 SECTION 2. AMENDATORY 19 O.S. 2011, Section 215.4, is  
15 amended to read as follows:

16 Section 215.4 ~~The~~ Each county is entitled to counsel of its own  
17 choice, as determined by the board of county commissioners. Except  
18 where a county has retained separate counsel and then only for civil  
19 matters, not criminal matters, the district attorney, assistant  
20 district attorneys, or special assistant district attorneys  
21 authorized by subsection C of Section 215.37M of this title, shall  
22 appear in all trial courts and prosecute all actions for crime  
23 committed in the district, whether the venue is changed or not; the  
24 district attorney or assistant district attorneys shall prosecute or

1 defend in all courts, state and federal, in any county in this  
2 state, all civil actions or proceedings in which any county in the  
3 district is interested, or a party unless representation for the  
4 county is provided pursuant to subsection A of Section 215.37M of  
5 this title; and the district attorney or assistant district  
6 attorneys shall assist the grand jury, if required, pursuant to  
7 Section 215.13 of this title. The district attorney may at all  
8 times request the assistance of district attorneys, assistant  
9 district attorneys, district attorney investigators from other  
10 districts, or any attorney employed by the District Attorneys  
11 Council who then may appear and assist in the prosecution of actions  
12 for crime or assist in investigation of crime in like manner as  
13 assistants or investigators in the district. Nothing in this  
14 section shall be construed to inhibit county officers from retaining  
15 their own separate counsel as allowed by law. This section shall  
16 apply only to counties with a population exceeding two hundred fifty  
17 thousand (250,000).

18 SECTION 3. AMENDATORY 19 O.S. 2011, Section 215.5, is  
19 amended to read as follows:

20 Section 215.5 ~~The~~ Except where the county has retained separate  
21 counsel, the district attorney or his assistants shall give opinion  
22 and advice to the board of county commissioners and other civil  
23 officers of his counties when requested by such officers and boards,  
24 upon all matters in which any of the counties of his district are

1 interested, or relating to the duties of such boards or officers in  
2 which the state or counties may have an interest. Nothing in this  
3 section shall be construed to inhibit county officers from retaining  
4 their own separate counsel as allowed by law. This section shall  
5 apply only to counties with a population exceeding two hundred fifty  
6 thousand (250,000).

7 SECTION 4. AMENDATORY 19 O.S. 2011, Section 215.37M, is  
8 amended to read as follows:

9 Section 215.37M A. ~~If the district attorney and~~ At the  
10 discretion of the board of county commissioners of any county ~~agree~~,  
11 legal representation in any civil case in which the county is  
12 interested or a party and the district attorney is required to  
13 represent the county pursuant to Section 215.4 of this title may be  
14 provided by contract with a private attorney. The costs of such  
15 contract shall be paid by the board of county commissioners out of  
16 its account for general government operation, or other account, as  
17 may be appropriate.

18 B. ~~If the district attorney and~~ At the discretion of the board  
19 of county commissioners of any county ~~agree~~, legal representation in  
20 any civil case in which a county officer or employee is a party and  
21 the district attorney is required to represent the county pursuant  
22 to Section 215.25 of this title may be provided by contract with a  
23 private attorney. The costs of such contract shall be paid by the  
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1 board of county commissioners out of its account for general  
2 government operation, or other account, as may be appropriate.

3 C. If a district attorney and the District Attorneys Council  
4 agree, prosecution of any criminal matter may be provided by  
5 contract with an attorney not employed by a district attorney, who  
6 shall be designated as a special assistant district attorney, if the  
7 case load of the office of the district attorney is such that  
8 adequate representation of the interest of the state is not possible  
9 without appointment of one or more special assistant district  
10 attorneys. The special assistant district attorney shall be  
11 appointed by the district attorney. The special assistant district  
12 attorney may serve with or without compensation~~ti~~ however,  
13 compensation shall be allowed only if the cost of compensation can  
14 be paid out of funds for the current fiscal year, designated for the  
15 salaries and operating expenses, for the office of the district  
16 attorney requesting the appointment or appointments. No  
17 supplemental appropriations shall be authorized for appointment of  
18 special assistant district attorneys. A special assistant district  
19 attorney appointed by the district attorney shall be deemed an agent  
20 of the district attorney's office in determining whether a conflict  
21 of interest exists pursuant to this act.

22 D. If the district attorney and the board of education of any  
23 school district agree, legal representation in any ad valorem tax  
24 matter in which the district attorney is required to represent the

1 school district may be assisted by an attorney employed or retained  
2 by the school district. The board of education is authorized to pay  
3 the costs of such representation out of its account for general  
4 government operation, or other account, as may be appropriate.  
5 However, this subsection shall not be construed to permit a school  
6 district or any other entity to be a party to the proceeding or give  
7 standing to such entity to be a party to the civil case in which the  
8 county is interested. This section shall apply only to counties  
9 with a population exceeding two hundred fifty thousand (250,000).

10 SECTION 5. AMENDATORY 19 O.S. 2011, Section 431, is  
11 amended to read as follows:

12 Section 431. From all decisions of the board of commissioners,  
13 upon matters properly before them, there shall be allowed an appeal  
14 to the district court by any persons aggrieved, ~~including the county~~  
15 ~~by its district attorney,~~ upon filing a bond with sufficient  
16 penalty, and one or more sureties to be approved by the county  
17 clerk, conditioned that the appellant will prosecute his or her  
18 appeal without delay, and pay all cost that he or she may be  
19 adjudged to pay in the said district court; said bond shall be  
20 executed to the county, and may be sued in the name of the county  
21 upon breach of any condition therein; ~~provided, that the district~~  
22 ~~attorney, upon the written demand of at least fifteen (15)~~  
23 ~~freeholders of the county, shall take an appeal from any action of~~  
24 ~~the board of county commissioners when said action relates to the~~

1 ~~interest or affairs of the county at large or any portion thereof,~~  
2 ~~in the name of the county, when he deems it to the interest of the~~  
3 ~~county so to do; and in such case no bond shall be required or given~~  
4 ~~and upon serving the notice provided for in the next section the~~  
5 ~~county clerk shall proceed the same as if a bond had been filed;~~  
6 ~~provided, further, that if the district attorney shall fail or~~  
7 ~~refuse to appeal after the written demand of the said fifteen (15)~~  
8 ~~freeholders, then any.~~ Any resident taxpayer of the county may be  
9 considered a person aggrieved and may appeal upon filing a bond with  
10 sufficient penalty, as provided in the foregoing portion of this  
11 paragraph. This section shall apply only to counties with a  
12 population exceeding two hundred fifty thousand (250,000).

13 SECTION 6. It being immediately necessary for the preservation  
14 of the public peace, health or safety, an emergency is hereby  
15 declared to exist, by reason whereof this act shall take effect and  
16 be in full force from and after its passage and approval.

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