

LEGISLATIVE BILL 601

Approved by the Governor April 23, 1987

Introduced by Miller, 37

AN ACT relating to county courts; to amend sections 72-240.14, 76-706, 76-710, 76-711, 76-712, 76-715.01, 76-723, and 77-2019, Reissue Revised Statutes of Nebraska, 1943, and section 24-519, Revised Statutes Supplement, 1986; to change requirements for issuance of certain warrants by clerk magistrates; to provide powers to clerk magistrates relating to garnishment proceedings and the appointment of certain appraisers; to change certain condemnation procedures; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 24-519, Revised Statutes Supplement, 1986, be amended to read as follows:

24-519. Clerk magistrates shall have authority to perform the following duties:

(1) To conduct any proceeding which is based on a misdemeanor, traffic infraction, violation of a city or village ordinance, or traffic violation or infraction under the laws of this state, except the trial of defendants who plead not guilty or for whom a not guilty plea has been entered. Any penalty imposed under this subdivision shall be made pursuant to a schedule established by the Supreme Court. Such schedule shall not provide for imprisonment;

(2) To conduct any proceeding for the issuance of warrants for arrest or for searches and seizures when no county or district judge is available in the county; ~~the county or district judge serving the county is not available by telephone at the time of the issuance of the warrant; and the issuance of such warrant is an emergency;~~

(3) To hear and determine any nonfelony proceeding for preliminary examination to determine probable cause or the release on bail of persons charged with bailable offenses;

(4) To determine temporary custody of a juvenile pursuant to section 43-253. An order of a clerk magistrate shall be reviewed by the county judge

upon the written request of any party to the action within ten days of the order. Such order may be affirmed, modified, or set aside by the county judge; and

(5) To hear and determine noncontested proceedings relating to decedents' estates, inheritance tax matters, and guardianship or conservatorship, except that matters relating to the construction of wills and trusts, the determination of title to real estate, and an authorization of the sale or mortgaging of real estate shall not be heard by a clerk magistrate; and

(6) To enter orders for hearings and trials, including orders for garnishment and hearings on distribution of garnished funds.

Sec. 2. That section 72-240.14, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

72-240.14. (1) Upon the filing of a petition under section 72-240.13, the county judge or clerk magistrate, within three days by order entered of record, shall appoint three disinterested freeholders of the county, not holders of leases of school lands, to serve as appraisers. The county judge or clerk magistrate shall direct the sheriff to summon the appraisers so selected to convene in the office of the county judge at a time specified in the summons for the purpose of qualifying as appraisers; and thereafter proceed to appraise the value of the permitted improvements to the land and growing crops owned by the lessee at the time of termination of the occupying tenant's lease.

(2) Notice of the appointment of the appraisers; and of the time and place of the meeting of the board of appraisers to have the value of the permitted improvements to the land and growing crops assessed; shall be served upon both the board and the lessee by registered or certified mail at their last-known mailing address addresses at least ten days prior to the meeting of the board of appraisers.

Sec. 3. That section 76-706, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-706. Upon filing of a petition under either section 76-704 or 76-705, the county judge or clerk magistrate, within three days by order entered of record, shall appoint three disinterested freeholders of the county, not interested in a like question, to serve as appraisers. One appraiser so appointed shall be a real estate appraiser licensed under sections 81-8,276

to 81-8,287, except , PROVIDED, that if the county judge shall find finds that no licensed real estate appraiser is a disinterested freeholder of the county, this requirement shall not apply. The county judge or clerk magistrate shall direct the sheriff to summon the appraisers so selected to convene at the office of the county judge at a time specified in the summons for the purpose of qualifying as appraisers, and thereafter proceed to appraise the property sought to be condemned and to ascertain and determine the damages sustained by the condemnee. Notice of intention to acquire the property, and of the time and place of meeting of the board of appraisers to have the damages assessed, shall be served upon the condemnee at least ten days prior to the meeting of the board of appraisers. Service of such notice shall be made in the manner provided for service of a summons in a civil action.

Sec. 4. That section 76-710, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-710. After the inspection, view, and hearing provided for in section 76-709 have been completed, the appraisers shall assess the damages that the condemnee has sustained or will sustain by the appropriation of the property to the use of the condemner, and make and file a report thereof in writing with the county judge court. In assessing such damages in cases in which the appropriation consists of taking an easement, the assessment of damages shall include damages for fences and crops destroyed or damaged by reason of the original construction of the improvement. Damage to fencing and crops, occurring after the original construction and resulting from the operation or maintenance of the improvement, shall not be included in such assessment, but shall be determined by agreement of the parties and paid to the owner or lessee by the condemner or its successors and assigns at the time such fencing or crops are damaged. Upon failure of the parties to agree, such damages may be determined in the same manner as provided under sections 76-701 to 76-724. A copy of the appraisers' report shall be transmitted to the condemnee.

The transmission shall be made by the county judge court within ten days of the return of appraisers and shall be by personal delivery or the sending by ordinary mail of such copy to the condemnee, or to the attorney representing the condemnee at the inspection, view, and hearing, or to the officer or representative of a corporate condemnee so present. When , and where

title or interest in a single parcel of land is held by several condemnees the transmission of such copy to any one of such owners of interest shall be considered compliance ~~herewith with such requirement~~. The county judge court shall record in the files of the proceedings the date, the person, his or her interest, and the manner of such transmission. Failure of transmission shall not be jurisdictional, but shall extend the condemnee's time of appeal to twenty days after such transmittal is finally made.

Sec. 5. That section 76-711, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-711. The condemner shall not acquire any interest in or right to possession of the property condemned until he or she has deposited with the county judge court for the use of the condemnee the amount of the condemnation award in effect at the time the deposit is made. The condemner shall have sixty days from the date of the award of the appraisers to deposit with the county judge court the amount of the award or the proceeding will be considered as abandoned. When the amount of the award is deposited with the county judge court by the condemner, the condemner will be deemed to have accepted the award, unless he or she gives notice of appeal from the award of the appraisers pursuant to section 76-715. If the proceeding is abandoned, proceedings may not again be instituted by the condemner to condemn the property within two years from the date of abandonment. If an appeal is taken from the award of the appraisers by the condemnee and the condemnee obtains a greater amount than that allowed by the appraisers, the condemnee shall be entitled to interest from the date of the deposit ~~with the county judge at the rate provided in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, compounded annually, on the amount finally allowed, less interest at the same rate on the amount withdrawn, or on the amount which the condemner offers to stipulate for withdrawal, as provided by the provisions of section 76-719.01.~~ If an appeal is taken from the award of the appraisers by the condemner, the condemnee shall be entitled to interest from the date of deposit ~~with the county judge at the rate provided in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, compounded annually, on the amount finally allowed, less interest at the same rate on the amount withdrawn, or on the amount which the condemner offers to stipulate for withdrawal as agreed to by the~~

condemnee, as provided by section 76-719.01, which provision shall apply to all appeals by the condemner or condemnee pending on June 6, 1961. Upon deposit of the condemnation award with the county judge court, the condemner shall be entitled to a writ of assistance to place him or her in possession of the property condemned.

Sec. 6. That section 76-712, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-712. Upon deposit of the condemnation award, the county judge court shall prepare and certify under his seal of office a true copy thereof, and shall transmit the same to the register of deeds of the county where any real estate or interest therein is condemned and to the county clerk of the county where personal property only is condemned. Where When real estate or personal property in two or more counties is condemned, a certified copy of the condemnation award shall be filed in each county where any property is situated. The amount of the condemnation award in all condemnation proceedings for the state highway system established by Chapter 39, article 13, or for any highway or urban extension thereof which is a part of the National System of Interstate and Defense Highways as defined in the Federal Aid Highway Act of 1956, and qualified for federal aid thereunder, must shall be deposited with the county judge court within sixty days from the filing of the appraisers' award. In such proceedings, if the condemner fails to make such deposit within sixty days from the filing of the appraisers' award, the condemner shall be deemed to have abandoned the condemnation proceeding.

Sec. 7. That section 76-715.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-715.01. The party appealing from the award for assessment of damages by the appraisers in any eminent domain action shall, within thirty days of the filing of the award, file a notice of appeal with the county judge court, specifying the parties taking the appeal and the award thereof appealed from, and shall serve a copy of the same upon all parties bound by the award or upon their attorneys of record. Service may be made by mail, and proof of such service shall be made by an affidavit of the appellant filed with the county judge court within five days after the filing of the notice stating that such notice of appeal was duly mailed, or that after diligent search that the addresses

of such persons or their attorneys of record are unknown.

Sec. 8. That section 76-723, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-723. The appraisers shall each receive a reasonable fee for their services, to be fixed by the county judge or clerk magistrate, and the same shall be taxed as costs. ~~The ; PROVIDED, that the~~ condemner may appeal from the allowance of any fee so fixed to the district court. ~~Such ; AND PROVIDED FURTHER, that such~~ an appeal shall be docketed apart from and shall be considered separately and independently from the rights between the condemnee and condemner. All costs of the first appraisal shall be paid by the condemner.

Sec. 9. That section 77-2019, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2019. In order to fix the value of property subject to the payment of said the inheritance tax, the county judge may appoint a clerk magistrate or some other competent person, or the clerk magistrate may appoint a competent person, as appraiser as often as or whenever occasion may require, except that when real estate is to be appraised by a competent person other than a county judge or a clerk magistrate, the county judge or clerk magistrate shall appoint a real estate appraiser licensed under sections 81-8,276 to 81-8,287, but if the county judge ~~shall find or clerk magistrate finds~~ that no licensed real estate appraiser is a disinterested freeholder of the county, some other competent person may be appointed.

Sec. 10. That original sections 72-240.14, 76-706, 76-710, 76-711, 76-712, 76-715.01, 76-723, and 77-2019, Reissue Revised Statutes of Nebraska, 1943, and section 24-519, Revised Statutes Supplement, 1986, are repealed.