

LEGISLATIVE BILL 441

Approved by the Governor May 26, 2009

Introduced by Council, 11; Cook, 13.

FOR AN ACT relating to transcripts; to amend sections 14-813, 15-1202, 15-1203, 15-1204, and 19-2424, Reissue Revised Statutes of Nebraska; to change provisions relating to the costs of transcripts of certain municipal proceedings; and to repeal the original sections.

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

Section 1. Section 14-813, Reissue Revised Statutes of Nebraska, is amended to read:

14-813 Whenever the right of appeal is conferred by this act, the procedure, unless otherwise provided, shall be substantially as follows: The claimant or appellant shall, within twenty days ~~from~~ after the date of the order complained of, execute a bond to such city with sufficient surety to be approved by the clerk, conditioned for the faithful prosecution of such appeal, and the payment of all costs adjudged against the appellant. Such bond shall be filed in the office of the city clerk. ~~It shall be the duty of the city clerk, on payment or tender to him of the costs of the transcript, at the rate of ten cents per hundred words, to prepare~~ Upon the request of the appellant and the payment by the appellant to the city clerk or his or her designee of the estimated cost of preparation of the transcript, the city clerk shall cause a complete transcript of the proceedings of the city relating to ~~their~~ its decision thereon, to be prepared. The cost of preparing the transcript shall be calculated in the same manner as the calculation of the fee for a court reporter for the preparation of a bill of exceptions as specified by rules of practice prescribed by the Supreme Court. At such time as the completed transcript is presented to the appellant, the appellant shall pay the amount of the cost of preparation in excess of the estimated amount already paid or shall receive a refund of any amount in excess of the actual cost. An appellant determined to be indigent shall not be required to pay a bond or any costs associated with such transcript preparation. For purposes of this section, indigent means the inability to financially pursue the appeal without prejudicing the appellant's ability to provide economic necessities for the appellant or the appellant's family. Indigency shall be determined by the court having jurisdiction over the appeal upon motion of the appellant. The court shall make a reasonable inquiry to determine the appellant's financial condition and shall consider such factors as the appellant's income, the availability to the appellant of other resources, including real and personal property, bank accounts, social security benefits, and unemployment or other benefits, the appellant's normal living expenses, the appellant's outstanding debts, the number and age of the appellant's dependents, and other relevant circumstances. It shall be the duty of the claimant or appellant to file a petition in the district court as in the commencement of an action within thirty days ~~from~~ after the date of the order or award appealed from, and he or she shall also file such transcript before answer day. The proceedings of the district court shall thereafter be the same as on appeal from the county board. Any taxpayer may appeal from the allowance of any claim against the city by giving a bond and complying with the foregoing provisions, ~~PROVIDED, the foregoing provisions~~ this section.

This section shall not be so construed as to prevent the city council from once reconsidering ~~their~~ its action on any claim or award upon ten days' notice to the parties interested.

Sec. 2. Section 15-1202, Reissue Revised Statutes of Nebraska, is amended to read:

15-1202 (1) The party appealing shall within thirty days ~~from~~ after the date of the order or decision complained of+(1) File (a) file a notice of appeal with the city clerk specifying the parties taking the appeal and the order or decision appealed from and ~~shall~~ serve a copy of the notice upon the city attorney and (b) deposit the fees and bond or undertaking required pursuant to subsection (2) of this section or file an affidavit pursuant to subsection (3) of this section. The notice of appeal shall serve as a praecipe for a transcript.+

(2) Except as provided in subsection (3) of this section, the appellant shall:

~~(2)~~ (a) Deposit with the city clerk a docket fee in the amount of the filing fee in district court for cases originally commenced in district court;

~~(3)~~ (b) Deposit with the city clerk a cash bond or undertaking with

at least one good and sufficient surety approved by the city clerk, in the amount of two hundred dollars, on condition that the appellant will satisfy any judgment and costs that may be adjudged against him or her; and

~~(4) (c) Deposit with the city clerk the fees for the preparation of a certified and complete transcript of the proceedings of the city relating to the order or decision appealed.~~

(3) (a) An appellant may file with the city clerk an affidavit alleging that the appellant is indigent. The filing of such an affidavit shall relieve the appellant of the duty to deposit any fee, bond, or undertaking required by subsection (2) of this section as a condition for the preparation of the transcript or the perfecting of the appeal by the appellant subject to the determination of the court as provided in section 15-1204. In conjunction with the filing of the petition for appeal as provided for in section 15-1204, the appellant shall file a copy of the affidavit alleging his or her indigency and the district court shall rule upon the issue of indigency prior to the consideration of any other matter relating to the appeal as provided in section 15-1204.

(b) An appellant determined to be indigent under this subsection shall not be required to deposit any fee, bond, or undertaking required by subsection (2) of this section. For purposes of this section, indigent means the inability to financially pursue the appeal without prejudicing the appellant's ability to provide economic necessities for the appellant or the appellant's family.

(c) An appellant determined not to be indigent shall, within thirty days after the determination, deposit with the city clerk the fees and bond or undertaking required by subsection (2) of this section. The appeal shall not proceed further until the city clerk notifies the court that the appropriate deposit has been made.

Sec. 3. Section 15-1203, Reissue Revised Statutes of Nebraska, is amended to read:

15-1203 The (1) Except as provided in subsection (2) of this section, the city clerk, on payment to him or her of the costs of the transcript, shall transmit within fifteen days to the clerk of the district court the docket fee and a certified and complete transcript of the proceedings of the city relating to the order or decision appealed. After receipt of such fee and transcript, the clerk of the district court shall docket the appeal.

(2) If the appellant files an affidavit alleging that he or she is indigent pursuant to section 15-1202, the city clerk shall transmit within fifteen days to the clerk of the district court a certified and complete transcript of the proceedings of the city relating to the order or decision appealed. After receipt of the transcript, the clerk of the district court shall docket the appeal.

Sec. 4. Section 15-1204, Reissue Revised Statutes of Nebraska, is amended to read:

15-1204 (1) The party appealing shall file a petition within thirty days ~~from~~ after the date the transcript is filed in the district court.

Satisfaction (2) Except as provided in subsection (3) of this section, satisfaction of the requirements of subsections (1) and (2) of section 15-1202 and subsection (1) of this section shall perfect the appeal and give the district court jurisdiction of the matter appealed.

(3) Indigency shall be determined by the district court having jurisdiction of the appeal upon motion of the appellant before the court considers any other matter relating to the appeal. The court shall make a reasonable inquiry to determine the appellant's financial condition and shall consider such factors as the appellant's income, the availability to the appellant of other resources, including real and personal property, bank accounts, social security benefits, and unemployment or other benefits, the appellant's normal living expenses, the appellant's outstanding debts, the number and age of the appellant's dependents, and other relevant circumstances. If the appellant is deemed to be indigent, the satisfaction of the requirements of subsections (1) and (3) of section 15-1202 and subsection (1) of this section shall perfect the appeal and give the district court jurisdiction of the matter appealed.

Sec. 5. Section 19-2424, Reissue Revised Statutes of Nebraska, is amended to read:

19-2424 It shall be the duty of (1) Upon the request of the owner appealing a special assessment and the payment by him or her of the estimated cost of preparation of the transcript to the city or village clerk or such clerk's designee, the city or village clerk, on tender or payment to him of the cost of preparing the transcript at the rate of ten cents per one hundred

words, to prepare shall cause a complete transcript of the proceedings before such city or village to be prepared. The cost of preparing the transcript shall be calculated in the same manner as the calculation of the fee for a court reporter for the preparation of a bill of exceptions as specified by rules of practice prescribed by the Supreme Court. At such time as the completed transcript is provided to the appellant, the appellant shall pay the amount of the cost of preparation which is in excess of the estimated cost already paid or shall receive a refund of any amount in excess of the actual cost. An appellant determined to be indigent shall not be required to pay any costs associated with such transcript preparation.

(2) For purposes of this section, indigent means the inability to financially pursue the appeal without prejudicing the appellant's ability to provide economic necessities for the appellant or the appellant's family. Indigency shall be determined by the court having jurisdiction over the appeal upon motion of the appellant. The court shall make a reasonable inquiry to determine the appellant's financial condition and shall consider such factors as the appellant's income, the availability to the appellant of other resources, including real and personal property, bank accounts, social security benefits, and unemployment or other benefits, the appellant's normal living expenses, the appellant's outstanding debts, the number and age of the appellant's dependents, and other relevant circumstances.

Sec. 6. Original sections 14-813, 15-1202, 15-1203, 15-1204, and 19-2424, Reissue Revised Statutes of Nebraska, are repealed.