

NORTH CAROLINA GENERAL ASSEMBLY
1971 SESSION

CHAPTER 363
SENATE BILL 94

AN ACT TO REPEAL VARIOUS OBSOLETE SECTIONS OF GENERAL STATUTES CHAPTER 2, (CLERK OF SUPERIOR COURT), AND TO REVISE THE REMAINING SECTIONS AND TRANSFER THEM TO CHAPTER 7A(THE JUDICIAL DEPARTMENT).

The General Assembly of North Carolina do enact:

Section 1. G.S. 2-2, 2-5, 2-6, 2-24, and 2-25 are revised, combined, and transferred to G.S. Chapter 7A, Article 12, to read as follows:

"§ 7A-100. **Election; term of office; oath; vacancy; office and office hours.** — (a) A clerk of the superior court for each county shall be elected by the qualified voters thereof, to hold office for a term of four years, in the manner prescribed by Chapter 163 of the General Statutes. The clerk, before entering on the duties of his office, shall take the oath of office prescribed by law. If the office of clerk of superior court becomes vacant otherwise than by the expiration of the term, or if the people fail to elect a clerk, the senior regular resident superior court judge for the county shall fill the vacancy by appointment until an election can be regularly held.

(b) The county commissioners shall provide an office for the clerk in the courthouse or other suitable place in the county seat. The clerk shall observe such office hours and holidays as may be directed by the Administrative Officer of the Courts."

Sec. 2. G.S. 2-10, 2-12, 2-13, and 2-15 are revised, combined, and transferred to Chapter 7A and there combined with G.S. 7A-102, which is also revised, to read as follows:

"§ 7A-102 **Assistant and deputy clerks; appointment; number; salaries; duties.** — (a) The numbers and salaries of assistant clerks, deputy clerks, and other employees in the office of each clerk of superior court shall be determined by the Administrative Officer of the Courts after consultation with the clerk concerned. All personnel in the clerk's office are employees of the State. The clerk appoints the assistants, deputies, and other employees in his office to serve at his pleasure. Assistant and deputy clerks shall take the oath of office prescribed for clerks of superior court, conformed to the office of assistant or deputy clerk, as the case may be.

(b) An assistant clerk is authorized to perform all the duties and functions of the office of clerk of superior court, and any act of an assistant clerk is entitled to the same faith and credit as that of the clerk. A deputy clerk is authorized to certify the existence and correctness of any record in the clerk's office and to perform any other ministerial act which the clerk may be authorized and empowered to do, in his own name and without reciting the name of his principal. The clerk is responsible for the acts of his assistants and deputies."

Sec 3. G.S. 2-16 is revised and transferred to Chapter 7A, to read as follows:

"§ 7A-103. **Authority of clerk of superior court.** — The clerk of superior court is authorized to

- (1) Issue subpoenas to compel the attendance of any witness residing or being in the State, or to compel the production of any document or paper, material to any inquiry in his court.
- (2) Administer oaths, and to take acknowledgment and proof of the execution of all instruments or writings.

- (3) Issue commissions to take the testimony of any witness within or without the State.
- (4) Issue citations and orders to show cause to parties in all matters cognizable in his court, and to compel the appearance of such parties.
- (5) Enforce all lawful orders and decrees, by execution or otherwise, against those who fail to comply therewith or to execute lawful process. Process may be issued by the clerk to be executed in any county of the State, and to be returned before him.
- (6) Certify and exemplify, under seal of his court, all documents, papers or records therein, which shall be received in evidence in all the courts of the State.
- (7) Preserve order in his court and to punish contempts.
- (8) Adjourn any proceeding pending before him from time to time.
- (9) Open, vacate, modify, set aside, or enter as of a former time, decrees or orders of his court.
- (10) Enter default or judgment in any action or proceeding pending in his court as authorized by law.
- (11) Award costs and disbursements as prescribed by law, to be paid personally, or out of the estate or fund, in any proceeding before him.
- (12) Compel an accounting by magistrates and compel the return to the clerk of superior court by the person having possession thereof, of all money, records, papers, dockets and books held by such magistrate by virtue or color of his office.
- (13) Grant and revoke letters testamentary, letters of administration, and letters of trusteeship.
- (14) Appoint and remove guardians and trustees, as provided by law.
- (15) Audit the accounts of fiduciaries, as required by law.
- (16) Exercise jurisdiction conferred on him in every other case prescribed by law."

Sec. 4. G.S. 2-17, 2-19, 2-20, and 2-21 are revised, combined, and transferred to Chapter 7A to read as follows:

"§ 7A-104. Disqualification; waiver, removal; when judge acts. — (a) The clerk shall not exercise any judicial powers in relation to any estate, proceeding, or civil action:

- (1) if he has, or claims to have, an interest by distribution, by will, or as creditor or otherwise;
- (2) if he is so related to any person having or claiming such an interest that he would, by reason of such relationship, be disqualified as a juror, but the disqualification on this ground ceases unless the objection is made at the first hearing of the matter before him;
- (3) if he or his wife is a party or a subscribing witness to any deed of conveyance, testamentary paper or nuncupative will, but this disqualification ceases when such deed, testamentary paper, or will has been finally admitted to probate by another clerk, or before the judge of the superior court;
- (4) if he or his wife is named as executor or trustee in any testamentary or other paper, but this disqualification ceases when the will or other paper is finally admitted to probate by another clerk, or before the judge of the superior court. The clerk may renounce the executorship and endorse the renunciation on the will or on some paper attached thereto, before it is propounded for probate, in which case the renunciation must be recorded with the will if it is admitted to probate.

The parties may waive the disqualification specified in subparagraphs (1), (2), and (3) of this subsection, and upon the filing of such written waiver, the clerk shall act as in other cases.

(b) When any of the disqualifications specified in this section exist, and there is no waiver thereof, or when there is no renunciation under subparagraph (a)(4), of this section, any party in interest may apply to the resident or presiding superior court judge for an order to remove the proceedings to the clerk of superior court of an adjoining county in the same district; or he may apply to the judge to make either in vacation or during a session of court all necessary orders and judgments in any proceeding in which the clerk is disqualified, and the judge in such cases is hereby authorized to make any and all necessary orders and judgments as if he had the same original jurisdiction as the clerk over such proceedings.

(c) In any case in which the clerk of the superior court is executor, administrator, collector, or guardian of an estate at the time of his election or appointment to office, in order to enable him to settle such estate, the resident or presiding judge of the superior court is empowered to make such orders as may be necessary in the settlement of the estate; and he may audit the accounts or appoint a commissioner to audit the accounts of such executor or administrator, and report to him for his approval, and when the accounts are so approved, the judge shall order the proper records to be made by the clerk."

Sec. 5. G.S. 2-22 is revised and transferred to Chapter 7A to read as follows:

"§ 7A-106. **Custody of records and property of office.** — (a) It is the duty of the clerk of superior court, upon going out of office for any reason, to deliver to his successor, or such person as the senior regular resident superior court judge may designate, all records, books, papers, moneys, and property belonging to his office, and obtain receipts therefor.

(b) Any clerk going out of office or such other person having custody of the records, books, papers, moneys, and property of the office who fails to transfer and deliver them as directed shall forfeit and pay the State one thousand dollars (\$1,000), which shall be sued for by the solicitor."

Sec. 6. G.S. 2-42 is hereby revised, renumbered, and transferred to Chapter 7A to read as follows:

"§ 7A-109. **Record-keeping procedures.** — (a) Each clerk shall maintain such records, files, dockets, and indexes as are prescribed by rule of the Director of the Administrative Office of the Courts. Except as prohibited by law, these records shall be open to the inspection of the public during regular office hours, and shall include civil actions, special proceedings, estates, criminal actions, juvenile actions, minutes of the court, judgments, liens, lis pendens, and all other records required by law to be maintained. The rules prescribed by the Director shall be designed to accomplish the following purposes:

- (1) to provide an accurate record of every determinative legal action, proceeding, or event which may affect the person or property of any individual, firm, corporation, or association;
- (2) to provide a record during the pendency of a case that allows for the efficient handling of the matter by the court from its initiation to conclusion and also affords information as to the progress of the case;
- (3) to provide security against the loss or destruction of original documents during their useful life and a permanent record for historical uses;
- (4) to provide a system of indexing that will afford adequate access to all records maintained by the clerk;
- (5) to provide, to the extent possible, for the maintenance of records affecting the same action or proceeding in one rather than several units; and
- (6) to provide a reservoir of information useful to those interested in measuring the effectiveness of the laws and the efficiency of the courts in administering them.

(b) The rules shall provide for indexing according to the minimum criteria set out below:

- (1) Civil actions - the names of all parties;
- (2) Special proceedings - the names of all parties;
- (3) Administration of estates - the name of the estate and in the case of testacy the name of each devisee;
- (4) Criminal actions - the names of all defendants;
- (5) Juvenile actions - the names of all juveniles;
- (6) Judgments, Liens, Lis Pendens, etc. - the names of all parties against whom a lien has been created by the docketing of a judgment, notice of lien, transcript, certificate, or similar document and the names of all parties in those cases in which a notice of lis pendens has been filed with the clerk and abstracted on the judgment docket.

(c) The rules shall require that all documents received for docketing shall be immediately indexed either on a permanent or temporary index. The rules may prescribe any technological process deemed appropriate for the economical and efficient indexing, storage and retrieval of information."

Sec. 7. G.S. 2-45 is transferred to Chapter 7A to read as follows:

"§ 7A-110. List of attorneys furnished to Commissioner of Revenue. — On or before the first of May each year the clerk of superior court shall certify to the Commissioner of Revenue the names and addresses of all attorneys at law located within the clerk's county who are engaged in the practice of law."

Sec. 8. G.S. 2-52 and 2-53 are revised, combined, and transferred to Chapter 7A to read as follows:

"§ 7A-111. Receipt and disbursement of insurance and other moneys for minors and incapacitated adults. — (a) When a minor under 21 years of age, or an adult who is mentally incapable on account of sickness, old age, disease or other infirmity to manage his property and affairs, is named beneficiary in a policy or policies of insurance, and the insured dies prior to the majority of such minor or during the incapacity of such adult, and the proceeds of each individual policy do not exceed two thousand dollars (\$2,000.00) such proceeds may be paid to and, if paid, shall be received by the public guardian or clerk of the superior court of the county wherein the beneficiary is domiciled. A certificate of mental incapacity, signed by a physician or reputable person who has had an opportunity to observe the mental condition of an adult beneficiary, filed with the clerk, is prima facie evidence of the mental incapacity of such adult, and authorizes the clerk to receive and administer funds under this section. The receipt of the public guardian or clerk shall be a full and complete discharge of the insurer issuing the policy or policies to the extent of the amount paid to such public guardian or clerk.

(b) Any person, firm, corporation or association having in its possession two thousand dollars (\$2,000.00) or less for any minor child or incapacitated adult, as described in (a), for whom there is no guardian, may pay such moneys into the office of the public guardian, if any, or the office of the clerk of superior court of the county of the recipient's domicile. The clerk of the superior court is hereby authorized to receive and administer funds under this section. The clerk's receipt shall constitute a valid release of the payor's obligation to the extent of the sum delivered to the clerk.

(c) The moneys paid into the office of clerk of superior court pursuant to this section shall be disbursed only upon the order of the clerk or assistant clerk, and in the following manner:

- (1) **Minors.** The clerk is authorized to disburse the moneys held in such sum or sums and at such time or times as in his judgment is in the best interest of the child, except that the clerk must first determine that the parents or other persons responsible for the child's support and maintenance are financially

unable to provide the necessities for such child, and also that the child is in need of maintenance and support or other necessities, including, when appropriate, education

- (2) Incapacitated adults. The clerk, upon finding of fact that it is in the best interest of the incapacitated adult, is authorized to disburse funds directly to a creditor or to some discreet and solvent neighbor or friend of a person mentally incapable of handling his property and affairs.

The clerk may require receipts or paid vouchers showing that the moneys disbursed under this section were used for the exclusive use and benefit of the child or incapacitated adult.

(d) The determination of incapacity authorized in subsection (a) of this section is separate and distinct from the procedure for the determination of incompetency provided in G.S. Chapter 35."

Sec. 9. G.S. 2-54, 2-55, 2-56, and 2-60 are hereby rewritten and transferred to Chapter 7A to read as follows:

"§ 7A-112. **Investment of funds in clerk's hands.** — (a) The clerk of the superior court may in his discretion invest moneys secured by virtue or color of his office or as receiver in any of the following securities:

- (1) obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States;
- (2) obligations of the State of North Carolina;
- (3) obligations of North Carolina cities or counties approved by the Local Government Commission; and
- (4) shares of any building and loan association organized under the laws of this state, or of any federal savings and loan association having its principal office in this state, and certificates of deposit for time deposits or savings accounts in any bank or trust company authorized to do business in North Carolina, to the extent in each instance that such shares or deposits are insured by the state or federal government or any agency thereof. If the clerk desires to deposit in a bank, saving and loan, or trust company funds entrusted to him by virtue or color of his office, beyond the extent that such deposits are insured by the state or federal government or an agency thereof, the clerk shall require such depository to furnish a corporate surety bond or bonds of the United States government or of the State of North Carolina, or of counties and municipalities of North Carolina whose bonds have been approved by the Local Government Commission.

(b) The State Auditor is hereby authorized and empowered to inspect the records of the clerk to insure compliance with this section, and he shall report non-compliance with the provisions of this section to the Administrative Officer of the Courts.

(c) It shall be unlawful for the clerk of the superior court of any county receiving any money by virtue or color of his office to apply or invest any of it except as authorized under this section. Any clerk violating the provisions of this section shall be guilty of a misdemeanor."

Sec. 10. The following sections of General Statutes Chapter 7A are renumbered as indicated:

7A-104 to 7A-105

7A-103 to 7A-108

7A-105 to 7A-107

Sec. 11. G.S. Chapter 2 is repealed except insofar as its provisions have been revised and transferred to Chapter 7A by the preceding sections of this act. Repeal of any curative of validating laws by this section shall not be construed to invalidate any acts validated by the curative or validating laws.

Sec. 11.1. G.S. 7A-105 is amended in line one by deleting "may" and inserting in lieu thereof "shall".

Sec. 12. The former G.S. 7A-106, having served its purpose as a transitional section, is repealed.

Sec. 13. This act is effective October 1, 1971.

In the General Assembly read three times and ratified, this the 11th day of May, 1971.