

## Chapter 46

### District Courts and Civil Proceedings Therein

#### 46.010

##### NOTES OF DECISIONS

The district court is one of limited powers. *Canuto v. Weinberger*, (1916) 79 Or 342, 155 P 190.

**FURTHER CITATIONS:** *In re Shaw*, (1918) 88 Or 174, 171 P 896; *In re Application of Boalt*, (1927) 123 Or 1, 260 P 1004.

**ATTY. GEN. OPINIONS:** Office of district judge as county office, 1924-26, p 569; district judge accepting another position, 1942-44, p 204; reimbursing district judge for travel outside county to purchase supplies, 1964-66, p 409; prosecution of city offenses in district court, (1970) Vol 34, p 1008.

#### 46.025

##### NOTES OF DECISIONS

Justice of peace jurisdiction conferred in city charter enacted by special law was not withdrawn by this section. *Grayson v. State*, (1968) 249 Or 92, 436 P2d 261.

**FURTHER CITATIONS:** *State v. Imbler*, (1964) 236 Or 493, 389 P2d 918.

**ATTY. GEN. OPINIONS:** Determination of county's population, 1942-44, p 456; effective date of federal census and its bearing on the creation of a district court, 1948-50, p 460; district judges of courts under this section as precluded from engaging in the practice of law, 1952-54, p 117; action by county court in establishing a district court, 1952-54, p 117; creation of district court as affected by the qualifications of the incumbent justice of peace, 1952-54, p 117; creation of district court as affected by elective term of incumbent justice of peace, 1956-58, p 95; determination that population classification for district court creation has been reached, 1960-62, p 17; county coming within provision as of last decennial census and having justice of peace, 1960-62, p 29; creation of district court in Curry County, 1960-62, p 74; reimbursing district judge for travel outside county to purchase supplies, 1964-66, p 409; procedure for implementing new judgeship, (1968) Vol 34, p 175.

#### 46.026

**ATTY. GEN. OPINIONS:** Commencement of term of judge of newly created district court, 1960-62, p 74; creation of district court and termination of justice court when justice of the peace appointed, 1960-62, p 74; effect of establishment of district court on justice districts, 1966-68, p 181; procedure for implementing new judgeship, (1968) Vol 34, p 175.

#### 46.030

**ATTY. GEN. OPINIONS:** Office of district judge as county office, 1924-26, p 569; issuing execution writ to sheriff of another county, 1948-50, p 383; filing nominating petitions

for district judges, 1958-60, p 329; changing venue from district court, 1960-62, p 352.

#### 46.040

##### NOTES OF DECISIONS

This section does not confer jurisdiction over the crime of assault being armed with dangerous weapon. *State v. Steagall*, (1958) 214 Or 116, 328 P2d 142.

**FURTHER CITATIONS:** *Williams v. Florida*, (1970) 399 US 78, 141, 90 S Ct 1893, 26 L Ed 2d 446, 477.

**ATTY. GEN. OPINIONS:** Prosecution of city offenses in district court, (1970) Vol 34, p 1008.

**LAW REVIEW CITATIONS:** 40 OLR 40.

#### 46.060

##### NOTES OF DECISIONS

Jurisdiction of the district court is limited to that expressly conferred upon it by statute. *Cohn v. Duntley*, (1933) 142 Or 186, 19 P2d 87; *Mitchell v. Ore. Wash. Cred. & Coll. Bureau*, (1950) 188 Or 391, 215 P2d 917.

Before 1935, district courts had no equitable jurisdiction; nor could they reform instruments or allow equitable defenses. *Cohn v. Duntley*, (1933) 142 Or 186, 19 P2d 87.

The 1935 amendment [to the Multnomah County district court law] conferred jurisdiction in equity as well as in law. *Fain v. Amend*, (1940) 164 Or 123, 100 P2d 481.

Where a complaint shows the district court to have jurisdiction of the subject matter under a federal statute, it has the duty to assume jurisdiction even if the complaint is defective or demurrable as to matters other than jurisdiction. *State v. Olson*, (1944) 175 Or 98, 157 P2d 723.

A writ of mandamus to compel a district court judge to take jurisdiction under a federal statute is demurrable where allegations of the complaint are not set forth, unless the writ contains allegations of ultimate fact disclosing jurisdiction under the statute, and shows a prima facie right to recover. *Id.*

District court has no jurisdiction of case alleging several causes of action, each claiming an amount below the jurisdictional limitation but which collectively claim more than the jurisdictional limitation. *Salitan v. Dashney*, (1959) 219 Or 553, 347 P2d 974, 81 ALR2d 532.

Jurisdiction is tested by the ad damnum clause or clauses of the complaint. *Draper v. Mullenex*, (1960) 225 Or 267, 357 P2d 519.

The question of jurisdiction is only to be resolved from what may be found in the several allegations well pleaded; surplusage should be disregarded. *Id.*

**FURTHER CITATIONS:** *Canuto v. Weinberger*, (1916) 79 Or 342, 155 P 190; *Hasbrook v. Lynch*, (1934) 146 Or 363, 369, 30 P2d 358; *Bowles v. Barde Steel Co.*, (1945) 177 Or 421, 164 P2d 692.

ATTY. GEN. OPINIONS: District courts jurisdiction over statute violations, 1924-26, p 604; jurisdiction to grant paroles, 1932-34, p 679; jurisdiction of district court in adoption proceedings, 1956-58, p 125; prosecution of city offenses in district court, (1970) Vol 34, 1008.

46.070

CASE CITATIONS: Salitan v. Dashney, (1959) 219 Or 553, 347 P2d 974, 81 ALR2d 532.

46.080

## NOTES OF DECISIONS

The legislature, by the 1953 amendment to ORS 46.120, intended to require service of any process other than a summons by the officers specified in ORS 52.120. Shoeman v. Bennett, (1963) 235 Or 257, 384 P2d 217.

ATTY. GEN. OPINIONS: Issuing execution writ to sheriff of another county, 1948-50, p 383.

LAW REVIEW CITATIONS: 37 OLR 69.

46.090

ATTY. GEN. OPINIONS: Effect of issuance of writ of execution by a clerk of a district court directing the sheriff of another county to levy upon personal property, 1944-46, p 213, 1948-50, p 383.

46.092

## NOTES OF DECISIONS

In Lincoln County probate jurisdiction was exclusively in the district court. Griffith v. W. Sur. Co., (1967) 248 Or 198, 432 P2d 1019.

FURTHER CITATIONS: State v. Imbler, (1964) 236 Or 493, 389 P2d 918; In re Wheeler Estate, (1964) 238 Or 306, 393 P2d 96.

ATTY. GEN. OPINIONS: Location of district courts and transfer of probate jurisdiction, 1956-58, p 116; jurisdiction of district court in adoption proceedings, 1956-58, p 125; jurisdiction of adoptions, 1956-58, p 150; validity of county charter provisions regarding judicial duties, 1960-62, p 403; jurisdiction of adoptions in Coos County under 1967 Act, 1966-68, p 507.

LAW REVIEW CITATIONS: 44 OLR 46; 46 OLR 84, 281.

46.094

CASE CITATIONS: State v. Imbler, (1964) 236 Or 493, 389 P2d 918.

46.096

CASE CITATIONS: In re Wheeler Estate, (1964) 238 Or 306, 393 P2d 196.

ATTY. GEN. OPINIONS: Validity of county charter provisions regarding judicial duties, 1960-62, p 403.

46.100

## NOTES OF DECISIONS

Nothing in this section gives district courts authority to set aside their own judgments. Mitchell v. Ore., Wash. Cred. & Coll. Bureau, (1950) 188 Or 391, 215 P2d 917.

FURTHER CITATIONS: Fain v. Amend, (1940) 164 Or 123, 100 P2d 481.

46.120

CASE CITATIONS: Schoeneman v. Bennett, (1963) 235 Or 257, 384 P2d 217.

46.141

ATTY. GEN. OPINIONS: 48 OLR 361, 364.

46.160

## NOTES OF DECISIONS

District courts have no inherent power on their own motion to vacate and set aside their judgments. Mitchell v. Ore., Wash. Cred. & Coll. Bureau, (1950) 188 Or 391, 215 P2d 917.

46.175

CASE CITATIONS: Miller v. Jordan, (1970) 3 Or App 134, 472 P2d 841; Williams v. Florida, (1970) 399 US 78, 141, 90 S Ct 1893, 26 L Ed 2d 446, 477.

46.180

CASE CITATIONS: Williams v. Florida, (1970) 399 US 78, 141, 90 S Ct 1893, 26 L Ed 2d 446, 477.

46.210

## NOTES OF DECISIONS

In an action to recover the value of a furnace removed from a dwelling house, the prevailing plaintiff was entitled to his costs. Hasbrook v. Lynch, (1934) 146 Or 363, 30 P2d 358.

46.221

CASE CITATIONS: Miller v. Jordan, (1970) 3 Or App 134, 472 P2d 841.

ATTY. GEN. OPINIONS: Return of jury fees, 1962-64, p 29.

46.250

## NOTES OF DECISIONS

On appeal, defendant could not file an answer in the circuit court raising issues of fact where the only questions passed on by the district court were questions of law, nor did plaintiff's reply constitute a waiver where he excepted to the allowance of an answer. Higgins v. Fields, (1935) 150 Or 528, 47 P2d 235.

This section covers the whole subject of appeals from the district court and takes away the right in all cases except those specified. State v. Dobson, (1942) 169 Or 546, 130 P2d 939.

1925 c.121 impliedly repealed a provision allowing appeals from the small claims department of the District Court of Multnomah County. *Id.*

Appeals to the circuit court not taken at the time of judgment, order or decree entered, must be taken within the period limited. Columbia Auto Works v. Yates, (1945) 176 Or 295, 156 P2d 561.

The time for appeal begins to run from the date of entry of judgment and not from the date of oral rendition of judgment. Furlong v. Tish, (1950) 189 Or 86, 218 P2d 476.

Order setting aside judgment pursuant to ORS 18.160 is not a final order from which an appeal may be taken. Hughes v. Pea, (1957) 212 Or 259, 319 P2d 584.

An order of the district court refusing to vacate its judgment, void because it had no jurisdiction of the subject matter, is an appealable final order. *Salitan v. Dashney*, (1959) 219 Or 553, 347 P2d 974, 81 ALR2d 532.

For the purpose of establishing when the transcript of an appeal from district court should be filed, the allowance of the appeal and the taking of the appeal are synonymous. Both are determined by the time of the giving of notice of appeal and the filing of the undertaking. *France v. Weinstein*, (1960) 224 Or 100, 355 P2d 621.

An appeal from a district court to a circuit court was properly dismissed where seven days elapsed between the time of filing notice of appeal and the time of filing the undertaking and stay bond. *Moltzner v. Cutler*, (1936) 154 Or 573, 61 P2d 93.

FURTHER CITATIONS: *Hulegaard v. Garrett*, (1968) 251 Or 535, 446 P2d 975.

46.270

CASE CITATIONS: *Smith v. DeKraay*, (1959) 217 Or 436, 342 P2d 784.

46.290

ATTY. GEN. OPINIONS: Reimbursing district judge for travel outside county to purchase supplies, 1964-66, p 409.

46.300

ATTY. GEN. OPINIONS: Authority of county court to reactivate justice district, (1971) Vol 35, p 586.

46.435

ATTY. GEN. OPINIONS: Small claims department of district court, fees, 1926-28, p 452.

46.485

CASE CITATIONS: *State v. Dobson*, (1942) 169 Or 546, 130 P2d 939; *Doane v. Stein*, (1918) 87 Or 97, 169 P 781.

LAW REVIEW CITATIONS: 48 OLR 153.

46.610

CASE CITATIONS: *State v. Smith*, (1969) 1 Or App 153, 458 P2d 687, Sup Ct review denied.

ATTY. GEN. OPINIONS: District judge accepting another

position, 1942-44, p 204; determining eligibility of candidates, 1958-60, p 9; appointment of district judge as supervisor of soil conservation district, 1958-60, p 147.

46.620

ATTY. GEN. OPINIONS: District court judge holding additional office of supervisor of soil conservation district, 1958-60, p 147.

46.630

#### NOTES OF DECISIONS

Where a 1913 Act abolished the office of a justice of the peace whose term as justice would have expired in 1918, and appointed him to the newly created district judgeship, and in 1914 he was elected to succeed himself as district judge for a six-year term, there was no district judgeship vacancy to be filled at the 1918 elections. *State v. Beveridge*, (1918) 88 Or 334, 171 P 1173.

46.632

ATTY. GEN. OPINIONS: Authority of county court to pay salary of district judge pro tem, 1950-52, p 328; reimbursing district judge for travel outside county to purchase supplies, 1964-66, p 409; paying travel expenses for attendance at traffic court conference, 1966-68, p 275.

46.720

ATTY. GEN. OPINIONS: Official qualified to be traffic court violations clerk, 1964-66, p 127.

46.730

#### NOTES OF DECISIONS

A judge, as a magistrate, may issue a search warrant without first filing the affidavit for the warrant with the clerk. *Siverson v. Olson*, (1935) 149 Or 323, 40 P2d 65.

46.740

#### NOTES OF DECISIONS

The entry of a judgment is the work of the clerk and is ministerial. *Jones v. Thompson*, (1946) 177 Or 650, 164 P2d 718.

46.760

ATTY. GEN. OPINIONS: Official qualified to be traffic court violations clerk, 1964-66, p 127.

