

## CHAPTER FOUR

*"the title to any office under this state"*

### 4.010. THE MEANING OF "TITLE TO OFFICE"

For the supreme court to exercise original appellate jurisdiction in this category, there must be a dispute regarding the legality of a person's "title to office,"—his legal right to exercise an office.<sup>1</sup> Thus, if a petitioner seeks to remove an individual from office, using a cause of action in which it is conceded that the individual has valid title until the removal would become effective, title to the office is not in dispute and the supreme court has no jurisdiction.<sup>2</sup> The dispute of title can arise in several ways,<sup>3</sup> but it is usually raised in quo warranto proceedings,<sup>4</sup> or election contest cases.<sup>5</sup>

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1. State *ex rel.* Consol. School Dist. v. Ingram, 317 Mo. 1141, 298 S.W. 37 (1927), *trans'd*, 2 S.W.2d 113 (Ct. App. 1928).

2. Antoine v. McCaffery, 335 S.W.2d 474 (Mo. Ct. App. 1960). This was a statutory removal action against members of the St. Louis Board of Education. Since the plaintiffs conceded the existence of the defendants' title, which could be divested only by the court order sought, the court of appeals retained jurisdiction. The court distinguished Eagleton v. Murphy, 348 Mo. 949, 156 S.W.2d 683 (1941), in which the applicable statute provided that immediately upon the commission of specified acts the officer would be disqualified from exercising that office. In the latter case, the supreme court retained jurisdiction without discussion.

3. E.g., State *ex rel.* Davidson v. Caldwell, 310 Mo. 397, 276 S.W. 631 (1925) (action to quash record of township and orders appointing successor to office of constable); Utt v. Oster, 235 S.W.2d 577 (Mo. Ct. App. 1951), *trans'd*, 362 Mo. 866, 245 S.W.2d 22 (1952) (declaratory judgment); State *ex rel.* Richardson v. Baldey, 40 S.W.2d 720 (Mo. Ct. App. 1931), *trans'd*, 331 Mo. 1006, 56 S.W.2d 67 (1932) (mandamus to compel vote count).

4. See State *ex rel.* Weed v. Meek, 129 Mo. 431, 31 S.W. 913 (1895), for a discussion of the nature of quo warranto. According to MISSOURI BAR ASS'N, MISSOURI APPELLATE PRACTICE 128 (1963), "the information in the nature of quo warranto is the proceeding by which the state inquires into and determines the legality of the claim of one who purports to use or exercise an office . . . ."

The *original* action of quo warranto may be brought in the supreme court; that court's jurisdiction to issue original remedial writs is granted in Mo. CONST. art. V, § 4.

The concern here is only with jurisdiction on appeal when the original action has not been brought in the supreme court, but it is necessary to be aware of the original jurisdiction because several cases cited for collateral matters in this section were original proceedings. For a discussion of original actions to determine appellate jurisdiction, see § 9.013.

5. Certain election contests may also be brought originally in the supreme court by virtue of Mo. CONST. art. VII, § 5, which provides that contests for certain executive offices are to be brought in that court, and that the general assembly may designate which court shall hear contests for all other public offices in the state. The power of the general assembly to make this designation under a similar provision of the 1875

#### 4.020. THE MEANING OF "OFFICE UNDER THIS STATE"

Since this jurisdictional category has been regarded as a distinct entity, the meaning given to "office under this state" should not be confused with that affixed to the phrase "state officer"<sup>6</sup> in cases pertaining to the sixth jurisdictional category. An "office under this state" is defined as one created by state law, so that the officer derives his authority directly from state law.<sup>7</sup> The duties of the office need not be co-extensive with the boundaries of the state in order to vest jurisdiction in the supreme court.<sup>8</sup> Similarly, constructions given terms such as "public officer" which appear in non-jurisdictional statutory or constitutional provisions have been distinguished from the unique test applied in this jurisdictional category,<sup>9</sup> and should not be used in ascertaining who is an officer under the state.

The following have been held to be offices under the state: county offices;<sup>10</sup> township offices;<sup>11</sup> directors of school districts;<sup>12</sup> commissioners of

constitution was discussed in *Gantt v. Brown*, 244 Mo. 300, 149 S.W. 644 (1912), in which original jurisdiction was exercised by the supreme court.

6. See § 6.051(b), note 44 and accompanying text.

7. State *ex rel.* *Ellis v. Ferguson*, 333 Mo. 1177, 65 S.W.2d 97 (1933); State *ex rel.* *Frisby v. Hall*, 152 Mo. 234, 53 S.W. 1062 (1899); State *ex rel.* *Blakemore v. Rombauer*, 101 Mo. 499, 14 S.W. 726 (1890). The jurisdictional issue in the *Blakemore* case arose in connection with its holding that the court of appeals had no power to issue original remedial writs in any kind of case over which the supreme court would have exclusive appellate jurisdiction. Prohibition was issued to prevent the court of appeals from hearing an original action of quo warranto trying title to an "office under this state." The case correctly states the present rule as to what is an "office under this state" for purposes of vesting appellate jurisdiction in the supreme court; however, the primary holding as to the original jurisdiction of the courts of appeals is no longer the law. State *ex rel.* *City of Mansfield v. Crain*, 301 S.W.2d 415 (Mo. Ct. App. 1957).

8. The "co-extensive with boundaries" language refers to the popular rather than the technical meaning of "state officer" (see cases cited § 6.051(b)), and is irrelevant to the determination of what is an "office under this state." State *ex rel.* *Blakemore v. Rombauer*, 101 Mo. 499, 14 S.W. 726 (1890).

9. See, e.g., State *ex rel.* *Ellis v. Ferguson*, 333 Mo. 1177, 65 S.W.2d 97 (1933); State *ex rel.* *McKittrick v. Whittle*, 333 Mo. 705, 63 S.W.2d 100 (1933); State *ex rel.* *School Dist. v. Harter*, 188 Mo. 516, 87 S.W. 941 (1905); State *ex rel.* *Walker v. Bus*, 135 Mo. 325, 36 S.W. 636 (1896).

10. *Kasten v. Guth*, 375 S.W.2d 110 (Mo. 1964); State *ex rel.* *Consol. School Dist. v. Ingram*, 317 Mo. 1141, 298 S.W. 37 (1927), *trans'd*, 2 S.W.2d 113 (Ct. App. 1928) (*dictum*); *Sanders v. Lacks*, 142 Mo. 255, 43 S.W. 653 (1897); State *ex rel.* *Blackmore v. Rombauer*, 101 Mo. 499, 14 S.W. 726 (1890); *Armantrout v. Bohon*, 157 S.W.2d 530 (Mo. Ct. App. 1941), *trans'd*, 349 Mo. 667, 162 S.W.2d 867 (1942); State *ex rel.* *Wood v. Meek*, 55 Mo. App. 292 (1893), *trans'd*.

11. State *ex rel.* *Davidson v. Caldwell*, 310 Mo. 397, 276 S.W. 631 (1925); *Ramsey v. Huck*, 267 Mo. 333, 184 S.W. 966 (1916); *MacRae v. Coles*, 183 S.W. 578 (Mo. 1916).

12. *New v. Corrough*, 370 S.W.2d 323 (Mo. 1963); State *ex rel.* *Mayfield v. Crisp*, 248 S.W.2d 664 (Mo. 1952); State *ex rel.* *Stipp v. Colliver*, 243 S.W.2d 344 (Mo.

road districts;<sup>13</sup> election officers;<sup>14</sup> and the special deputy to the commissioner of finance.<sup>15</sup> However, the personal representative of a decedent's estate does not hold such an office, even though he has been appointed pursuant to state statutes.<sup>16</sup>

The authority of a municipal official is usually derived directly from a charter rather than from state law,<sup>17</sup> and for this reason, many municipal

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1951); State *ex rel.* Taylor v. Pretended Consol. School Dist., 362 Mo. 249, 240 S.W.2d 946 (1951); State *ex rel.* Taylor v. Whitford, 361 Mo. 184, 233 S.W.2d 694 (1950); State *ex rel.* Rice v. Hawk, 360 Mo. 490, 228 S.W.2d 785 (1950); State *ex rel.* Kamp v. Pretended Consol. School Dist., 359 Mo. 639, 223 S.W.2d 484 (1949); Bernhardt v. Long, 357 Mo. 427, 209 S.W.2d 112 (1948); State *ex rel.* Mitchell v. Heath, 345 Mo. 226, 132 S.W.2d 1001 (1939); State *ex rel.* Worsham v. Ellis, 329 Mo. 124, 44 S.W.2d 129 (1931), *trans'd from* 11 S.W.2d 1095 (Ct. App. 1928); State *ex rel.* Gentry v. Sullivan, 320 Mo. 362, 8 S.W.2d 616 (1928); State *ex rel.* Thompson v. Bright, 298 Mo. 335, 250 S.W. 599 (1923); State *ex rel.* West v. Consolidated School Dist., 290 Mo. 134, 234 S.W. 54 (1921); State *ex rel.* Sutton v. Fasse, 189 Mo. 532, 88 S.W. 1 (1905), *trans'd from* 71 S.W. 745 (Ct. App. 1903); State *ex rel.* Frisby v. Hall, 152 Mo. 234, 53 S.W. 1062 (1899); State *ex rel.* Frisby v. Stone, 152 Mo. 202, 53 S.W. 1069 (1899); State *ex rel.* Barrett v. Parish, 262 S.W. 412 (Mo. Ct. App. 1924). As a general rule, after 1935 the jurisdictional question was merely mentioned in the opinions. The only transfer after that year was made by the court of appeals in Utt v. Oster, 235 S.W.2d 577 (Mo. Ct. App. 1951), *trans'd*, 362 Mo. 866, 245 S.W.2d 22 (1952), in which the litigant sought a declaratory judgment as to the legality of the organization of a consolidated school district, and apparently overlooked the fact that the action involved the legality of title claimed by the directors of the district.

13. State *ex rel.* Jones v. Meyer, 321 Mo. 858, 12 S.W.2d 489 (1928); State *ex rel.* Richardson v. Baldey, 40 S.W.2d 720 (Mo. Ct. App. 1931), *trans'd*, 331 Mo. 1006, 56 S.W.2d 67 (1932).

14. Noonan v. Walsh, 364 Mo. 1169, 273 S.W.2d 195 (1954); State *ex rel.* Stone v. Thomas, 349 Mo. 22, 159 S.W.2d 600 (1942).

15. State *ex rel.* Marr v. Allen, 316 Mo. 754, 291 S.W. 454 (1927) (en banc).

16. *In re Roff*, 327 Mo. 113, 34 S.W.2d 710 (1931), *trans'd*, 226 Mo. App. 1203, 50 S.W.2d 156 (1932).

17. One should, however, beware of special circumstances, such as the fact that the office of ward committeewoman is an "office under this state." Noonan v. Walsh, 364 Mo. 1169, 273 S.W.2d 195 (1954). In State *ex rel.* Smith v. Smith, 152 Mo. 444, 54 S.W. 218 (1899), the supreme court, in an original mandamus action to force the Kansas City Court of Appeals to transfer five cases, including one involving the removal of a Kansas City police official, held that exclusive appellate jurisdiction over that one case was in the supreme court because of the constitutional issue presented. Therefore, the court of appeals had improperly refused to transfer to the supreme court. (State *ex rel.* Goodnow v. Police Comm'r's, 80 Mo. App. 206 (1899), *trans'd by mandate*, 184 Mo. 109, 71 S.W. 215 (1902).) The constitutional issue pertained to a conflict between the provisions of the state statute which had specially created the police system and the provisions of the city charter which purported to regulate this system. Although the supreme court found it unnecessary to discuss whether the police official held an office under the state, it presumably was such an office despite the intermediate charter provisions, since in State *ex rel.* Goodnow v. Police Comm'r's, *supra*, dictum by the court of appeals had so indicated.

offices have been held not to be offices under the state.<sup>18</sup>

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18. State *ex rel.* McNutt v. Northrup, 367 S.W.2d 512 (Mo. 1963), *trans'd* (alderman); State *ex rel.* Tucker v. Mattingly, 268 S.W.2d 868 (Mo. 1954), *trans'd*, 275 S.W.2d 34 (Ct. App. 1955) (alderman); Ibbetson v. Schulz, 332 Mo. 850, 59 S.W. 2d 617, *trans'd*, 64 S.W.2d 313 (Ct. App. 1933) (city collector); Green v. Owen, 326 Mo. 450, 31 S.W.2d 1037 (1930), *trans'd*, 225 Mo. App. 746, 38 S.W.2d 496 (1931) (city attorney); State *ex rel.* Otto v. Hyde, 317 Mo. 714, 296 S.W. 775 (1927) (*en banc*), *trans'd* (village board of trustees); State *ex rel.* Ragsdale v. Walker, 132 Mo. 210, 33 S.W. 813, *trans'd*, 68 Mo. App. 110 (1896) (mayor); Felker v. City of Sikeston, 334 S.W.2d 754 (Mo. Ct. App. 1960) (mayor and alderman); Montague v. Whitney, 298 S.W.2d 461 (Mo. Ct. App. 1957) (mayor); see Bristol v. Fischel, 151 Mo. 34, 51 S.W. 678, *trans'd*, 81 Mo. App. 367 (1899). All but two of these cases involved at least one transfer. In most of the later cases the precedents were sufficiently clear so that the transfers probably resulted from a failure to check the case law; this is especially true of State *ex rel.* Tucker v. Mattingly, *supra*, in which the opinion indicated that the litigant had contended that the court had jurisdiction because title to office was involved.