# CHAPTER THREE

*"the construction of the revenue laws of this state"*

## 3.010. Introduction

In general, the problems concerning the revenue law jurisdiction of the supreme court revolve around two propositions: (1) there must be implicated in the case some statute which may be characterized as a "revenue law," and (2) the case must involve a dispute between the parties to be resolved by construction of that statute.

In contrast to its cases in the other categories of exclusive appellate jurisdiction, the supreme court has not maintained a consistently restrictive attitude toward its jurisdiction over revenue cases. As a result, relatively few technical distinctions have been built upon the two basic propositions. In fact the supreme court has taken jurisdiction in some cases (section 3.040) in which it might have held that the statutes under construction were not technically revenue laws, or that "construction" of a revenue law was not properly involved.

Most of the rules which are technical in outlook were developed approximately prior to 1940. Subsequent opinions have often ignored, without expressly overruling, the older decisions. Therefore, this chapter is divided into three stages. Sections 3.020 and 3.030 deal with the technical meanings that have been attached to "revenue laws" and "construction." Section 3.040 catalogues the cases over which the supreme court has taken jurisdiction. The section must be considered in the light of the fact that many of these cases apparently ignore the technical distinctions discussed in sections 3.020 and 3.030. Although the analysis of the cases in this chapter follows the two basic propositions, the individual cases rarely articulate this analysis in its complete form.

## 3.020. What Is a Revenue Law of This State?

The leading case of *State ex rel. Hadley v. Adkins*[1] characterized a revenue law in these terms:

> [I]t makes no difference where the law is to be found, whether under the title of revenue or any other title, so long as it relates to the subject-matter of revenue;[2] . . . the term "revenue law" covers and includes

1. 221 Mo. 112, 119 S.W. 1091 (1909), *trans'd from* 119 Mo. App. 396, 100 S.W. 661 (1906).

2. *Accord,* Transport Rentals, Inc. v. Carpenter, 325 S.W.2d 745 (Mo. 1959), discussed in text accompanying note 29 *infra.* This was a declaratory judgment action to de-

> laws relating to the disbursement of the revenue and its preservation, as well as provisions relating to the assessment, levy and collection of it . . . .[3]

The cases in this chapter indicate that the second phrase declares the central thread common to statutes which have been held to be "revenue laws." For purposes of jurisdiction, revenue laws are state statutes[4] which relate to procedures, rates, exemptions and other matters involved in the *process* by which revenue is acquired and disbursed. When the subject matter of the statute falls outside the confines of this process, it is not a revenue law. Thus, a case requiring construction of statutes pertaining to the ultimate *use* to be made of revenue funds, rather than the *mechanics* by which officials disburse those funds, is within the jurisdiction of the courts of appeals.[5]

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termine whether plaintiff-lessor's motor vehicles were subject to the Missouri registration fee, which, said the court, "is a tax upon the privilege of operating motor vehicles on the highways of this state." *Id.* at 749. (In this connection the court cited State *ex rel.* McClung v. Becker, 288 Mo. 607, 233 S.W. 54 (1921), which characterized the Vehicle Registration Act as a revenue law.) The provisions relating to registration construed in *Carpenter* were codified under Title IX of Mo. REV. STAT. (1959) entitled "Motor Vehicles, Watercraft and Aviation." Nevertheless, the laws did pertain to the acquisition of revenue and the supreme court retained jurisdiction.

See State *ex rel.* Miller v. Board of Educ., 18 S.W.2d 26 (Mo.), *trans'd,* 224 Mo. App. 120, 21 S.W.2d 645 (1929), holding that statutes involving the location of school buildings in no way related to revenue and could not therefore be classified as revenue laws.

3. 221 Mo. at 118, 119 S.W. at 1093.

4. That city charter provisions pertaining to taxation are not "revenue laws of this state" was first unequivocally announced in State *ex rel.* Hadley v. Adkins, 221 Mo. 112, 118, 119 S.W. 1091, 1093 (1909), discussed in text accompanying note 1 *supra. Accord,* State *ex rel.* Missouri Glass Co. v. Reynolds, 243 Mo. 715, 148 S.W. 623 (1912) (charter provisions regulating issuance and payment of tax bills); Russel v. Woerner, 207 Mo. 653, 106 S.W. 49 (1907), *trans'd,* 131 Mo. App. 253, 110 S.W. 691 (1908) (charter provisions relating to details of acquiring tax deeds).

5. White v. Social Security Comm'n, 345 Mo. 1046, 137 S.W.2d 569 (1940), *trans'd.* This dispute centered about the right of the petitioner to receive benefits to be paid out of state funds. The supreme court acknowledged its jurisdiction to construe statutes dealing with the *mechanics* for disbursement of public funds by official custodians (such as those regulating the manner in which warrants are to be paid), but excluded from its jurisdiction cases involving the ultimate *use* to be made of revenue funds. If this were not the rule, cases such as suits for salaries or highway condemnation proceedings, which involve the payment of state funds to private recipients, always would come within its jurisdiction. Accordingly, the case of Hughes v. Social Security Comm'n, 133 S.W.2d 430 (Mo. Ct. App. 1939), *trans'd, retrans'd by* supreme court, 142 S.W.2d 672 (Ct. App. 1940), involving an application for old age benefits, was overruled by *White.* (The second opinion of the court of appeals in *Hughes* indicated that the supreme court had retransferred the case by a mandate dated after the decision in *White.*) *Accord,* E. B. Jones Motor Co. v. Industrial Comm'n, 298 S.W.2d 407 (Mo.), *trans'd,* 305 S.W.2d 889 (Ct. App. 1957); Parker v. Unemployment Compensation Comm'n, 358 Mo. 365, 214 S.W.2d 529 (1948), *trans'd,* 221 S.W.2d 840 (Ct. App. 1949).

Statutes which concern the *power* to tax rather than the *process* of taxation are also excluded from the definition of revenue laws; this is indicated by cases involving taxation by units of local government, which may tax only under authority delegated to them by the state.[6] Since 1902 it has been held that the supreme court lacks jurisdiction to construe the statutes by which the taxing power is delegated to local units.[7] The case of *State ex rel. Divine v. Collier*[8] illustrates the distinction between statutes relating to the taxing power and those relating to the taxing process. The issue presented was whether the city could tax livestock located outside the city but owned by a city resident. This necessitated *construction* of a statute outlining factors such as the location of personalty which local officials were required to consider in administering the assessment process. The supreme court retained jurisdiction.

Not all funds exacted from citizens of the state by units of government are technically regarded as revenue for jurisdictional purposes. To constitute revenue, the funds collected must be subject to appropriation by the state or its local units for public governmental purposes.[9] On the basis of this

6. Mo. CONST. art. X, § 1: "The taxing power may be exercised by the general assembly for state purposes, and by counties and other political subdivisions under power granted to them by the general assembly for county, municipal and other corporate purposes."

Mo. CONST. art. X, § 15: "The term 'other political subdivision,' as used in this article, shall be construed to include townships, cities, towns, villages, school, road, drainage, sewer and levee districts and any other public subdivision, public corporation or public quasi-corporation having the power to tax."

7. City of Hannibal *ex rel.* Bassen v. Bowman, 167 Mo. 535, 67 S.W. 214 (1902), *trans'd,* 98 Mo. App. 103, 71 S.W. 1122 (1903). A similar situation was presented in City of St. Joseph v. Metropolitan Life Ins. Co., 183 Mo. 1, 81 S.W. 1080, *trans'd,* 110 Mo. App. 124, 84 S.W. 97 (1904), in which the issue was whether a state statute delegating to cities the power to impose a license tax on insurance companies was still in effect. For further discussion of this case see note 19 *infra. Accord,* Fischback Brewing Co. v. City of St. Louis, 337 Mo. 1044, 87 S.W.2d 648 (1935), *trans'd,* 231 Mo. App. 793, 95 S.W.2d 335 (1936); City of Richmond v. Creel, 253 Mo. 256, 161 S.W. 794 (1913), *trans'd,* 183 Mo. App. 240, 170 S.W. 420 (1914). The matter was clearly settled when, in State *ex rel.* Bouckaert Bros. v. Mathews, 159 S.W.2d 767 (Mo.), *trans'd,* 162 S.W.2d 352 (Ct. App. 1942), the case was transferred in an opinion by the supreme court which intimated that a glance by counsel at the *Fischback* case, *supra,* should have settled any doubts as to where the appeal should be taken. Although these cases specifically involve delegation of the power to municipalities, presumably the rule extends to delegations to all other "political subdivisions."

8. 301 Mo. 72, 256 S.W. 455 (1923); see Long v. City of Independence, 360 Mo. 620, 229 S.W.2d 686 (1950). The court in *Collier* used the term "right" to tax in connection with this problem; this phrase should not be confused with the *power* to tax. That is, assuming the basic power to tax this general class of personal property, the issue was whether the city had the right to tax these particular items of personalty.

9. Howell v. Division of Employment Security, 358 Mo. 459, 463, 215 S.W.2d 467, 471 (1948), *trans'd,* 240 Mo. App. 931, 222 S.W.2d 953 (1949); State *ex rel.* Broughton v. Oliver, 273 Mo. 537, 201 S.W. 868 (1918), *trans'd from* 186 Mo. App. 272, 172

definition the supreme court denied jurisdiction to construe the Unemployment Compensation Law (requiring "contributions" paid by employers to be placed in a special reserve fund out of which unemployment benefits are paid).[10] Payment of these benefits to individuals indirectly serves a "public purpose," by acting as a buffer against the economic instability and the general unrest associated with unemployment.[11] But apparently, "public purpose" in the revenue context refers to uses of funds which *directly* benefit the general public rather than particular individuals.[12]

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S.W. 75 (1914), *retrans'd,* 202 Mo. App. 527, 208 S.W. 112 (1919); see Harwicke v. Wymore, 228 S.W. 757, 758 (Mo.), *trans'd,* 208 Mo. App. 414, 235 S.W. 171 (1921).

10. Howell v. Division of Employment Security, *supra* note 9.

11. *Id.* at 465, 215 S.W.2d at 472.

12. Apparently, the governmental purpose may be the acquisition of funds for the general administration of government, or for a more specific function, so long as it *directly* benefits the general public of either the state or the locality. See State *ex rel.* Johnson v. Atchison, T. & S.F. Ry., 310 Mo. 587, 601, 275 S.W. 932, 935 (1925), which stated that although special road and bridge tax levies would produce funds to be placed in a *special* account, those funds nevertheless constituted county "revenue." The apparent rationale was that the fund was set aside for a governmental purpose of the county (the building of roads and bridges), which provided a direct and general benefit to the county's public. This distinguishes it from funds set aside for payment only to particular individuals. The supreme court in this case construed statutes setting maximum rates that could be levied by counties for general purposes and for the more specific purpose of road and bridge construction, expressly basing its jurisdiction on construction of revenue laws. See Gladstone Special Rd. Dist. v. County Court, 365 Mo. 1097, 293 S.W.2d 351 (1956) (statutes pertaining to duty of county courts to set aside special fund for use by special road districts); Lamar Township v. City of Lamar, 261 Mo. 171, 169 S.W. 12 (1914) (involving which entity was entitled to road and bridge fund collected by township).

In State *ex rel.* Hughes v. Southwestern Bell Tel. Co., 352 Mo. 715, 179 S.W.2d 77 (1944), the court mentioned revenue laws as one basis of its jurisdiction. The only statutes construed were those pertaining to special road district assessments. Presumably, these statutes can be distinguished from statutes dealing with special benefit assessments for drainage districts and sewer improvements which are not revenue laws (notes 13-14 *infra* and accompanying text), but no such distinction was articulated by the court in its brief statement of jurisdiction.

In fact, this failure to analyze fully the statutes in terms of general or specific public purposes is manifest in almost all the cases cited in this footnote. See also notes 38-50 *infra* and accompanying text. There has never been a suggestion by the courts that statutes which prescribe the modes of school taxation are not revenue laws for purposes of jurisdiction, although some cases have denied supreme court jurisdiction because the tests relating to "construction" were not met (note 32 *infra* and accompanying text). However, taxes assessed by school districts do bear some resemblances, for example, to assessments made by drainage districts. *Compare* Lyons v. School Dist., 311 Mo. 349, 278 S.W. 74 (1925), *trans'd from* 246 S.W. 610 (Ct. App. 1923), *with* State *ex rel.* Broughton v. Oliver, 273 Mo. 537, 201 S.W. 868 (1918), *trans'd from* 186 Mo. App. 272, 172 S.W. 75 (1914), *retrans'd,* 202 Mo. App. 527, 208 S.W. 112 (1919). A school district is a corporation created for the sole purpose of maintaining a school system, and the taxes it levies are "all of necessity taxes for the building of schools after they are instituted." Russell v. Frank, 348 Mo. 533, 542, 154 S.W.2d 63, 67 (1941) (case contained

Special benefit assessments do not produce revenue since the funds collected are not directly applied toward general public purposes; they finance benefits accruing only to the land assessed.[13] For this reason, the courts of appeals have jurisdiction to construe statutes providing for the financing of improvements made by drainage or levee districts[14] and sewer districts.[15] They also have jurisdiction of cases involving city street assessments.[16]

### 3.030. The Meaning of "Construction"

With few exceptions,[17] the jurisdictional principles in revenue cases have been developed by the courts without cross-reference to the elaborate set of

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no discussion of appellate jurisdiction). On the other hand, the purpose of school taxation is more closely associated with a public purpose, *i.e.*, education, than a special drainage assessment for the specific purpose of improving the very land assessed. It is not suggested that the supreme court should not have jurisdiction of school tax cases. Nor is their comparison with the drainage assessment cases intended to exhaust discussion on the matter. Rather, it is drawn to illustrate the considerations which are lacking in the school tax opinions. *E.g.*, in Lyons v. School Dist., *supra*, the supreme court made only a brief reference to construction of revenue laws as the basis for its jurisdiction. The statutes involved pertained (1) to the maximum rates of levy for buying, erecting, repairing or furnishing school buildings and the mechanics involved in the execution of such levies, and (2) to the mechanics by which levies are made to finance the bonded indebtedness of school districts. In State *ex rel.* Parrish v. Young, 327 Mo. 909, 38 S.W.2d 1021 (1931), in which the statutes construed related to the mechanics by which school taxes are extended on the tax book, the court again gave only a passing reference to jurisdiction.

13. State *ex rel.* Broughton v. Oliver, *supra* note 12.

14. The leading case is State *ex rel.* Broughton v. Oliver, *supra* note 12. *Accord,* Fort Osage Drainage Dist. v. Foley, 312 S.W.2d 144 (Mo.), *trans'd,* 319 S.W.2d 687 (Ct. App. 1958), *overruling* State *ex rel.* Douglass v. Redmon, 190 Mo. App. 300, 176 S.W. 714 (1915), *trans'd,* 270 Mo. 465, 194 S.W. 260 (1917); Pearson Drainage Dist. v. Erhardt, 196 S.W.2d 855 (Mo. 1946), *trans'd,* 239 Mo. App. 845, 201 S.W.2d 484 (1947); Bushnell v. Mississippi & Fox River Drainage Dist., 340 Mo. 811, 102 S.W.2d 871 (1937), *trans'd,* 233 Mo. App. 921, 111 S.W.2d 946 (1938); Chilton v. Drainage Dist., 332 Mo. 1173 (1933), 61 S.W.2d 744, *trans'd from* 224 Mo. App. 467, 28 S.W.2d 120 (1930), *retrans'd,* 63 S.W.2d 421 (1933); State *ex rel.* Kersey v. Sims, 309 Mo. 18, 274 S.W. 359 (1925), *trans'd,* 286 S.W. 832 (Ct. App. 1926); State *ex rel.* Kersey v. Coleman, 274 S.W. 1108 (Mo. Ct. App. 1925). In State *ex rel.* Douglass v. Redmon, *supra,* the court of appeals transferred, holding that a construction of both the revenue laws and the constitution was involved. The supreme court, in accepting jurisdiction, stated that it was sufficient that a constitutional issue was involved, but did not expressly condemn the court of appeal's reasoning that revenue laws were also to be construed.

15. St. Ferdinand Sewer Dist. v. Turner, 356 Mo. 804, 203 S.W.2d 731 (1947), *trans'd,* 208 S.W.2d 85 (Ct. App. 1948); Normandy Consol. School Dist. v. Wellston Sewer Dist., 74 S.W.2d 621 (Mo.), *trans'd,* 77 S.W.2d 477 (Ct. App. 1934).

16. Associated Holding Co. v. W. B. Kelly & Co., 336 Mo. 851, 81 S.W.2d 624 (1935), *trans'd,* 230 Mo. App. 267, 90 S.W.2d 419 (1936); see City of Laclede v. Libby, 278 S.W. 372 (Mo. 1925), *trans'd,* 221 Mo. App. 703, 285 S.W. 178 (1926).

17. The only case which extensively discusses the possibility of patterning jurisdictional rules for revenue cases after those applied in the constitutional question cases (see

rules to determine whether the constitution is being "construed." One purpose of these rules is to determine the point at which a constitutional controversy becomes involved in a case. Generally, the answer has been that it

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Chapter One) is an opinion denying motions for rehearing and transfer to the supreme court in Little River Drainage Dist. v. Jones, 234 Mo. App. 816, 136 S.W.2d 440 (1940). The first factor mentioned in the opinion was that the moving party had not contended that the case was one involving the construction of a revenue law until his motion to transfer. The court said in dictum that since the rule in "constitutional question" cases was that constitutional issues must be raised at the first opportunity in order to vest the supreme court with jurisdiction, the instant motion to transfer could be dismissed on similar grounds (see § 1.021(a) for a statement of this rule). It is doubtful that such an application could be made here, since the party had *not* failed to raise any issue calling for a construction of revenue laws. What he had failed to do was to articulate the *jurisdictional* contention earlier. The only rule from the constitutional question cases that could even remotely apply in this situation is that which requires a party to specify provisions to be construed with failure to do so precluding the supreme court's jurisdiction (§ 1.021 (b)).

The court in further dictum noted that the substantive law issue on which the merits of the case turned had already been decided in a previous supreme court case; the court stated that it would be possible to deny the instant motion to transfer by borrowing the rule that a constitutional issue which has been previously decided with such finality that it is no longer debatable confers no jurisdiction on the supreme court (see § 1.033 for a statement of the rule). This dictum has not, however, been followed in revenue cases. See State *ex rel.* Marlowe v. Nolan, 347 Mo. 124, 146 S.W.2d 598 (1941), where the court cited the case of State *ex rel.* Martin v. Childress, 345 Mo. 495, 134 S.W.2d 136 (1939), for the proposition that it had jurisdiction because the revenue laws were to be construed. One issue in the *Nolan* case was the validity of a tax judgment against a minor, which by itself could not confer jurisdiction (see note 33 *infra* and accompanying text). Considering the second issue, which was the only one that might involve the construction of a revenue law, the court again cited the *Childress* case, saying the matter had been settled by it. The debatability doctrine of the constitutional question cases was thereby ignored. It is arguable, however, that the debatability principle was the reason for the court of appeal's retention of jurisdiction in Douglass v. Ray, 199 Mo. App. 24, 199 S.W. 568 (1917), although the court did not clearly articulate its reasoning nor cross-refer to the constitutional question cases. The issue in this case—a dispute between one collector and his predecessor over statutory penalties due a collector on delinquent taxes—appears to turn on the construction of those statutes which pertain to penalties and collector's commissions. These statutes appear to be revenue laws since they refer to the mechanics by which delinquent taxes are collected. (See State *ex rel.* White v. Fendorf, 317 Mo. 579, 296 S.W. 787 (1927), in which the supreme court expressly retained jurisdiction on the basis of construction of a revenue law; note 65 *infra* and accompanying text.) However, in *Douglass* the court relied on the construction a prior case had given these statutes, making it unnecessary to reconstrue them. Therefore, a possible interpretation of the case is that the court felt construction of the revenue laws was not "directly" involved because their meaning was no longer debatable.

The motion to transfer in the *Little River Drainage Dist.* case was finally denied on the ground that construction of the statutes claimed to be revenue laws was not "essential to the determination of the case." 234 Mo. App. at 826, 136 S.W.2d at 447. This proposition was borrowed from the constitutional question cases (§ 1.022 (d)). In State *ex rel.* Town of Commerce v. Frazer, 182 Mo. App. 277, 168 S.W. 669 (1914),

must be raised at the first opportunity at the trial level and thereafter passed upon by the trial court adversely to the party appealing and preserved for appellate review.[18] In the revenue cases, however, there have been only a few cryptic indications that the courts are concerned whether an issue of revenue law construction was raised and passed upon at the trial level.[19]

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*trans'd,* the court said that construction of revenue laws was "essentially" involved, although it did not cite any constitutional question cases in this connection.

The only other cases referring to the constitutional question area are: T. J. Moss Tie Co. v. Allen, 318 Mo. 440, 300 S.W. 486 (1927), discussed *infra* note 27; City of St. Joseph v. Metropolitan Life Ins. Co., 183 Mo. 1, 81 S.W. 1080 (1904), discussed *infra* note 19.

18. See § 1.020.

19. In City of St. Joseph v. Metropolitan Life Ins. Co., 183 Mo. 1, 81 S.W. 1080, *trans'd,* 110 Mo. App. 124, 84 S.W. 97 (1904), the court stated that if the case had "necessarily involved a construction of these [revenue] laws, and if no judgment [presumably by the trial court] could be rendered . . . without construing the revenue laws . . . this court would have jurisdiction . . . ." *Id.* at 8, 81 S.W. at 1082. The court cited cases from the constitutional question area that have been associated with a controversial subject called the "inherency doctrine" (for a discussion of this doctrine see § 1.022 (d)). It is unfortunate that the court intimated that its jurisdiction was conditioned upon the *necessity* of a construction of revenue laws by the trial court. This is not even the conditioning factor for constitutional jurisdiction, as passage by a trial court on a constitutional question when it was possible to dispose of the case on other grounds, still provides jurisdiction in the supreme court (see § 1.022). In fact, the inherency doctrine is not intended to condition jurisdiction, but rather, it is an attempt to avoid the loss of supreme court jurisdiction from some defect such as the failure of a party to raise the issue at the first opportunity or to preserve the issue for appeal.

A further anomaly in the *St. Joseph* case lies in its failure to state why construction of revenue laws was not "necessarily" involved. The issue was whether a state statute, delegating to municipalities the power to tax insurance companies, had been repealed by a subsequently enacted statute pertaining to the mechanics by which the state taxed insurance companies. The former statute was not a revenue law (see note 7 *supra* and accompanying text) but it appears that the latter *was* a revenue law. It seems that the issue of the city's competence to tax, if raised at the trial, necessarily involved ascertaining the meaning of the latter statute.

The mischief of *St. Joseph* has been recently exhibited in City of Poplar Bluff v. Poplar Bluff Loan & Bldg. Ass'n, 369 S.W.2d 764 (Mo. Ct. App. 1963), which involved construction of the act delegating power to municipalities to tax savings and loan "companies." This was not a revenue law (see note 7 *supra* and accompanying text). But the contention that another statute, which *was* a revenue law (the act providing for state taxation of savings and loan "associations"), had reserved to the state the sole power to tax this particular litigant, would appear to necessarily call for construction of a revenue law. Although the court of appeals expressed doubts as to its jurisdiction, it retained the case, citing the *St. Joseph* case.

The courts' reasoning in the two cases does not appear in their cryptic jurisdictional statements. Perhaps the courts were considering factors concerning the way in which the issues were raised or passed upon at the trial level. The language of the *St. Joseph* case especially points to such hidden factors; or perhaps the courts simply failed to analyze in two stages whether (1) there was involved a statute which pertained to the process of taxation rather than to the power to tax and (2) the issue presented called for a con-

Instead, the courts appear to be concerned only with whether the issue of revenue law construction will be properly involved at the appellate stage.

It is fortunate that the complexities arising from the tedious rules in the constitutional cases have been avoided; perhaps revenue cases do not foster problems similar to those that necessitate concern over the time at which a constitutional issue is raised.[20] But the failure of revenue opinions to articulate this kind of analysis leaves unanswered questions concerning the raising and trial court disposition of construction issues[21] and their preservation for appeal.[22]

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struction of that statute. It seems that the courts were influenced by the fact that the ultimate issue pertained to the power to tax rather than to the process of taxation, and ignored the fact that this issue required construction of a statute which pertained to the process of taxation.

One other case that attached significance to the judgment of the trial court is State v. Lauridsen, 312 S.W.2d 140 (Mo.), *trans'd,* 318 S.W.2d 511 (Ct. App. 1958). The court noted that the judgment of conviction or acquittal for failure to acquire a license "does not directly affect the right of the state to collect revenue . . . or to directly adjudge or enforce the payment of any revenue." *Id.* at 142. The court's statement arose from a consideration of the rule that for title to real estate to be "involved" in a case, the judgment sought, if rendered, must directly affect title (see § 5.010). No other case has adopted this strained interpretation of revenue jurisdiction. For further discussion of this case see text accompanying note 25 *infra.*

20. Normally, the source of authority drawn upon by a court in deciding a case is a body of case or statutory law. However, when a party raises a constitutional issue the constitution becomes an additional source of authority; such an issue might be raised as an afterthought in order to vest jurisdiction in the supreme court, or dropped in order to divest it. This use of constitutional questions to influence jurisdiction is probably the chief factor in the formulation of elaborate rules restricting jurisdiction over constitutional questions (see § 1.021).

21. The problems which have caused the courts to devise rules requiring parties to raise the constitutional issue at the first opportunity may not occur as frequently in the revenue cases. See note 20 *supra* and accompanying text. See also § 2.030, note 18. However, there are potential situations in the revenue area which are not covered by the express holdings of the revenue opinions. For example, the revenue opinions do not indicate where jurisdiction lies when an issue calling for construction of revenue laws has been raised before a trial court which refused to pass upon that issue, preferring to rest its decision on other grounds. In the constitutional question area it is established that the supreme court has no jurisdiction when the trial court did not pass on the issue (see § 1.022). Conceivably, the opposite result obtains in revenue cases if (as suggested in § 3.033) the courts test prospectively whether construction of revenue laws will be involved at the appellate stage.

22. One problem, the solution to which is not expressly prescribed by revenue opinions, arises when the revenue law's meaning was disputed and it was construed by the trial court, but the party appealing does not expressly raise that construction as one of the alleged errors on appeal—either because that construction was not adverse to his case or because he prefers to rely on other allegations of error. In this situation the reviewing court may nevertheless need to ascertain the meaning of revenue laws in reaching its decision. In the constitutional question decisions, it is established that the supreme court has no jurisdiction in such cases because of the failure to preserve the issue (see § 1.024).

Generally, the meaning of "construction" in the revenue cases may be analyzed in terms of two propositions which were stated in *State ex rel. Hadley v. Adkins:*

> [1] [T]he revenue [law] must be directly and primarily concerned, not merely indirectly or as an incident . . . [2] where the question in the case is merely one relating to the general practice in circuit courts or before justices of the peace, although the case may pertain to the collection of taxes, yet . . . the revenue laws are not involved in the constitutional sense.[23]

These two propositions may be designated as the "directness" doctrine and the "practice" doctrine. The discussion of these doctrines will be directed toward deciding whether both may be reduced to the single proposition: to vest jurisdiction in the supreme court, a dispute must exist between the parties about the meaning of a particular revenue statute and this dispute must call for a construction of that statute by the court.[24]

### 3.031. *Cases Invoking the "Directness" Doctrine*

The operation of the "directness" doctrine is illustrated by two recent cases.[25] The first was an appeal from a misdemeanor conviction for violation of the Vehicle Registration Act which provides the mechanics by which the state acquires revenue through license fees paid for the privilege of using

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Presumably, the "directness" doctrine developed in the revenue cases (see § 3.031, especially notes 27 & 28 *infra* and accompanying text), would serve to deny supreme court jurisdiction in this situation because the revenue law's meaning is no longer disputed; however, the opinions invoking that doctrine point only to the prospective lack of "directness" on appeal, without unequivocally deciding whether directness at the trial is relevant to the jurisdictional issue. This result under the "directness" doctrine can, therefore, only be presumed.

The failure to articulate whether jurisdiction vests according to what happened at the trial level or according to a prospective view of what the reviewing court will do is discussed further in § 3.033. This raises the problem of which court has jurisdiction when an issue calling for construction of revenue laws was disputed, passed upon by the trial court and preserved for appeal, but the appellate court does not have to decide the construction issue. In the constitutional question cases, because the courts refer back to the trial and questions preserved to determine whether jurisdiction vests in the supreme court, it is established that prospective conjecture about the result on appeal is irrelevant (see § 1.024). However, if the revenue cases actually test prospectively the issues that will be involved on appeal, the opposite result could obtain. No express acknowledgment of this problem appears in the revenue cases.

23. 221 Mo. 112, 118-19, 119 S.W. 1091, 1093 (1909), discussed note 1 *supra.*

24. This proposition is supported by the amendment proposed in 1895 (Mo. Laws 1895, at 286-87), which is quoted in "Introduction," note 37.

25. *Compare* State v. Lauridsen, 312 S.W.2d 140 (Mo.), *trans'd,* 318 S.W.2d 511 (Ct. App. 1958), *with* Transport Rentals, Inc. v. Carpenter, 325 S.W.2d 745 (Mo. 1959).

state highways. This statute is a revenue law,[26] and because it governed the subject matter of the case, the court had to refer to it and ascertain its meaning. In this sense construction of the statute was involved in the case. However, the parties conceded that the defendants were required by the statute to have licenses either in this state or in the state of their employer's residence, leaving one real issue—whether the employer was *in fact* a resident of Iowa or Nebraska.[27] Since the *meaning* of the statute was not at issue, the case was transferred by the supreme court which said that construction of the revenue laws was only "indirectly" involved.[28] The second case also involved the statutory exemption of a non-resident whose state of residence had a reciprocal exemption for Missouri residents.[29] However, the meanings of certain terms in this provision were disputed, giving the supreme court jurisdiction. The dispute centered on whether Transport Rentals, a New Jersey corporation which leased trucks to a New York concern for operation in this state, was either the "owner" or the "operator" of the vehicles within the meaning of the statute.

A second class of cases in which the directness doctrine has been invoked, involves the prerogative of school districts to acquire funds through taxation. In *White v. Boyne*[30] the question was whether a consolidated school district had authority to cause taxes to be levied, or the original districts had

26. See note 2 *supra* and accompanying text.

27. In T. J. Moss Tie Co. v. Allen, 318 Mo. 440, 300 S.W. 486 (1927), *trans'd*, 8 S.W.2d 1038 (Ct. App. 1928), *remanded and second appeal taken*, 19 S.W.2d 23 (Ct. App. 1929), the defendant *conceded* the construction given by the plaintiff to certain statutory and constitutional provisions relating to classification and evaluation of property for taxation purposes. The sole issue was the factual one of whether county officials had complied with these provisions. Finding it had no jurisdiction, the supreme court cross-referred to the constitutional question area for authority (see § 1.010 for cases in point). See also Douglass v. Ray, 199 Mo. App. 24, 199 S.W. 568 (1917), discussed *supra* note 17.

The case of State *ex rel.* Parish v. Young, 327 Mo. 909, 38 S.W.2d 1021 (1931), is arguably contrary. The supreme court retained jurisdiction although it appears that the meaning of the statutes relating to extension of school taxes on the tax book was not disputed and the sole issue was whether officials had in fact complied with the statute (see the discussion in note 12 *supra* which considers whether similar statutes are revenue laws). The supreme court retained jurisdiction without any reference to *Allen* or kindred cases.

28. The reasoning of the court turned primarily on the "directness" doctrine although it did consider, probably unnecessarily, the effect of the judgment (discussed note 19 *supra*). *Accord*, State v. McNeary, 88 Mo. 143 (1885) (misdemeanor conviction for operating dramshop without required license); Douglass v. Ray, *supra* note 27; see State *ex rel.* Jones v. Howe Scale Co., 253 Mo. 63, 161 S.W. 789 (1913), *trans'd*, 182 Mo. App. 658, 166 S.W. 328 (1914).

29. This provision now appears as Mo. REV. STAT. § 301.271 (1959). For further discussion of the case see note 2 *supra*.

30. 324 Mo. 176, 23 S.W.2d 107 (1929), *trans'd from* 11 S.W.2d 1083 (Ct. App. 1928), *retrans'd*, 224 Mo. App. 597, 30 S.W.2d 791 (1930).

retained the sole authority until the levy was made. This issue required a construction only of the statutes providing for consolidation, which were not revenue laws.[31] Although taxation was involved, the precise issues presented did not call for ascertaining the meaning of any particular statute pertaining to taxation. Thus, no revenue law was *either* directly or indirectly called forth for construction and the supreme court had no jurisdiction.[32]

### 3.032. *Cases Invoking the "Practice" Doctrine*

Two 1904 cases appear to have established the "practice" doctrine. The first was *State ex rel. Flentge v. Gawronski,*[33] in which the validity of a tax judgment was attacked on the ground that the appellant was a minor when

31. The principal statute involved did not refer to the power to tax specifically, but only to the *time* at which the general duties of the newly elected officers of the school board would commence.

32. This holding was followed in three cases involving statutes which outlined the mechanics for school district elections to increase tax rates: Cooper v. School Dist., 362 Mo. 49, 239 S.W.2d 509 (1951) (dictum); Hurtgen v. Gasche, 223 S.W.2d 493 (Mo. 1949), *trans'd,* 227 S.W.2d 494 (Ct. App. 1950); Young v. Brassfield, 223 S.W.2d 491 (Mo. 1949), *trans'd,* 241 Mo. App. 35, 228 S.W.2d 823 (1950). The court failed in these cases to analyze jurisdiction by separate inquiries into whether these statutes were technically revenue laws and whether the issues presented called for their construction. By using only "directness" language the court did not indicate if future appeals which necessitate a construction of the same statutes should go to the supreme court. There is no clear determination that they *are not* revenue laws. For a discussion of the possible arguments that could be raised in this connection see note 12 *supra* and accompanying text.

These holdings also failed to consider an older case retained by the supreme court expressly on the ground that construction of the revenue laws was involved. In State *ex rel.* Marlowe v. Himmelberger-Harrison Lumber Co., 332 Mo. 379, 58 S.W.2d 750 (1933), *trans'd from* 25 S.W.2d 489 (Ct. App. 1930), the taxpayer challenged the legality of an assessment on the ground of non-compliance with the tax-increase election statutes. The statutes were the only ones actually construed by the court.

The case of State *ex rel.* Fredericktown School Dist. v. Underwood School Dist., 250 S.W.2d 843 (Mo. Ct. App. 1952), is more susceptible of analysis in terms of "directness." This was a mandamus action to compel defendant district to levy taxes for the satisfaction of a judgment obtained against it by plaintiff district. Plaintiff's action was based upon a statute which authorized school districts to levy a certain tax rate *when a majority vote of citizens had been obtained.* The court of appeals apparently assumed that this statute was a revenue law, but retained jurisdiction because its construction was not directly and primarily an issue in the case. *Id.* at 845. This action was correct because the real issue growing out of the trial court's overruling of the motion to quash (from which ruling this appeal was taken) was one of pleading, *i.e.*, whether plaintiff's complaint was defective since it failed to state that a majority vote had been obtained in defendant's district. The meaning of the statute was not an issue since it was conceded that the statute gave no authority to levy the proposed rate in the absence of a majority vote. *Id.* at 846.

33. 179 Mo. 549, 78 S.W. 807 (1904), *trans'd,* 110 Mo. App. 411, 85 S.W. 126 (1905); see State *ex rel.* Marlowe v. Nolan, 347 Mo. 124, 146 S.W.2d 598 (1941), discussed *supra* note 17.

the judgment was rendered. This issue did not turn on the meaning of a particular revenue law, and the case was transferred to the court of appeals. *State ex rel. Sons v. Holland*,[34] transferred to the court of appeals the same year, was an action to recover delinquent taxes, in which the defendant contended that the local officials had not complied with the requirement for the filing of certain documents. The defense that a sufficient cause of action had not been filed before the justice of the peace was termed a "question of practice, which might be raised in any case."[35]

In a 1934 case the supreme court stated the central jurisdictional defect which the courts isolate by use of the "practice" doctrine: "[We are not] called upon to construe or interpret any provision of law, statutory, constitutional, or common, pertaining to the revenue of the state. The only relation this case bears to the revenue laws is that the surplus funds in the hands of the sheriff were obtained through a sale under an execution for taxes."[36] There are always certain formalities demanding compliance from taxation officials, which are defined by the *general* law rather than by any particular revenue law. Therefore, cases involving these practices, for example, the validity of judgments or the details of levying an execution, technically confer no jurisdiction upon the supreme court.

### 3.033. *Critique of the Meaning of "Construction"*

When a party seeks to collect or enjoin the collection of taxes, or when there are disputed claims to revenue funds by governmental units or officials, the case involves the subject matter of revenue. However, the issues presented may or may not require the court to ascertain, that is, construe, the meaning of a particular revenue statute. If there is no construction, the situation is covered by either the "directness" or "practice" doctrine and technically the supreme court is without jurisdiction. Even if the issues

34. 186 Mo. 222, 85 S.W. 356 (1905), *trans'd*, 116 Mo. App. 345, 92 S.W. 362 (1906).

35. *Id.* at 224, 85 S.W. at 357.

36. Holly v. Rolwing, 76 S.W.2d 1076, 1077 (Mo. 1934), *trans'd*, 87 S.W.2d 651 (Ct. App. 1935); *accord*, State *ex rel.* Lancaster v. Kennedy, 273 Mo. 122, 199 S.W. 953, *trans'd*, 207 S.W. 71 (Ct. App. 1918); State *ex rel.* Citizen's Bank v. Patterson, 129 Mo. App. 281, 108 S.W. 1127 (1908); see Daudt v. Drainage Dist., 149 Mo. 405, 50 S.W. 893 (1899), *trans'd*. Compare State *ex rel.* Ginger v. Palmer, 194 S.W.2d 736, 739 (Mo. Ct. App.), *trans'd*, 198 S.W.2d 10 (Mo. 1946) (en banc).

An old case transferred by the St. Louis Court of Appeals appears to be contrary, although it apparently was not retransferred and has never been expressly overruled. State *ex rel.* Sexton v. Tittman, 31 Mo. App. 82 (1888), *trans'd*, presented the question whether a suit in equity could be prosecuted for the recovery of personal taxes assessed against a decedent's estate, no such action being prescribed by the statutes. The dissenting opinion called attention to the last fact as indicating that no particular revenue law was called into construction.

require the court to ascertain the meaning of particular revenue laws governing the subject matter of the case, the "directness" doctrine requires in addition that there be a dispute between the parties about the meaning of the particular revenue law being construed.

The "directness" and "practice" doctrines prescribe the manner in which construction of revenue laws must be involved in a case, but they do not expressly define the *time* at which the construction issues must be involved. Rather than referring to the case at the trial level, the reviewing courts *appear* to approach the jurisdictional question prospectively; that is, in articulating the "directness" and "practice" doctrines, they speak only in terms of issues which will be involved on appeal. If the courts are testing prospectively, the supreme court would not assume jurisdiction, even though construction issues have been passed upon below and preserved for appeal, if it could be anticipated that the appeal would be decided on other grounds.[37] This extension of the test could cause confusion by forcing the supreme court to anticipate its consideration of the merits in order to establish appellate jurisdiction. In fact, the supreme court's predilection toward the "prospective determination" test has not produced undue difficulty, but the failure to consider the time when the construction issue becomes involved within the "directness" and "practice" doctrines results in a troublesome ambiguity.

This ambiguity may be so fundamental a defect as to render the two doctrines unworkable. Section 3.040 illustrates that the supreme court has in fact taken jurisdiction of cases with a cursory statement that construction of revenue laws is involved, but in which the reader is unable to discover a disputed construction of any particular revenue law. Perhaps the construction issue was in fact preserved but the opinion on the merits did not consider it because the decision was based on other grounds. The supreme court is unable to inform the reader of this result because neither doctrine affords a means for reference to the trial proceedings. This is only a possible explanation for the prospective reasoning implicit in the opinions. It also assumes that the court is aware of the underlying quandary. While the two doctrines have not been worked out in detail nor widely applied, the result has not been altogether unsatisfactory because, as will be shown in sections 3.040 and 3.050, the complexity of this jurisdictional category has been minimized.

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37. However, in the constitutional area, jurisdiction vests by virtue of the issues that have been preserved for appeal, rather than the result on appeal. See § 1.024. See also the discussion in notes 17-22 *supra* and accompanying text. There is also some case authority that reviewing courts *cannot* determine jurisdiction by anticipating their consideration of the merits, although the rule is not uniformly followed. See §§ 7.030, 9.015.

### 3.040. Cases the Supreme Court Has Retained

The previous sections considered restrictive or negative principles announced by the case law. These negative principles, turning on the technical meaning of the terms "revenue laws" and "construction," have not been consistently invoked by the supreme court to deny jurisdiction.[38]

Three 1964 supreme court cases reflect this non-restrictive attitude. In *Stein v. Tax Comm'n*,[39] the court *mentioned* construction of revenue laws as its basis for jurisdiction; however, the opinion does not cite or construe any statute relating to revenue.[40] One issue was whether the assessment valuation fixed on appellant's property was supported by substantial evidence. This was decided by reference to the testimony.[41] A second issue hinged upon the circuit court's power to allow the appellant to avoid delinquent penalties by paying the disputed amount to the circuit clerk to be held during the pendency of the dispute. There was no contention that any particular statute granted this power; so resolution of the issue turned on the *general* law relating to the powers of a circuit court.[42]

In *Library Dist. v. Hopkins*,[43] the court again gave only passing reference to revenue laws as its basis for jurisdiction. The question presented was

38. An example of the supreme court's assumption of jurisdiction without exhausting the negative principles which might have served to deny jurisdiction is seen in City of Berger *ex rel.* Dieterle v. La Boube, 260 S.W.2d 527 (Mo. 1953), *trans'd from* 252 S.W.2d 659 (Ct. App. 1952), which involved construction of the statute delegating to municipalities the power to levy a poll tax. No mention was made of the rule that statutes by which the taxing power is delegated do not confer jurisdiction on the supreme court. See notes 6-8 *supra* and accompanying text. Nor did the court discuss whether the poll tax was for specific local improvement purposes as to not technically produce revenue. See notes 9-16 *supra* and accompanying text for possible arguments that could have been raised in this connection.

Other previously discussed examples of the non-restrictive attitude are: (1) note 12 *supra* discusses the failure of the courts to use the public purpose principle as a lever to deny jurisdiction in cases involving local taxation for specific purposes; (2) note 17 *supra* and accompanying text covers the failure to adopt the elaborate exclusionary rules of the constitutional question jurisdiction; and (3) note 27 *supra* shows the court in one case ignoring an exclusionary decision rendered four years earlier under the "directness" doctrine.

39. 379 S.W.2d 495 (Mo. 1964).

40. Perhaps revenue laws had been construed at the trial court level, but the supreme court decided that it could dispose of the case without reconstruing these laws. In this connection, see § 3.033; see also notes 18-22 *supra* and accompanying text. But if this occurred, the court did not articulate it, so the possibility may be discounted when assessing what this case represents for jurisdictional purposes.

41. It is arguable that jurisdiction over this issue could have been denied under the "directness" doctrine (see note 27 *supra* and accompanying text).

42. See § 3.032 for cases denying supreme court jurisdiction in similar situations under the "practice" doctrine. See also note 50 *infra* and accompanying text.

43. 375 S.W.2d 71 (Mo. 1964).

whether land lying within the boundaries of both a municipality and a county library district was exempt from library taxes. This issue involved construction only of statutes pertaining to the establishment of library districts, to the geographical boundaries of corporate districts and municipalities, and to the powers of such units to tax for the *specific* purpose of establishing libraries. The court did not question whether these statutes were technically revenue laws.[44]

In *Freed v. Feeney,*[45] the court gave as a reason for its jurisdiction the result which might follow from adjudication of the facts of the case. It stated that the city of St. Joseph might be liable for $60,000 in connection with the establishment of a levee district, which sum would have to be paid before an additional sum of $1,500,000 then available by appropriation could be expended by the United States Corps of Engineers. This jurisdictional statement leaves unclear whether the court was accepting jurisdiction on the basis of the amount in dispute,[46] or on the basis of construction of revenue laws. West Publishing Company concluded that it was the latter, and classified this statement under "courts," key number 231(48). The only statutes in issue were those pertaining to the establishment and financing of levee districts through special benefit assessments. If these statutes were the basis of jurisdiction, the court ignored the case law that excludes them from the definition of revenue laws.[47]

In fact only eleven cases since 1940 were found in which a transfer has been made by the supreme court because of the technical rules available in the case law.[48] Perhaps this fact can be accounted for in part by the repeated

44. See notes 9-17 *supra* and accompanying text for possible arguments which could have been raised in this connection, especially note 12 which discusses general and specific public purposes. Perhaps the establishment of libraries is a direct benefit to the general public so that library taxes may be classified as a public purpose, although a specific one. The connotation of the word "library" is similar to that of "education"; the latter has been regarded as a public function for taxing purposes. But the court, in only mentioning jurisdiction, did not go through this analysis.

45. 374 S.W.2d 75 (Mo. 1964).

46. This case is discussed further at § 9.012, note 19. See § 9.030 for a discussion of factors that would be considered in deciding whether the amount involved could have been the basis for jurisdiction.

47. Notes 13-16 *supra* and accompanying text.

48. The cases are arranged in the order of the notes in which they are cited. (Note 5): E. B. Jones Motor Co. v. Industrial Comm'n, 298 S.W.2d 407 (Mo.), *trans'd,* 305 S.W.2d 889 (Ct. App. 1957); Parker v. Unemployment Compensation Comm'n, 358 Mo. 365, 214 S.W.2d 529 (1948), *trans'd,* 221 S.W.2d 840 (Ct. App. 1949); White v. Social Security Comm'n, 345 Mo. 1046, 137 S.W.2d 569 (1940), *trans'd.* (Note 7): State *ex rel.* Bouckaert Bros. v. Mathews, 159 S.W.2d 767 (Mo.), *trans'd,* 162 S.W.2d 352 (Ct. App. 1942). (Note 9): Howell v. Division of Employment Security, 358 Mo. 459, 215 S.W.2d 467 (1948), *trans'd,* 240 Mo. App. 931, 222 S.W.2d 953 (1949). (Note 14): Fort Osage Drainage Dist. v. Foley, 312 S.W.2d 144 (Mo.), *trans'd,* 319 S.W.2d 687

citation in revenue cases of the broad proposition that revenue laws are those which pertain to the whole system ranging from assessment to the mechanics of disbursement.[49] It may be said also that the supreme court has preferred to rest jurisdiction on issues which pertain generally to that system, rather than to strictly require that the issues call for construction of particular statutes which pertain to that process. As a result, legal problems arising from the administration of the system flow directly to one final appellate arbiter without being caught in a web of uncertain technical distinctions and transfers at the original appellate jurisdictional level.[50] In short, the scope of original

(Ct. App. 1958); Pearson Drainage Dist. v. Erhardt, 196 S.W.2d 855 (Mo. 1946), *trans'd,* 239 Mo. App. 845, 201 S.W.2d 484 (1947). (Note 15): St. Ferdinand Sewer Dist. v. Turner, 356 Mo. 804, 203 S.W.2d 731 (1947), *trans'd,* 208 S.W.2d 85 (Ct. App. 1948). (Note 25): State v. Lauridsen, 312 S.W.2d 140 (Mo.), *trans'd,* 318 S.W.2d 511 (Ct. App. 1958). (Note 32): Hurtgen v. Gasche, 223 S.W.2d 493 (Mo. 1949), *trans'd,* 227 S.W.2d 494 (Ct. App. 1950); Young v. Brassfield, 223 S.W.2d 491 (Mo. 1949), *trans'd,* 241 Mo. App. 35, 228 S.W.2d 823 (1950). This list, of course, does not include any transfers that may have occurred without opinion.

49. For the original statement of the proposition see text accompanying note 3 *supra.*

50. See State *ex rel.* Wilson Chevrolet, Inc. v. Wilson, 332 S.W.2d 867 (Mo. 1960), in which the court made only a passing reference to construction of revenue laws in holding this to be the basis of its jurisdiction. The court referred to a statute requiring certain formalities to be followed by boards of equalization in notifying property owners of increases in the assessed valuation of property. However, it was *conceded* by the parties that this statute required notification by mail, so that the court could have invoked the "directness" doctrine, and refused jurisdiction, because of the absence of a dispute as to the construction of the statute. See notes 25-27 *supra* and accompanying text. The issue centered about the admissibility of evidence in the circuit court which was reviewing the board's decision relating to whether notice had in fact been given. This issue turned on the meaning of the Administrative Procedure and Review Act, Mo. REV. STAT. §§ 536.010-.150 (1959), which could not be classified as a revenue law since it pertains to administrative agencies generally.

The situation in this case is at least analogous to the situation in those cases in which the supreme court has denied jurisdiction under the "practice" doctrine (see § 3.031). That is, the issue is one involving formalities to be followed in the process of administrative procedure and review, which are not prescribed by any particular revenue law. One possible distinction is that the "practice" doctrine as originally announced (text accompanying note 24 *supra)* referred to "general practice in the circuit courts or before justices of the peace," which, at that time, probably meant the general law relating to such matters as executions and the validity of judgments, rather than to the formalities of administrative review. But this distinction only brushes aside the "practice" doctrine. There still remains the fact that there was no *dispute* over the meaning of a particular revenue law, which fact again makes the "directness" doctrine applicable (see § 3.031). To face squarely what happened, it must be stated that the supreme court took jurisdiction solely because the case involved review of an administrative determination relating to revenue.

This view is substantiated by several other cases involving administrative procedure and review in which the supreme court mentioned construction of revenue laws as its basis for jurisdiction, but did not explain which revenue laws were being construed. Drey v. Tax Comm'n, 345 S.W.2d 228 (Mo. 1961); Cupples Hesse Corp. v. Tax Comm'n,

appellate jurisdiction may be said to coincide with the confines of the system of taxation.

The cases in which the supreme court has adopted construction of revenue laws as its basis for jurisdiction may be catalogued according to the subject matter of the statutes involved in the cases: taxation of estates,[51] bank stock,[52] and intangible personal property;[53] taxation of utilities, railroads, and airlines;[54] poll taxes,[55] motor vehicle licenses,[56] income taxes,[57] inheritance taxes[58] and corporate franchise taxes;[59] exemptions;[60] financing of road and bridge construction,[61] establishment of libraries,[62] and construction

329 S.W.2d 696 (Mo. 1959); Koplar v. Tax Comm'n, 321 S.W.2d 686 (Mo. 1959); Schneider v. Tax Comm'n, 319 S.W.2d 535 (Mo. 1958); May Dep't Stores v. Tax Comm'n, 308 S.W.2d 748 (Mo. 1958). In some of these cases the court did at least refer to statutes which specifically pertain to the jurisdiction and powers of review of the boards of equalization and the Tax Commission. These statutes might properly be called revenue laws, as contradistinguished from the Administrative Procedure and Review Act which refers to administrative review generally, but close analysis might have revealed that the dispute in most of these cases centered principally around the meaning of the latter act.

51. State *ex rel.* Rudder v. Haphe, 326 Mo. 460, 31 S.W.2d 788 (1930) (involved alleged liability of administrator for assessed taxes).

52. City of Stanberry v. Jordan, 145 Mo. 371, 46 S.W. 1093 (1898).

53. *In re* Armistead, 362 Mo. 960, 245 S.W.2d 145 (1952) (question of statute's applicability to certain insurance proceeds).

54. United Air Lines, Inc. v. Tax Comm'n, 377 S.W.2d 444 (Mo. 1964) (en banc); St. Louis Southwestern Ry. v. Tax Comm'n, 319 S.W.2d 559 (Mo. 1959); State *ex rel.* Hatten v. Kansas City Power & Light Co., 365 Mo. 296, 281 S.W.2d 784 (1955); State *ex rel.* Halferty v. Kansas City Power & Light Co., 346 Mo. 1069, 145 S.W.2d 116 (1940); St. Louis & S.F. Ry. v. Gracy, 126 Mo. 472, 29 S.W. 579 (1894).

55. City of Berger *ex rel.* Dieterle v. La Boube, 260 S.W.2d 527 (Mo. 1953), discussed *supra* note 38; see Moore v. Vaughn, 127 Mo. 538, 30 S.W. 162 (1895), *trans'd from* 53 Mo. App. 632 (1893).

56. Transport Rentals, Inc. v. Carpenter, 325 S.W.2d 745 (Mo. 1959), discussed *supra* note 2 and text accompanying notes 25-29 *supra.*

57. Marty v. Tax Comm'n, 336 S.W.2d 696 (Mo. 1960) (involved long term capital gains); A. P. Green Fire Brick Co. v. Tax Comm'n, 277 S.W.2d 544 (Mo. 1955) (determining whether certain royalties were income from sources within this state).

58. Osterloh's Estate v. Carpenter, 337 S.W.2d 942 (Mo. 1960) (provisions pertaining to transfers made in contemplation of death).

59. Straus v. Tribout, 347 Mo. 149, 146 S.W.2d 617 (1940) (lien of the state based upon corporate franchise taxes).

60. *In re* Atkins' Estate, 307 S.W.2d 420 (Mo. 1957); St. Louis Gospel Center v. Prose, 280 S.W.2d 827 (Mo. 1955); Tiger v. Tax Comm'n, 277 S.W.2d 561 (Mo. 1955); Midwest Bible & Missionary Institute v. Sestric, 364 Mo. 167, 260 S.W.2d 25 (1953); Salvation Army v. Hoehn, 354 Mo. 107, 188 S.W.2d 826 (1945); *In re* First Nat'l Safe Deposit Co., 351 Mo. 423, 173 S.W.2d 403 (1943) (en banc); Kansas City Exposition Driving Park v. Kansas City, 174 Mo. 425, 74 S.W. 979 (1903); State *ex rel.* Millis v. Fleming, 189 Mo. App. 261, 175 S.W. 95 (1915), *trans'd*, 204 S.W. 1085 (Mo. 1918).

61. Gladstone Special Rd. Dist. v. County Court, 365 Mo. 1097, 293 S.W.2d 351 (1956); State *ex rel.* Hughes v. Southwestern Bell Tel. Co., 352 Mo. 715, 179 S.W.2d

and maintenance of public educational facilities;[63] administrative procedure of and review of the agencies engaged in taxation;[64] procedures to be followed in the assessment, levy and collection of taxes;[65] and the formalities followed in the disbursement, custody and preservation of revenue funds.[66]

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77 (1944); State *ex rel.* Johnson v. Atchison, T. & S.F. Ry., 310 Mo. 587, 275 S.W. 932 (1925) (en banc); Lamar Township v. City of Lamar, 261 Mo. 171, 169 S.W. 12 (1914). These cases are discussed note 12 *supra.*

62. Library Dist. v. Hopkins, 375 S.W.2d 71 (Mo. 1964), discussed notes 43-44 *supra* and accompanying text.

63. State *ex rel.* Marlowe v. Himmelberger-Harrison Lumber Co., 332 Mo. 379, 58 S.W.2d 750 (1933), discussed *supra* note 32; State *ex rel.* Parrish v. Young, 327 Mo. 909, 38 S.W.2d 1021 (1931), discussed *supra* notes 12, 27; Lyons v. School Dist., 311 Mo. 349, 278 S.W. 74 (1925), discussed *supra* note 12.

64. Note 50 *supra.*

65. Cases involving the rules that must be followed for assessed valuations, for the description of assessed property and for changes or equalization in assessed valuations: State *ex rel.* Wilson Chevrolet, Inc. v. Wilson, 332 S.W.2d 867 (Mo. 1960), discussed *supra* note 50; Foster Bros. Mfg. Co. v. Tax Comm'n, 319 S.W.2d 590 (Mo. 1958); State *ex rel.* Lindell Tower Apartments, Inc. v. Guise, 357 Mo. 50, 206 S.W.2d 320 (1947); State *ex rel.* Lane v. Corneli, 149 S.W.2d 815 (Mo. 1941); State *ex rel.* Merritt v. Gardner, 347 Mo. 569, 148 S.W.2d 780 (1941); State *ex rel.* Marlowe v. Nolan, 347 Mo. 124, 146 S.W.2d 598 (1941), discussed *supra* note 17; State *ex rel.* Martin v. Childress, 345 Mo. 495, 134 S.W.2d 136 (1939); Wymore v. Markway, 338 Mo. 46, 89 S.W.2d 9 (1935); State *ex rel.* Harrison County Bank v. Springer, 134 Mo. 212, 35 S.W. 589 (1896).

Statutes outlining the formalities by which tax judgments and delinquent taxes are enforced: Evans v. Buente, 284 S.W.2d 543 (Mo. 1955); Hilton v. Smith, 134 Mo. 499, 33 S.W. 464 (1896); see State *ex rel.* Mispagel v. Angert, 53 Mo. App. 349 (1893), *trans'd.*

Statutory provisions pertaining to penalties for delinquent taxes and collector's commissions: State *ex rel.* White v. Fendorff, 317 Mo. 579, 296 S.W. 787 (1927); State *ex rel.* Shannon County v. Hawkins, 169 Mo. 615, 70 S.W. 119 (1902). *But see* Douglass v. Ray, 199 Mo. App. 24, 199 S.W. 568 (1917), discussed *supra* note 17.

Other cases: Long v. City of Independence, 360 Mo. 620, 229 S.W.2d 686 (1950) (involved statutes outlining the period of assessment and the effective date thereof); State *ex rel.* Divine v. Collier, 301 Mo. 72, 256 S.W. 455 (1923), discussed in text accompanying note 8 *supra.*

66. Cases on the issuance and payment of warrants: Pullum v. Consolidated School Dist., 357 Mo. 858, 211 S.W.2d 30 (1948); Morrow v. Surber, 97 Mo. 155, 11 S.W. 48 (1889); see State *ex rel.* Ginger v. Palmer, 194 S.W.2d 736 (Mo. Ct. App.), *trans'd,* 198 S.W.2d 10 (Mo. 1946) (en banc).

Cases on disputed claims by public or quasi-public corporations to certain revenue funds: Gladstone Special Rd. Dist. v. County Court, 365 Mo. 1097, 293 S.W.2d 351 (1956), discussed *supra* note 12; State *ex rel.* Pullum v. Consolidated School Dist., 361 Mo. 114, 233 S.W.2d 702 (1950); Lamar Township v. City of Lamar, 261 Mo. 171, 169 S.W. 12 (1914), discussed *supra* note 12; see State *ex rel.* School Dist. v. Shuck, 184 Mo. App. 511, 170 S.W. 431 (1914), *trans'd,* 273 Mo. 50, 199 S.W. 975 (1917) (dispute between two school districts over funds apportioned by state superintendent of schools); State *ex rel.* Town of Commerce v. Frazer, 182 Mo. App. 277, 168 S.W. 669 (1914), *trans'd* (city claiming interest in monies placed in special fund by county). These cases

### 3.050. Conclusion

"Construction of revenue laws" is the one major jurisdictional category in which the supreme court has not developed a technical and restrictive attitude toward its jurisdiction. Technical rules available in the older case law, which might have been expanded to exclude later cases, especially since 1940, have been largely ignored by the court. As a result, only eleven cases have been transferred with opinions by the supreme court since that year.

Attending this expansive outlook has been a failure to articulate fully and consistently the category's technical underpinnings. Most of the opinions, especially those since 1940, make only a passing reference to jurisdiction. As a result, in the few areas in which jurisdictional problems have persisted,[67] litigants often find that the case law does not indicate where appeals should be taken. On the whole, however, the paucity of transfers shows that this lack of explanation is not a pressing problem.

If the supreme court were to embark upon a program of restricting its jurisdiction by technical rules, it would find itself enmeshed in a cumulative complication of doctrine. The court would have to carve out of the presently existing scope of jurisdiction a smaller sphere; the complication would arise from the obligation to distinguish and reject fringe cases. This fabrication would no doubt confuse the precedents to which litigants (and the court itself) must look in deciding jurisdiction, far more than the present failure to articulate technical rules. By minimizing uncertainty and complication at the original appeal level, the present case law provides for a more efficient hierarchy of review. This accords with the growing recognition of the need for a more orderly and integrated system of administrative procedure and review.[68]

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involved statutes pertaining to the apportionment of revenue funds among the various units of local administration.

Cases on statutes pertaining to the deposit of revenue funds in banks: *In re* Liquidation of People's Bank, 344 Mo. 611, 127 S.W.2d 669 (1939); Wright County *ex rel.* Elk Creek Township v. Farmers' & Merchants' Bank, 30 S.W.2d 32 (Mo. 1930).

67. See notes 19 & 32 *supra*. See also notes 21-22 *supra* and accompanying text for a discussion of unanswered questions in the case law.

68. See St. Louis Bar Association Committee on Administrative Agencies, *Judicial Review and Control of Missouri Administrative Agencies,* 19 U. Kan. City L. Rev. 268 (1951); *Report of Administrative Law Committee,* 10 J. Mo. B. 116 (1954).