CHAPTER SIX

"in all civil cases where the state or any county or other political subdivision of the state or any state officer as such is a party"

6.010. Introduction

The phrase "in all civil cases" was added to the sixth clause of the appellate jurisdictional provision in the 1945 constitution.[1] Also added was the provision for supreme court jurisdiction when the state is a party.[2] Thus, there are presently four types of cases falling within this category over which the supreme court exercises exclusive original appellate jurisdiction: when one of the parties is (1) the state, (2) a county, (3) another political subdivision, or (4) a state officer.

6.020. State a Party

The basic condition which must be satisfied before the supreme court will hear an original appeal of a case falling within this category is that the state

1. Since the provision giving the supreme court jurisdiction of cases in which the state is a party is also an innovation, probably the phrase "civil cases" was added in an effort to distinguish the cases to be included in this category from criminal actions in which the state is a party; jurisdiction of criminal appeals had already been allocated under the "felony" category. See § 7.010. However, the one opinion considering the new phrase "all civil cases" resurrected a judicial definition of a civil case as a legal means for "the enforcement or protection of private rights, and redress or prevention of private wrongs." State v. Harold, 364 Mo. 1052, 271 S.W.2d 527 (1954), *trans'd*, 281 S.W.2d 605 (Ct. App. 1955); *cf.* State *ex rel.* Kochtitzky v. Riley, 203 Mo. 175, 101 S.W. 567 (1907); *In re* McFarland, 223 Mo. App. 826, 12 S.W.2d 523 (1928); State *ex rel.* Bixman v. Denton, 128 Mo. App. 304, 107 S.W. 446 (1908). State v. Harold, *supra,* was an appeal from a juvenile proceeding in which the defendant was adjudged a delinquent, having committed a burglary and larceny. Since a juvenile proceeding is not a true criminal action, the fact that the offense would be considered a felony if committed by an adult did not give the supreme court jurisdiction. See § 7.010, note 1. After holding that the case was not a criminal action, the court applied the traditional definition of "civil case" and ruled that because the defendant had committed a *public* wrong the case was also not a civil action and transferred to the court of appeals on both grounds. As will be discussed, notes 4-7 *infra* and accompanying text, some public right or interest must be identified in order for the state to be considered a party for jurisdictional purposes. Therefore, the court's use of the traditional definition is misleading since it might be applied to *all* non-criminal actions, with the result that the supreme court would not have jurisdiction in cases involving general or public welfare in which the state is a party. In construing "civil cases" the traditional technical meaning should be disregarded to avoid this anomaly; the addition of this term should be regarded solely as a means of distinguishing civil and criminal actions.

2. Under the 1875 constitution the supreme court would not take jurisdiction merely because the state was a party to the case. State *ex rel.* Office of Civilian Defense Salvage Comm. v. Horner, 353 Mo. 839, 184 S.W.2d 1002, *trans'd,* 238 Mo. App. 787, 187 S.W.2d 976 (1945).

must be the real party in interest. Because the "state a party" provision was added to this section in 1945 and relatively few cases have construed it, litigants must often consult cases that either antedate the 1945 constitution or concern non-jurisdictional issues to ascertain when the condition is satisfied.[3]

The principal requirement is that an identifiable public interest must be involved in the case. Thus, the state has been held to be the real party in interest in cases to enjoin the maintenance of a public nuisance,[4] the operation of a nursing home,[5] the unauthorized practice of medicine,[6] and the continuation of a private business enterprise in a state park.[7] The courts have held also that jurisdiction belonged in the supreme court on the ground of "state a party" in two cases[8] involving taxation by the state and in three cases[9] involving enforcement of appearance bonds.

3. The existence of the state's pecuniary interest in the outcome of the case has been termed immaterial in this connection. State *ex rel.* Delmar Jockey Club v. Zachritz, 166 Mo. 307, 65 S.W. 999 (1901) (en banc). *But see* State *ex rel.* Missouri Pac. Ry. v. Williams, 221 Mo. 227, 120 S.W. 740 (1909) (en banc).

For the rule that the state is not necessarily a party when one of its executive commissions is named as a party, see Christeson v. Highway Comm'n, 40 S.W.2d 615 (Mo. 1931), *trans'd*, 46 S.W.2d 906 (Ct. App. 1932); State *ex rel.* Highway Comm'n v. Bates, 317 Mo. 696, 296 S.W. 418 (1927) (en banc).

The question of whether the state is the real or merely a nominal party arises in cases of quo warranto. There are two varieties of this action to test the validity of title. They can be distinguished by the identity of the person serving as plaintiff in the respective branches. In the common law action, instituted and prosecuted by the prosecuting attorney or the attorney general, the state is said to be acting *ex officio* through its officers and is the real party in interest. If the statutory action of quo warranto is used (Mo. Rev. Stat. § 531.010 (1959)), the private person who seeks to institute the suit and be named as private relator must have some peculiar interest which distinguishes him from the general public. The private relator, rather than the state, is then deemed the real party in interest. State *ex rel.* Dalton v. Mattingly, 268 S.W.2d 868 (Mo. 1954), *trans'd*, 275 S.W.2d 34 (Ct. App. 1955); State *ex rel.* Handlan v. Wilkie Land Co., 349 Mo. 666, 162 S.W.2d 846 (1942), *trans'd*; State *ex rel.* Otto v. Hyde, 317 Mo. 714, 296 S.W. 775 (1927), *trans'd*; State *ex rel.* Wallach v. Schneider's Credit Jewelers, 243 S.W.2d. 125 (Mo. Ct. App. 1951); see State *ex rel.* Griffin v. Smith, 363 Mo. 1235, 258 S.W.2d 590 (1963) (en banc). A discussion of these two actions is found in Missouri Bar Ass'n, Missouri Appellate Practice 128-30, 133-39 (1963).

4. See State *ex rel.* Thrash v. Lamb, 237 Mo. 437, 141 S.W. 665 (1911) (en banc). Although jurisdiction had to be predicated upon the other categories in 1911, presumably the supreme court would now have jurisdiction of a similar case based on state a party.

5. State *ex rel.* Eagleton v. Patrick, 370 S.W.2d 254 (Mo. 1963).

6. State *ex rel.* Collet v. Scopel, 316 S.W.2d 515 (Mo. 1958).

7. State *ex rel.* Taylor v. Anderson, 362 Mo. 513, 242 S.W.2d 66 (1961).

8. State v. Kosovitz, 342 S.W.2d 828 (Mo. 1961) (to collect delinquent income taxes); *In re* Atkins Estate, 307 S.W.2d 420 (Mo. 1957) (to determine whether certain property was exempt from income taxes). Cases such as these could probably be based also on construction of revenue laws. See § 3.040.

9. State v. Norton, 347 S.W.2d 849 (Mo. 1961) (en banc); State v. Haney, 277

6.030. County a Party

To confer jurisdiction upon the supreme court, the county must be a formal party to the record. Although the county is interested in the outcome of the case, if only a county officer or board is named as party plaintiff or defendant, the court of appeals has original appellate jurisdiction.[10] Once the county has been established a party to the record, the court will then determine whether it is the real party in interest.[11] No clearly identifiable test is applied, although pecuniary interest of the county appears to be a

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S.W.2d 632 (Mo. 1955); State v. Haverstick, 317 S.W.2d 654 (Mo. Ct. App. 1958), *trans'd,* 326 S.W.2d 92 (Mo. 1959).

10. It is well established that the county is not a party to the case merely because the judges of the county court are parties; the courts of appeals have jurisdiction in such cases. Perkins v. Burks, 61 S.W.2d 756 (Mo.), *trans'd,* 64 S.W.2d 712 (Ct. App. 1933); Dietrich v. Brickey, 327 Mo. 189, 37 S.W.2d 428 (1931), *trans'd,* 48 S.W.2d 69 (Ct. App. 1932); State *ex rel.* Stipp v. Cornish, 19 S.W.2d 294 (Mo. 1929), *trans'd,* 223 Mo. App. 978, 24 S.W.2d 667 (1930); Village of Grandview v. McElroy, 318 Mo. 135, 298 S.W. 760 (1927), *trans'd;* State *ex rel.* Cornelius v. McClanahan, 273 S.W. 1059 (Mo.), *trans'd,* 221 Mo. App. 399, 278 S.W. 88 (1925); State *ex rel.* Nee v. Gorsuch, 303 Mo. 295, 260 S.W. 455 (1924) (en banc), *trans'd,* 217 Mo. App. 480, 268 S.W. 665 (1925); State *ex rel.* Tadlock v. Mooneyham, 296 Mo. 421, 247 S.W. 163 (1922), *trans'd,* 212 Mo. App. 573, 253 S.W. 1098 (1923); Burrows v. County Court, 308 S.W.2d 299 (Mo. Ct. App. 1957); State *ex rel.* Texas County v. White, 68 Mo. App. 503 (1897), *trans'd.*

In Bowman v. Phelps County, 36 S.W.2d 414 (Mo. Ct. App. 1931), *trans'd,* 330 Mo. 826, 51 S.W.2d 3 (1932), it was held that when an account is presented to the county court for payment out of county funds, the county *is* a party to the record. Otherwise, to make the county a party of record, the county clerk must be formally served. State *ex rel.* Heath v. County Court, 324 S.W.2d 662 (Mo. 1959), *trans'd,* 331 S.W.2d 289 (Ct. App. 1960). This is also true of St. Louis County, which has a special "home rule" charter. State *ex rel.* Town of Olivette v. American Tel. & Tel. Co., 273 S.W.2d 286 (Mo. 1954), *trans'd,* 280 S.W.2d 134 (Ct. App. 1955). In Witt v. City of Webster Groves, 383 S.W.2d 723 (Mo. 1964), *trans'd,* St. Louis County *intervened* in an action by which certain parties were seeking injunction and declaratory judgment that an annexation made by the city of Webster Groves (which is located in St. Louis County) was invalid. The county sought a declaration of the legal status of the city's annexation ordinance and election. The supreme court was apparently satisfied that the county was sufficiently a party in interest and a party to the record at the trial court. However, the case was transferred on the ground that the county was not among the parties appealing the trial court's judgment for the city. *Cf.* Freeman v. St. Louis Quarry Co., 30 Mo. App. 362 (1888) (dictum), *trans'd.*

See State *ex rel.* Thompson v. Roberts, 264 S.W.2d 314 (Mo.), *trans'd,* 269 S.W.2d 148 (Ct. App. 1954); State *ex rel.* Walker v. Locust Creek Drainage Dist., 58 S.W.2d 452 (Mo. 1933), *trans'd,* 228 Mo. App. 434, 67 S.W.2d 840 (1934).

11. State *ex rel.* Hickory County v. Dent, 121 Mo. 162, 25 S.W. 924 (1894), *trans'd from* court of appeals; State *ex rel.* Ozark County v. Tate, 109 Mo. 265, 18 S.W. 1088 (1892); State *ex rel.* Hickory County v. Davis, 292 S.W.2d 322 (Mo. Ct. App. 1956), *trans'd,* 302 S.W.2d 892 (Mo. 1957). Each of these cases was an action on the bond of a county official giving the supreme court jurisdiction because the county was deemed the real party in interest.

factor; in two cases the court of appeals was held to have jurisdiction because the county's liability would not be altered by the decision on appeal.[12]

There are many cases which appear to have presented no difficult questions of jurisdiction in which supreme court jurisdiction was expressly based on the fact that counties were parties.[13]

6.040. Other Political Subdivisions

Although the phrase "other political subdivision" appears to present a potential "catchall" category, the courts, when faced with problems of appellate jurisdiction, have given it a unique and limited definition. Thus,

12. In Barrett v. Stoddard County, 183 S.W. 644 (Mo. Ct. App. 1916), the particular proceeding from which the appeal was taken was incidental to the principal proceeding in which the county was a party. The court of appeals had jurisdiction since the county would not be affected by the result in the incidental proceeding. The court of appeals likewise had jurisdiction in Johnson County v. Bryson, 27 Mo. App. 341 (1887), since the county was a mere stakeholder.

13. Cases involving restitution of money: County of St. Francois v. Brookshire, 302 S.W.2d 1 (Mo. 1957); Howard County v. Moniteau County, 336 Mo. 295, 78 S.W.2d 96 (1934); Corbin v. Adair County, 171 Mo. 385, 71 S.W. 674 (1903); Meekins v. Sullivan County, 154 Mo. 136, 55 S.W. 145 (1900); New Madrid County v. Phillips, 125 Mo. 61, 28 S.W. 321 (1894). Suits for salaries: Mooney v. County of St. Louis, 286 S.W.2d 763 (Mo. 1956); Cook v. County of St. Francois, 349 Mo. 484, 162 S.W.2d 252 (1942), *trans'd from* court of appeals; Chapman v. McDonald County, 5 S.W.2d 403 (Mo. 1928); Jenkins v. Shannon County, 226 Mo. 187, 125 S.W. 1100 (1910), *trans'd from* court of appeals. Actions involving payment of warrants or bonds: Layson v. Jackson County, 365 Mo. 905, 290 S.W.2d 109 (1956); Ballard v. Standard Printing Co., 356 Mo. 552, 202 S.W.2d 780 (1947); Sturdivant Bank v. Stoddard County, 332 Mo. 568, 58 S.W.2d 702 (1933) (en banc); Howell County *ex rel.* Inhabitants of Township 24 v. Wheeler, 108 Mo. 294, 18 S.W. 1080 (1892). Cases involving tax assessments: Taney County v. Empire Dist. Elec. Co., 309 S.W.2d 610 (Mo. 1958); Platte River Drainage Dist. v. Andrew County, 278 S.W. 387 (Mo. 1925). Other cases: Estate of Ballard v. Clay County, 355 S.W.2d 894 (Mo. 1962) (discovery of assets proceeding); Odell v. Pile, 260 S.W.2d 521 (Mo. 1953) (injunction); Greenfield v. Petty, 346 Mo. 1186, 145 S.W.2d 367 (1940) (suit to quiet title).

There are also cases which involved at least one transfer, but in which the opinions referred to no particular complication of the jurisdictional issue. This probably indicates that the litigants had made clear-cut errors in the choice of appellate forum. State *ex rel.* Spratley v. Maries County, 339 Mo. 577, 98 S.W.2d 623 (1936), *trans'd from* court of appeals; Kansas City Sanitary Co. v. Laclede County, 307 Mo. 10, 269 S.W. 395 (1925) (en banc), *trans'd from* court of appeals; Taney County v. Addington, 296 S.W.2d 129 (Mo. Ct. App. 1956), *trans'd,* 304 S.W.2d 842 (Mo. 1957); Fort Osage Drainage Dist. v. Jackson County, 264 S.W.2d 792 (Mo. Ct. App. 1954), *trans'd,* 275 S.W.2d 326 (Mo. 1955); Howell County v. Cook, 48 S.W.2d 88 (Mo. Ct. App. 1932), *trans'd*; Franklin County v. Missouri Pac. Ry., 183 S.W. 1099 (Mo. Ct. App. 1916), *trans'd,* 210 S.W. 874 (Mo. 1919); Reynolds v. Clark County, 73 Mo. App. 278 (1898), *trans'd,* 162 Mo. 680, 63 S.W. 382 (1901); Allen v. Cowan, 30 Mo. App. 1, *trans'd,* 96 Mo. 193, 9 S.W. 587 (1888); Webster County v. Cunningham, 25 Mo. App. 358 (1887), *trans'd.*

although certain governmental or corporate units might be called "political subdivisions" for other purposes,[14] they will not necessarily be included for jurisdictional purposes.

6.041. *Townships*

The present rule,[15] first expressed in *Harrison & Mercer County Drainage Dist. v. Trail Creek Township,*[16] is that the supreme court has original appellate jurisdiction when a township within a county, which township was created under the township organization statutes, is named as a party.[17] The holding in *Harrison* has been consistently followed.[18]

6.042. *City of St. Louis*

An 1876 amendment to the 1875 Missouri Constitution provided that St. Louis should function as a corporate governmental unit in the dual capacity of city and county.[19] Because of this unique arrangement, St. Louis was originally classified as a "political subdivision," giving the supreme court exclusive original appellate jurisdiction when the city was a party in *either* capacity.[20]

14. See Mo. CONST. art. X, § 15. See also Long v. City of Independence, 360 Mo. 620, 229 S.W.2d 686 (1950).

15. Dictum to the contrary expressed in Wilson v. King's Lake Drainage & Levee Dist., 237 Mo. 39, 139 S.W. 136 (1911), *trans'd,* 158 S.W. 931 (Ct. App. 1913), should be disregarded.

16. 317 Mo. 933, 297 S.W. 1 (1927).

17. *Id.* at 941, 297 S.W. at 4.

18. Fleming v. Clark Township, 357 S.W.2d 940 (Mo. 1962); Cullor v. Jackson Township, 249 S.W.2d 393 (Mo. 1952); Sherlock v. Duck Creek Township, 338 Mo. 868, 92 S.W.2d 675 (1936); Liberty Township v. Telford, 349 S.W.2d 704 (Mo. Ct. App. 1961), *trans'd,* 358 S.W.2d 842 (Mo. 1962); see Grand River Township v. Cooke Sales & Serv., Inc., 267 S.W.2d 322 (Mo. 1954); Norborne Land Drainage Dist. Co. v. Cherry Valley Township, 325 Mo. 1197, 31 S.W.2d 201 (1930); Wright County *ex rel.* Elk Creek Township v. Farmers' & Merchants' Bank, 30 S.W.2d 32 (Mo. 1930); Reilly v. Sugar Creek Township, 232 Mo. App. 721, 121 S.W.2d 298 (1938), *trans'd;* Missouri Township v. Farmers' Bank, 12 S.W.2d 763 (Mo. Ct. App. 1928), *trans'd,* 328 Mo. 868, 42 S.W.2d 353 (1931).

19. The purpose and language of this amendment were discussed in Lovins v. City of St. Louis, 336 Mo. 1194, 84 S.W.2d 127 (1935), *trans'd,* 90 S.W.2d 430 (Ct. App. 1936). The combination of city and county functions is presently authorized by Mo. CONST. art. VI, § 31.

20. Cases involving violations of city ordinances: City of St. Louis v. Southcombe, 320 Mo. 865, 8 S.W.2d 1001 (1928); City of St. Louis v. Murta, 283 Mo. 77, 222 S.W. 430 (1920); City of St. Louis v. Coffee, 76 Mo. App. 318 (1898), *trans'd;* City of St. Louis v. Robinson, 55 Mo. App. 256 (1893), *trans'd,* 135 Mo. 460, 37 S.W. 110 (1896). Cases involving property damages, personal injuries and alleged negligence of the city: Volz v. City of St. Louis, 326 Mo. 362, 32 S.W.2d 72 (1930); Straub v. City of St. Louis, 175 Mo. 413, 75 S.W. 100 (1903); Harman v. City of St. Louis, 55 Mo. App.

This rule was changed in *Lovins v. City of St. Louis.*[21] Presently, the supreme court has original appellate jurisdiction only if St. Louis sues or is sued in its governmental capacity *as a county,* rather than in its municipal capacity.[22] Thus, the scope of supreme court jurisdiction over St. Louis cases now coincides with jurisdiction based on "county a party."[23]

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175 (1893), *trans'd,* 137 Mo. 494, 38 S.W. 1102 (1897). Other cases: Gracey v. City of St. Louis, 213 Mo. 384, 111 S.W. 1159 (1908) (suit for balance of salary); Steffen v. City of St. Louis, 135 Mo. 44, 36 S.W. 31 (1896) (action on a contract); Riddle v. Brown, 37 Mo. App. 550 (1889), *trans'd* (proceeding in nature of creditors' bill); Freeman v. St. Louis Quarry Co., 30 Mo. App. 362 (1888), *trans'd.*

In handling these cases, the courts had required that the city be the real party in interest, a fact determined by the use of several tests. First, the city had to be a formal party to the record. City of St. Louis v. Dietering, 19 S.W.2d 882 (Mo. 1929), *trans'd,* 27 S.W.2d 711 (Ct. App. 1930). Thus, if a city board, rather than the city itself was named, the supreme court did not have original appellate jurisdiction. State *ex rel.* Horstkotte v. Board of Health, 90 Mo. 169, 2 S.W. 291 (1886). Also, some substantial interest of the city had to be shown. This was normally a financial interest: City of St. Louis *ex rel.* Hydraulic Press Brick Co. v. Ruecking Constr. Co., 212 S.W. 887 (Mo. 1919), *trans'd*; Hilton v. Universal Constr. Co., 212 S.W. 867 (Mo. 1919), *trans'd,* 202 Mo. App. 672, 216 S.W. 1034 (1920). However, some cases do not refer to this pecuniary standard: Frolichstein v. Cupples' Station Light, Heat & Power Co., 201 S.W. 897 (Mo. 1918), *trans'd,* 201 Mo. App. 162, 210 S.W. 90 (1919); Bowser v. City of St. Louis, 177 S.W. 610 (Mo. 1915), *trans'd,* 182 S.W. 1066 (Ct. App. 1916). Two cases held that when the city was sued in its capacity as trustee of philanthropic funds, the court of appeals had jurisdiction. Barnett v. City of St. Louis, 195 S.W. 1017 (Mo.), *trans'd,* 198 S.W. 452 (Ct. App. 1917); Joyce Surveying Co. v. City of St. Louis, 68 Mo. App. 182 (1896).

21. 336 Mo. 1194, 84 S.W.2d 127 (1935), *trans'd,* 90 S.W.2d 430 (Ct. App. 1936).

22. Cases held to involve only the municipal capacity, over which the court of appeals had jurisdiction have included condemnation proceedings: City of St. Louis v. Butler Co., 358 Mo. 1221, 219 S.W.2d 372 (en banc), *trans'd,* 223 S.W.2d 831 (Ct. App. 1949); City of St. Louis v. Essex Inv. Co., 356 Mo. 1204, 204 S.W.2d 726 (1947). Cases involving enforcement of municipal ordinances now are heard by the court of appeals; City of St. Louis v. Friedman, 358 Mo. 681, 216 S.W.2d 475 (1948); Superior Press Brick Co. v. City of St. Louis, 152 S.W.2d 178 (Mo.), *trans'd,* 155 S.W.2d 290 (Ct. App. 1941); Fischbach 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). Personal injury actions against the city: Keen v. City of St. Louis, 185 S.W.2d 23 (Mo.), *trans'd,* 189 S.W.2d 139 (Ct. App. 1945); Koontz v. City of St. Louis, 84 S.W.2d 131 (Mo. 1935), *trans'd,* 230 Mo. App. 128, 89 S.W.2d 586 (1936); Fadem v. City of St. Louis, 99 S.W.2d 511 (Mo. Ct. App. 1936). Other cases held to involve only the municipal capacity: Rowland v. City of St. Louis, 327 S.W.2d 505 (Mo. Ct. App. 1959) (involving city's capacity to issue surveyor's licenses); McClellan v. City of St. Louis, 170 S.W.2d 131 (Mo. Ct. App. 1943) (city's capacity to operate hospitals); City of St. Louis v. Gottschall, 121 S.W.2d 239 (Mo. Ct. App. 1938) (city sued out execution on judgment).

In City of St. Louis v. Smith, 360 Mo. 406, 228 S.W.2d 780 (1950) (en banc), the supreme court took jurisdiction apparently because the jurisdictional amount was met, and held that certain employees should be paid for a lay-off period. In complying with this ruling, the city made certain deductions from the payments, which action was challenged as illegal in Wessler v. City of St. Louis, 242 S.W.2d 289 (Mo. Ct. App.

6.043. *Other Corporate Units*

The supreme court cannot exercise original appellate jurisdiction merely because a municipality is a party.[24] Likewise, the following units have been excluded from the meaning of "political subdivision" for purposes of jurisdiction: school districts;[25] drainage, levee and road districts;[26] county hospitals;[27] and commissions of the state executive branch of government.[28]

1951). The court of appeals retained jurisdiction in this case because the jurisdictional amount was no longer specified, and the city was involved in only its municipal capacity. Apparently jurisdiction of suits to determine a city employee's compensation or term of office is in the supreme court if the employee performs a county rather than a municipal function. *Compare* Holland v. City of St. Louis, 262 S.W.2d 1 (Mo. 1953), *trans'd,* 264 S.W.2d 928 (Ct. App. 1954), *with* Riley v. Holland, 362 Mo. 682, 243 S.W.2d 79 (1951).

23. Since the rules which were previously used by the supreme court to determine when St. Louis was a real party to a case (see note 20 *supra*) are essentially those used when a county is named a party (see notes 11-12 *supra* and accompanying text), the effect of the *Lovins* decision has been to limit the number of cases in which jurisdiction will be exercised. It has not changed the rules applied to those cases to determine if the city is the real party.

24. State *ex rel.* Highway Comm'n v. Hudspeth, 297 S.W.2d 510 (Mo.), *trans'd,* 303 S.W.2d 703 (Ct. App. 1957); Kansas City v. National Eng'r & Mfg. Co., 265 S.W.2d 384 (Mo. 1954); Ingle v. City of Fulton, 260 S.W.2d 666 (Mo. 1953), *trans'd,* 268 S.W.2d 600 (Ct. App. 1954); Long v. City of Independence, 360 Mo. 620, 229 S.W.2d 686 (1950); Stratton v. City of Warrensburg, 159 S.W.2d 766 (Mo.), *trans'd,* 237 Mo. App. 280, 167 S.W.2d 392 (1942); Associated Holding Co. v. W. B. Kelley & Co., 336 Mo. 851, 81 S.W.2d 624 (1935), *trans'd,* 230 Mo. App. 267, 90 S.W.2d 419 (1936); McGill v. City of St. Joseph, 31 S.W.2d 1038 (Mo. 1930), *trans'd,* 225 Mo. App. 1033, 38 S.W.2d 725 (1931); 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 of St. Joseph v. Georgetown Lodge, 8 S.W.2d 979 (Mo.), *trans'd,* 222 Mo. App. 1076, 11 S.W.2d 1082 (1928); Village of Grandview v. McElroy, 318 Mo. 135, 298 S.W. 760 (1927); Smith v. City of Sedalia, 228 Mo. 505, 128 S.W. 735 (1910), *trans'd*; City of Tarkio v. Loyd, 179 Mo. 600, 78 S.W. 797, *trans'd,* 109 Mo. App. 171, 82 S.W. 1127 (1904); 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); Webb City & Carterville Waterworks Co. v. Webb City, 143 Mo. 493, 45 S.W. 279 (1898); Parker v. Zeisler, 139 Mo. 298, 40 S.W. 881 (1897), *trans'd,* 73 Mo. App. 537 (1898) (earlier cases taken inadvertently by supreme court rejected); City of St. Charles v. Hackman, 133 Mo. 634, 34 S.W. 878 (1896); Kansas City v. Neal, 122 Mo. 232, 26 S.W. 695 (1894), *trans'd*; Felker v. City of Sikeston, 334 S.W.2d 754 (Mo. Ct. App. 1960); McCullough v. City of Springfield, 241 Mo. App. 425, 236 S.W.2d 753 (1951). The rule is so well established that it is surprising to find recent opinions which expressly reject contentions by litigants that the supreme court has jurisdiction because a city is a party. State *ex rel.* Barnett v. Sappington, 260 S.W.2d 669 (Mo. 1953), *trans'd,* 266 S.W.2d 774 (1954); Deacon v. City of Ladue, 294 S.W.2d 616 (Mo. Ct. App. 1956).

25. State *ex rel.* Kugler v. Tillatson, 300 S.W.2d 517 (Mo.), *trans'd,* 304 S.W.2d 485 (Ct. App. 1957); Cooper v. School Dist., 362 Mo. 49, 239 S.W.2d 509 (1951); Young v. Brassfield, 223 S.W.2d 491 (Mo. 1949), *trans'd,* 249 Mo. App. 35, 228 S.W.2d 823 (1950); Hydesburg Common School Dist. v. Rensselaer Common School Dist., 214 S.W.2d 4 (Mo. 1948), *trans'd,* 218 S.W.2d 833 (Ct. App. 1949); State *ex rel.* Heppe v.

6.050. State Officer a Party

The courts must rule upon two questions to determine whether the supreme court has jurisdiction under the "state officer" provision: (1) whether a state officer is a party to the case, and (2) whether that officer is a *contesting* party.

6.051. *Criteria for Deciding Whether a State Officer Is a Party*

The courts have adopted a two-step approach to ascertain whether a state officer is involved as a party. The first step requires the identification of an individual governmental official; the second, his qualification as a "state officer" under established definitional tests.

6.051(a). *Identification of the Official*

As the alignment of parties in certain kinds of actions has become more complicated, distinctions have been drawn in the case law to cope with the increasing complexities. The central jurisdictional requirement is that there

Zilafro, 206 S.W.2d 496 (Mo. 1947), *trans'd,* 210 S.W.2d 719 (Ct. App. 1948); Cardwell v. Howard, 345 Mo. 215, 132 S.W.2d 960 (1939), *trans'd,* 137 S.W.2d 652 (Ct. App. 1940); Normandy Consol. School Dist. v. Wellston Sewer Dist., 74 S.W.2d 621 (Mo.), *trans'd,* 77 S.W.2d 477 (Ct. App. 1934); Consolidated School Dist. v. Gower Bank, 53 S.W.2d 280 (Mo.), *trans'd,* 55 S.W.2d 713 (Ct. App. 1932); Gray v. School Dist., 20 S.W.2d 657 (Mo. 1929), *trans'd,* 224 Mo. App. 905, 28 S.W.2d 683 (1930); State *ex rel.* Cravens v. Thompson, 322 Mo. 444, 17 S.W.2d 342, *trans'd,* 22 S.W.2d 196 (Ct. App. 1929); 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); State *ex rel.* School Dist. No. 4 v. School Dist. No. 3, 238 Mo. 407, 141 S.W. 1111 (1911), *trans'd,* 163 Mo. App. 253, 146 S.W. 816 (1912); School Dist. v. Boyle, 182 Mo. 347, 81 S.W. 409 (1904), *trans'd,* 113 Mo. App. 340, 88 S.W. 136 (1905); State *ex rel.* Federicktown School Dist. v. Underwood School Dist., 250 S.W.2d 843 (Mo. Ct. App. 1952); State *ex rel.* McCain v. Acom, 241 Mo. App. 446, 236 S.W.2d 749 (1951); School Dist. v. Burris, 84 Mo. App. 654 (1900).

26. 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); Drainage Dist. No. 28 v. Drainage Dist. No. 23, 144 S.W.2d 61 (Mo.), *trans'd,* 146 S.W.2d 858 (Ct. App. 1940); 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); Normandy Consol. School Dist. v. Wellston Sewer Dist., 74 S.W.2d 621 (Mo.), *trans'd,* 77 S.W.2d 477 (Ct. App. 1934); Chilton v. Drainage Dist., 332 Mo. 1173, 61 S.W.2d 744 (1933), *trans'd from* 224 Mo. App. 467, 28 S.W.2d 120 (1930), *retrans'd,* 228 Mo. App. 4, 63 S.W.2d 421 (1933); Wheat v. Platte City Benefit Assessment Special Rd. Dist., 330 Mo. 1245, 52 S.W.2d 856 (1932), *trans'd,* 227 Mo. App. 869, 59 S.W.2d 88 (1933); Wilson v. King's Lake Drainage & Levee Dist., 237 Mo. 39, 139 S.W. 136 (1911) (en banc), *trans'd,* 176 Mo. App. 470, 158 S.W. 931 (1913).

27. Stribling v. Jolley, 362 Mo. 995, 245 S.W.2d 885 (en banc), *trans'd,* 241 Mo. App. 1123, 253 S.W.2d 519 (1952).

28. Wheat v. Platte City Benefit Assessment Special Rd. Dist., 330 Mo. 1245, 52 S.W.2d 856 (1932), *trans'd,* 227 Mo. App. 869, 59 S.W.2d 88 (1933).

must be an *individual* named as a party in his capacity as a state officer.[29] This requirement has caused difficulties regarding collective activity of officials comprising state executive or administrative agencies.

Prior to 1945, many of these state agencies or commissions had no independent legal substance, and could sue and be sued only in the names of the individuals who comprised them. The courts held that because the title of these agencies was a collective name for these individuals, the supreme court had jurisdiction of cases involving agency activities.[30]

Article IV, section twelve of the 1945 constitution provided that the executive branch of government should consist of the governor, lieutenant governor, state treasurer, state auditor, secretary of state, attorney general and the several executive departments (revenue, education, highways, conservation, agriculture, "and such additional departments, not exceeding five in number as may hereafter be established by law"). It was also provided that "unless discontinued, all present or future boards, bureaus, commissions, and other agencies of the state exercising administrative or executive authority shall be assigned by the governor to the department to which their respective powers and duties are germane."[31]

Since the executive reorganization much of the important work of the executive branch has been carried on by commissions which can sue and be sued in corporate capacities. Since the adversary interests in proceedings have been reposed in these legal entities, rather than in the persons who compose them, the supreme court has refused to take jurisdiction, because of the

29. *Compare* Shepherd v. Department of Revenue, 370 S.W.2d 381 (Mo. 1963), *trans'd, with* Felker v. Carpenter, 340 S.W.2d 696 (Mo. 1960), *and* Missouri Ins. Co. v. Morris, 255 S.W.2d 781 (Mo. 1953). Although each case involved the Department of Revenue, the supreme court retained jurisdiction only in the latter two, in which the director of revenue was an actual party *as an individual.*

30. *E.g.*, American Nat'l Ins. Co. v. Keitle, 353 Mo. 1107, 186 S.W.2d 447 (1945) (Unemployment Compensation Commission); Shelley v. Commission for the Blind, 309 Mo. 612, 274 S.W. 688 (1925) (en banc). In many of these cases the court's approach is awkward since it is caught between the need to conceive of the commission and its component members as one entity and the traditional urge in approaching a complex alignment of named parties to seek out natural persons suing or being sued in their official capacities. See State *ex rel.* Office of Civilian Defense Salvage Comm. v. Horner, 353 Mo. 838, 184 S.W.2d 1002, *trans'd,* 238 Mo. App. 787, 187 S.W.2d 976 (1945); Foster v. Commission for the Blind, 327 Mo. 416, 37 S.W.2d 450 (1931). See three cases dealing with the old State Board of Health: State *ex rel.* Lentine v. Board of Health, 334 Mo. 220, 65 S.W.2d 943 (1933); State *ex rel.* Horton v. Clark, 320 Mo. 1190, 9 S.W.2d 635 (1928) (en banc); State *ex rel.* Conway v. Hiller, 266 Mo. 242, 180 S.W. 538 (1915) (en banc).

31. Mo. CONST. art IV, § 12. Administrative Law Comm. for the Missouri Bar, *Survey of Mo. Administrative Agencies,* 19 U. KAN. CITY L. REV. 227, 243-62 (1951), contains a treatment of the plan submitted to carry out this assignment, and an outline of the assignment made.

absence of an identifiable individual state officer who can be named as a party. (This result was also reached before 1945 in cases involving a few agencies, including the Highway Commission[32] and the Public Service Commission,[33] which were incorporated prior to that year.) Since 1945 this has

32. The Highway Commission was held not to be a "state officer" for purposes of jurisdiction in State *ex rel.* Highway Comm'n v. Hudspeth, 297 S.W.2d 510 (Mo.), *trans'd,* 303 S.W.2d 703 (Ct. App. 1957); Pope Constr. Co. v. Highway Comm'n, 337 Mo. 30, 84 S.W.2d 920 (1935), *trans'd,* 230 Mo. App. 502, 92 S.W.2d 974 (1936); Wheat v. Platte City Benefit Assessment Special Rd. Dist., 330 Mo. 1245, 52 S.W.2d 856 (1932), *trans'd,* 227 Mo. App. 869, 59 S.W.2d 88 (1933); Christeson v. Highway Comm'n, 40 S.W.2d 615 (Mo. 1931), *trans'd,* 46 S.W.2d 906 (Ct. App. 1932); State *ex rel.* Highway Comm'n v. Carroll, 34 S.W.2d 74 (Mo. 1931), *trans'd,* 226 Mo. App. 563, 44 S.W.2d 1105 (1932); State *ex rel.* Highway Comm'n v. Day, 327 Mo. 122, 35 S.W.2d 37 (1930) (en banc), *trans'd,* 226 Mo. App. 884, 47 S.W.2d 147 (1932).

33. The awkwardness of the search for individual state officers when the principal work is being done by a commission is pointed up in the myriad of transfers and appeals regarding this commission in the 1930's. The statutes pertaining to the Public Service Commission had purported to confer jurisdiction upon the supreme court in all cases to which the commission was a party, whether or not the jurisdictional amount requirement was met. Since the commission was a corporate entity, not a "state officer," the statutory provision was held to be an unconstitutional attempt by the general assembly to extend the jurisdiction of the supreme court beyond the constitutionally enumerated categories. State *ex rel.* Pitcairn v. Public Serv. Comm'n, 92 S.W.2d 881 (Mo.), *trans'd,* 100 S.W.2d 636 (Ct. App. 1936); State *ex rel.* Gehrs v. Public Serv. Comm'n, 90 S.W.2d 394 (Mo.), *trans'd,* 100 S.W.2d 636 (Ct. App. 1936); State *ex rel.* Orscheln Bros. Truck Lines v. Public Serv. Comm'n, 338 Mo. 572, 92 S.W.2d 882 (1935), *trans'd,* 231 Mo. App. 293, 98 S.W.2d 126 (1936); State *ex rel.* Pitcairn v. Public Serv. Comm'n, 90 S.W.2d 395 (Mo. 1935), *trans'd,* 231 Mo. App. 446, 100 S.W.2d 637 (1936); State *ex rel.* Pitcairn v. Public Serv. Comm'n, 338 Mo. 180, 90 S.W.2d 392 (1935), *trans'd,* 100 S.W.2d 635 (Ct. App. 1937); State *ex rel.* Gehrs v. Public Serv. Comm'n, 338 Mo. 177, 90 S.W.2d 390 (1935), *trans'd,* 99 S.W.2d 858 (Ct. App. 1936). All of these cases were transferred to the Kansas City Court of Appeals, which dismissed the appeals because the supreme court had held unconstitutional only the one provision vesting jurisdiction in the supreme court, and had left the rest of the statute intact. One remaining provision stated that the courts of appeals would have no jurisdiction of cases involving this commission. In addition, the court of appeals also dismissed another case which had been transferred to it: State *ex rel.* Hunter v. Public Serv. Comm'n, 100 S.W.2d 637 (Mo. Ct. App. 1936).

The next step in the confusion came in State *ex rel.* Wabash Ry. v. Shain, 341 Mo. 19, 106 S.W.2d 898 (1937), an original action in the supreme court for mandamus to compel the judges of the Kansas City Court of Appeals to set aside their judgment dismissing State *ex rel.* Pitcairn v. Public Serv. Comm'n, 100 S.W.2d 635 (Ct. App. 1937). The supreme court was faced with the embarrassing task of holding that the court of appeals should have taken the case on the ground that the statutory provision divesting the latter court of jurisdiction was also unconstitutional, in spite of the fact that the supreme court declined to announce this in an earlier opinion denying a rehearing in State *ex rel.* Orscheln Bros. Truck Lines v. Public Serv. Comm'n, *supra.* The party moving for rehearing had contended that the transfer to the court of appeals had left him without a tribunal in which to appeal.

Accordingly, the alternative writ of mandamus issued in the *Shain* case, *supra,* was made peremptory, and, by stipulation, the disposition of this case governed the original

been expressly held to be the rule in cases involving the Department of

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mandamus actions brought in the supreme court after the dismissal by the court of appeals of the other two *Pitcairn* cases and the *Orscheln* case, *supra.* State *ex rel.* Pitcairn v. Shain, 341 Mo. 27, 106 S.W.2d 901 (1937).

The opinion of the Kansas City Court of Appeals in State *ex rel.* Pitcairn v. Public Serv. Comm'n, 232 Mo. App. 609, 110 S.W.2d 367 (1937), *trans'd from* 92 S.W.2d 881 (Mo. 1936), which it heard in conformity to the mandate of the supreme court, is enlightening in its bitterness:

> In so far as this court is concerned, we enter an uncharted field in so far as any assumption of jurisdiction or declarations of law by this court touching the acts of the Public Service Commission are concerned. It follows that the most available light for our guidance is the conclusions reached and principles laid down by the Supreme Court during the many years that Court assumed exclusive jurisdiction in matters of final appeal from the findings and orders of the Commission. *Id.* at 610, 110 S.W.2d at 367-68.

The court went on to point out that matters concerning the commission are often tied in with constitutional issues over which the court of appeals could exercise no jurisdiction. *Id.* at 610-11, 110 S.W.2d at 368. This was a recognition of the possibility that the supreme court, because of the division of appellate jurisdiction, is more able to act as final arbiter in these cases. That is, the courts of appeals can only go so far in their efforts to develop a body of case law, before reaching a point at which the supreme court must take over. This view is bolstered by the fact that the courts of appeals are bound by Mo. CONST. art. V, § 2 to follow the latest controlling decision of the supreme court. This is true even though the court of appeals feels that the latest decision of the supreme court is outmoded or poorly considered. *E.g.,* Gordon v. Metropolitan Life Ins. Co., 238 Mo. App. 46, 176 S.W.2d 506 (1943); Benton v. Kansas City, 237 Mo. App. 385, 168 S.W.2d 476 (1943); Sparks v. Knight Templars & Masonic Life Indem. Co., 61 Mo. App. 109 (1895). The court of appeals may also find that decisions of the supreme court are confusing and that it will be difficult to announce a decision which would not be susceptible of being called contrary to the latest ruling of the supreme court. Faced with this dilemma, the court of appeals may, after reaching its decision, choose to transfer the case to the supreme court for final disposition under Mo. CONST. art. V, § 10 (this procedure is discussed in "Introduction," text accompanying notes 50-54). See Gennari v. Prudential Ins. Co., 324 S.W.2d 355 (Mo. Ct. App. 1959). Because the court of appeals must be careful in this regard when approaching a complex field of law, its ability to effect needed changes and to announce progressive decisions is hampered.

It is therefore arguable that the supreme court's restrictive outlook which resulted in this division of the commission cases has gone against the grain of the growing recognition in this state of the need for a more integrated system of review. See Administrative Law Comm. of the Missouri Bar, *Survey of Mo. Administrative Agencies,* 19 U. KAN. CITY L. REV. 227, 268-74 (1951). Also noteworthy is the provision in PROP. No. 290, § 1, PROPOSALS OF THE MISSOURI CONSTITUTIONAL CONVENTION 1943-1944, that "appeals shall lie . . . to the Supreme Court in all cases and proceedings wherein any order or decision of the Public Service Commission of Missouri is reviewed." For discussion of this and similar proposals for changes in the new constitution, see "Introduction," note 30.

However, there is a theoretical alternative to the view that the supreme court has decreased the efficiency of administrative review. Fitzpatrick, *The Reviewing Courts of Ill.,* 1952 U. ILL. L.F. 5, 22-23, suggests that the supreme court of a state may exercise control over the development of law in a given area without hearing all the appellate cases that arise in that area; that in fact it should be relieved of the obligation of hear-

Labor and Industrial Relations,[34] the Department of Public Health and

ing cases of trifling importance. Rather, the supreme court should exercise control by selectively reviewing, in its discretion, the most important cases in a given area. If this may be said to characterize the theory of the Missouri appellate system, perhaps the present allocation of jurisdiction over the commission cases approaches a practical realization of the theory. That is, cases meeting the jurisdictional "amount" or which raise a constitutional question (which the supreme court *must* hear on original appeal) are more likely the most important cases. In addition, the supreme court has the discretionary power to review decisions of the courts of appeals under Mo. CONST. art. V, § 10. (See "Introduction," text accompanying notes 50-51 for a discussion of this review procedure.) However, adoption of this view detracts from the dignity of the courts of appeals and, in effect, compounds whatever stunting effect results from the jurisdictional disadvantages of those courts. But as seen, failure to adopt this view leads to the conclusion that in these cases the supreme court with one sweep (at least in theory if not in practice) diminished the effectiveness of administrative review regarding the Public Service Commission.

The matter stands as it did after the confusion ended in 1937. The general assembly amended the statute to read that appeals should be taken to the court having "appellate jurisdiction in this state." Mo. LAWS 1937, at 434. Jurisdiction is now divided between the courts of appeals and the supreme court, the latter having jurisdiction only if a constitutional issue is raised or if the jurisdictional "amount" is met. *E.g.*, State *ex rel.* Harline v. Public Serv. Comm'n, 332 S.W.2d 940 (Mo.), *trans'd*, 343 S.W.2d 177 (Ct. App. 1960); American Petroleum Exch. v. Public Serv. Comm'n, 172 S.W.2d 952 (Mo.), *trans'd*, 238 Mo. App. 92, 176 S.W.2d 533 (1943).

34. This department was organized in 1946, pursuant to the enabling provision in the constitution for the establishment of new executive departments. Mo. LAWS 1945, at 1107. It is organized into several divisions which are corporate entities over which the supreme court has refused to take jurisdiction unless the case falls within one of the other jurisdictional categories. The present Division of Unemployment Security was known as the Unemployment Compensation Commission before the executive reorganization, and was not a corporate entity. It could sue or be sued only in the name of the three individual commissioners who were regarded as state officers for jurisdictional purposes. American Nat'l Ins. Co. v. Keitle, 353 Mo. 1107, 186 S.W.2d 447 (1945); Cape Girardeau Sand Co. v. Unemployment Compensation Comm'n, 353 Mo. 828, 184 S.W.2d 605 (1945); Atkisson v. Murphy, 352 Mo. 644, 179 S.W.2d 27 (1944); Trianon Hotel Co. v. Keitle, 350 Mo. 1041, 169 S.W.2d 891 (1943) (court distinguished cases involving corporate commissions); A. J. Meyer & Co. v. Unemployment Compensation Comm'n, 348 Mo. 147, 152 S.W.2d 184 (1941); Murphy v. Doniphan Tel. Co., 347 Mo. 372, 147 S.W.2d 616 (1941); Murphy v. Hurlbut Undertaking & Embalming Co., 346 Mo. 405, 142 S.W.2d 449 (1940). The supreme court took jurisdiction of these cases. However, in the executive reorganization, the Division of Employment Security was created as a corporate entity and the supreme court ruled that it no longer had jurisdiction due to the absence of an individual state officer as a party. E. B. Jones Motor Co. v. Industrial Comm'n, Div. of Employment Security, 298 S.W.2d 407 (Mo.), *trans'd*, 305 S.W.2d 889 (Ct. App. 1957); 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); 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) (lengthy discussion of the reorganization included in this opinion).

The Division of Workmen's Compensation, formerly known as the Workmen's Compensation Commission, was a corporate entity before the reorganization. Thus, the courts

Welfare,[35] the Board of Chiropractic Examiners,[36] the Board of Optometry[37] and the boards of regents of state colleges.[38]

As a general rule the corporate unit is the only "necessary and proper" party, and litigants will not obtain a supreme court hearing by naming individuals who are affiliated with the unit.[39] However, in cases in which an individual member of a commission or department can be identified as the official who made the administrative determination contested by the suit[40] or who might be subjected to criminal penalties upon an adverse result,[41] this individual is the proper party, and original appellate jurisdiction lies in the supreme court.

6.051(b). *Qualification of the Official as a "State Officer"*

Once an individual official was identified, the determination whether he was a "state officer" within the meaning of article V, section three was traditionally based on the requirement that his duties and functions must be coextensive with the geographical boundaries of the state.[42] In a few recent

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of appeals have had jurisdiction both before and after the reorganization. Trokey v. United States Cartridge Co., 214 S.W.2d 526 (Mo. 1948), *trans'd,* 222 S.W.2d 496 (Ct. App. 1949); State *ex rel.* Goldman v. Workmen's Compensation Comm'n, 325 Mo. 153, 27 S.W.2d 1026, *trans'd,* 225 Mo. App. 59, 32 S.W.2d 142 (1930). See the discussion of jurisdictional amount in connection with the workmen's compensation cases, § 9.022 (b).

35. Dunnegan v. Gallop, 369 S.W.2d 206 (Mo. 1963), *trans'd,* 374 S.W.2d 407 (Ct. App. 1964); Jones v. Department of Pub. Health & Welfare, 354 S.W.2d 37 (Mo. Ct. App. 1962). The Social Security Commission (now the Division of Welfare, assigned to this department) was also held to be a corporate entity and not a state officer in White v. Social Security Comm'n, 345 Mo. 1046, 137 S.W.2d 569 (1940), *trans'd.* For an outline of the structure of this department, see Administrative Law Comm. of the Missouri Bar, *Survey of Mo. Administrative Agencies,* 19 U. KAN. CITY L. REV. 227, 257-59 (1951).

36. State *ex rel.* Gibson v. Board of Chiropractic Examiners, 365 S.W.2d 773 (Mo. Ct. App. 1963).

37. State *ex rel.* Missouri Optometric Ass'n v. Schneider's Credit Jewelers, Inc., 243 S.W.2d 125 (Mo. Ct. App. 1951).

38. Koch v. Board of Regents, 256 S.W.2d 785 (Mo. 1953), *trans'd,* 265 S.W.2d 421 (Ct. App. 1954).

39. Trokey v. United States Cartridge Co., 214 S.W.2d 526 (Mo. 1948), *trans'd,* 222 S.W.2d 496 (Ct. App. 1949); State *ex rel.* Gehrs v. Public Serv. Comm'n, 338 Mo. 177, 90 S.W.2d 390 (1935), *trans'd,* 99 S.W.2d 858 (Ct. App. 1936).

40. *Compare* Shepherd v. Department of Revenue, 370 S.W.2d 381 (Mo. 1963), *with* Wilson v. Morris, 369 S.W.2d 402 (Mo. 1963).

41. Department of Penal Institutions v. Wymore, 350 Mo. 127, 165 S.W.2d 618 (1942). Here the individual commissioners would have been subjected to penalties if their official acts had been held to violate the Drivers' License Act.

42. State *ex rel.* Kirks v. Allen, 250 S.W.2d 348 (Mo. 1952), *trans'd,* 255 S.W.2d 144 (Ct. App. 1953); Murphy v. Hurlbut Undertaking & Embalming Co., 346 Mo. 405, 142 S.W.2d 449 (1940); Fischbach Brewing Co. v. City of St. Louis, 337 Mo. 1044, 87

cases, the courts have used another test, which either supersedes or supplements the earlier rule: to vest jurisdiction in the supreme court the official "must exercise a portion of the sovereign power of government *independently* and without control of a superior power other than the law."[43] The courts, in an effort to keep the jurisdictional categories distinct, have refused to confuse these tests with those applied to determine whether a person holds an "office under this state" in the "title to office" category.[44]

The case law, principally through use of the "co-extensive with boundaries" test, has excluded from the jurisdictional definition of "state officer" officials who hold positions at the municipal,[45] township,[46] and county[47]

S.W.2d 648 (1935), *trans'd,* 231 Mo. App. 793, 95 S.W.2d 335 (1936); Bank of Darlington v. Atwood, 325 Mo. 123, 27 S.W.2d 1029, *trans'd,* 225 Mo. App. 974, 36 S.W.2d 429 (1930); State *ex rel.* Rucker v. Hoffman, 313 Mo. 667, 288 S.W. 16 (1926), *trans'd,* 294 S.W. 429 (Ct. App. 1927); State *ex rel.* Foerstel v. Higgins, 144 Mo. 410, 46 S.W. 423, *trans'd,* 76 Mo. App. 319 (1898); State *ex rel.* Holmes v. Dillon, 90 Mo. 229, 2 S.W 417 (1886).

43. Shepherd v. Department of Revenue, 370 S.W.2d 381, 382 (Mo. 1963), *trans'd,* 377 S.W.2d 525 (Ct. App. 1964).

The adoption of the current test, which appears to have been inadvertent, can be traced in the history of three cases. In State *ex rel.* Webb v. Pigg, 363 Mo. 133, 137-38, 249 S.W.2d 435, 438 (1952), the court, with regard to a non-jurisdictional issue, interpreted "state officer" as used in Mo. CONST. art. VII, § 13 to require that the official must have been delegated part of the governmental sovereignty of the state to be exercised for the public benefit without control of a superior power other than the law.

In Mossman v. St. Joseph Lead Co., 254 S.W.2d 241 (Mo. Ct. App. 1953), *trans'd,* 265 S.W.2d 335 (Mo. 1954), the court mentioned both tests and apparently used the article VII, section thirteen rule for the purposes of deciding the jurisdictional question. The *Shepherd* case, *supra,* does not even mention the earlier "co-extensive" test, and in a footnote, 370 S.W.2d at 382, cites *Pigg,* acknowledging the identity of the current test as that used in cases involving article VII, section thirteen.

Conceivably, the effect of exclusive use of the test previously used only for article VII could limit the number of cases heard by the supreme court under this jurisdictional category. That is, if an official's duties are prescribed and controlled by the dictates of a superior officer, rather than by statute or constitutional provision, he is not a "state officer" so as to vest jurisdiction in the supreme court, even if his duties extend throughout the state. On the other hand, officers such as county prosecutors, who have been excluded under the "co-extensive" test (see note 47 *infra),* might be included as state officers under the article VII test. It seems likely that when faced with this contention the supreme court will hold that the two tests are complementary rather than mutually exclusive.

44. See § 4.020.

45. State *ex rel.* Barnett v. Sappington, 260 S.W.2d 669 (Mo. 1953), *trans'd,* 266 S.W.2d 774 (Ct. App. 1954) (city councilmen); State *ex rel.* Bouckaert Bros. v. Mathews, 159 S.W.2d 767 (Mo.), *trans'd,* 162 S.W.2d 352 (Ct. App. 1942); Fischbach 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 license and excise commissioners); State *ex rel.* Foerstel v. Higgins, 144 Mo. 410, 46 S.W. 423, *trans'd,* 76 Mo. App. 319 (1898) (board of election commissioners); State *ex rel.* Horstkotte v. Board of Health, 90 Mo. 169, 2 S.W. 291 (1886), *dismissing appeal from* 16 Mo. App. 8 (1884); Britton v. Steber,

levels. Two cases[48] have excluded persons holding offices at the state level because their duties were limited to particular areas within the state. In a number of cases, the supreme court has made only passing reference to the question of its jurisdiction, because it was clear that a state officer was named as a party.[49]

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62 Mo. 370 (1876) (mayor); State *ex rel.* Goodnow v. Police Comm'rs, 80 Mo. App. 206 (1899), *trans'd,* 184 Mo. 109, 71 S.W. 215 (1902) (city policeman).

46. State *ex rel.* Schonhorst v. Hinning, 110 Mo. 82, 19 S.W. 494 (1892).

47. State *ex rel.* Kirks v. Allen, 250 S.W.2d 348 (Mo. 1952), *trans'd,* 255 S.W.2d 144 (Ct. App. 1953) (prosecuting attorney); Young v. Brassfield, 223 S.W.2d 491 (Mo. 1949), *trans'd,* 241 Mo. App. 35, 228 S.W.2d 823 (1950) (county clerk and clerk of school district); Normandy Consol. School Dist. v. Wellston Sewer Dist., 74 S.W.2d 621 (Mo.), *trans'd,* 77 S.W.2d 477 (Ct. App. 1934) (county treasurer); Dietrich v. Brickey, 327 Mo. 189, 37 S.W.2d 428 (1931), *trans'd,* 48 S.W.2d 69 (Ct. App. 1932) (county treasurer); Hill v. Hopson, 221 Mo. 103, 120 S.W. 29 (1909), *trans'd,* 150 Mo. App. 611, 131 S.W. 357 (1910) (county court judges and road overseer); State *ex rel.* Berder v. Spencer, 91 Mo. 206, 3 S.W. 410 (1887), *trans'd* (sheriff); Paddock-Hawley Iron Co. v. Mason, 2 S.W. 841 (Mo. 1887), *dismissing appeal from* 16 Mo. App. 320 (1884) (sheriff); State *ex rel.* Holmes v. Dillon, 90 Mo. 229, 2 S.W. 417 (1886) (sheriff); State *ex rel.* Consol. School Dist. v. Blackwell, 254 S.W.2d 243, (Mo. Ct. App. 1952) (county clerk); State *ex rel.* Bartle v. Coleman, 33 Mo. App. 470 (1889) (county court judges). State *ex rel.* Rucker v. Hoffman, 313 Mo. 667, 288 S.W. 16 (1926), *trans'd,* 294 S.W. 429 (Ct. App. 1927), held that a circuit judge is not a state officer and overruled State *ex rel.* Albers v. Horner, 10 Mo. App. 307 (1881).

A few cases exclude school district officials from the jurisdictional definition of "state officer." *E.g.,* Cooper v. School Dist., 362 Mo. 49, 239 S.W.2d 509 (1951); State *ex rel.* Gorman v. Offut, 9 S.W.2d 595 (Mo. 1928), *trans'd,* 26 S.W.2d 830 (Ct. App. 1930); 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).

48. Bank of Darlington v. Atwood, 325 Mo. 123, 27 S.W.2d 1029, *trans'd,* 225 Mo. App. 974, 36 S.W.2d 429 (1930); John O'Brien Boiler Works Co. v. Third Nat'l Bank, 282 Mo. 670, 222 S.W. 788 (1920), *trans'd,* 231 S.W. 1053 (Ct. App. 1921) (members of board of state hospital). The first case involved a peculiar application of the "co-extensive" test to the commissioner of finance, whose general duties did comply with the test; but he was acting in the particular capacity as liquidating agent for a bank and his duties were limited to a given area. However, this variation of the "co-extensive" test was apparently a makeweight to fortify the principal holding that he was not a contesting party in any capacity (see note 50 *infra*); it is therefore doubtful authority outside this context.

49. Grant v. Neal, 381 S.W.2d 838 (1964) (state treasurer); Chaffin v. County of Christian, 359 S.W.2d 730 (Mo. 1962) (en banc) (state auditor and attorney general); Pinzino v. Supervisor of Liquor Control, 334 S.W.2d 20 (Mo. 1960); Van Hoose v. Smith, 355 Mo. 799, 198 S.W.2d 23 (1946) (state auditor); Orr v. Hoehn, 353 Mo. 426, 182 S.W.2d 596 (1944) (state auditor); Sampson Distrib. Co. v. Cherry, 346 Mo. 885, 143 S.W.2d 307 (1940) (inspector of oils and motor fuels); State v. Farmers' Exch. Bank, 331 Mo. 689, 56 S.W.2d 129 (1932) (secretary of state); Butler v. Board of Educ., 16 S.W.2d 44 (Mo. 1929) (state auditor).

6.052. *When Is a State Officer a Contesting Party?*

If a named individual official is identified as a state officer, he must be shown to be a real party to the action before the supreme court will exercise original appellate jurisdiction. That is, the officer must be engaged in the pending action in a true adversary or contesting capacity.[50] Administrative

50. There are some interesting parallels in the development of the case law pertaining to the state superintendent of insurance and the state commissioner of finance. Since well before 1945, both officials have had duties relating to the regulation of financial institutions (insurance companies and banks respectively) and both have had duties in the nature of receivership over the assets of financially unstable institutions. The basis for supreme court jurisdiction when the superintendent of insurance is a party was stated in State *ex rel.* Waddell v. Smith, 131 Mo. 176, 33 S.W. 11 (1895): the assets of the corporation vested absolutely in the superintendent who was to defend and prosecute all actions in his own name. Compare Barnett v. City of St. Louis, 195 S.W. 1017 (Mo.), *trans'd,* 198 S.W. 452 (Ct. App. 1917); Joyce Surveying Co. v. City of St. Louis, 68 Mo. App. 182 (1896). The latter held that a political subdivision sued in its capacity as trustee of philanthropic funds was not the real party in interest and that jurisdiction was in the court of appeals. Other cases in which the supreme court has taken jurisdiction because the superintendent of insurance was a party are as follows: Clay v. Eagle Reciprocal Exch., 368 S.W.2d 344 (Mo. 1963); First Nat'l Bank v. Higgins, 357 S.W.2d 139 (Mo. 1962); Klaber v. O'Malley, 90 S.W.2d 396 (Mo. 1935); Dahnke-Walker Milling Co. v. Blake, 242 Mo. 23, 145 S.W. 438 (1912); Reichenbach v. Ellerbe, 52 Mo. App. 72 (1892), *trans'd,* 115 Mo. 588, 22 S.W. 573 (1893).

In 1930 the Kansas City Court of Appeals transferred to the supreme court two cases in which the commissioner of finance was handling bank assets. Linehart v. Farmers' State Bank, 27 S.W.2d 751 (Mo. Ct. App. 1930), *trans'd* (apparently retransferred by supreme court without opinion since a second court of appeals opinion appears at 226 Mo. App. 588, 43 S.W.2d 1062 (1931)); Tate v. Cantley, 23 S.W.2d 190 (Mo. Ct. App. 1930), *trans'd* (no indication in reporter and citator system that case was retransferred). However, in that same year the supreme court distinguished the respective capacities of the superintendent and the commissioner, holding that the latter could not be the real party in interest since he was acting only as a liquidating agent for the private concern. Bank of Darlington v. Atwood, 325 Mo. 123, 27 S.W.2d 1029, *trans'd,* 225 Mo. App. 974, 36 S.W.2d 429 (1930). Following this holding there was a deluge of opinions in which the supreme court denied jurisdiction when the commissioner was a party. *In re* Wellston Trust Co., 131 S.W.2d 720 (Mo. 1939), *trans'd,* 136 S.W.2d 430 (Ct. App. 1940); State v. Farmers' Exch. Bank, 331 Mo. 689, 56 S.W.2d 129 (1932); Consolidated School Dist. v. Gower Bank, 53 S.W.2d 280 (Mo.), *trans'd,* 55 S.W.2d 713 (Ct. App. 1932); Cantley v. Piggott, 331 Mo. 30, 52 S.W.2d 846 (1932); City of Doniphan v. Cantley, 330 Mo. 639, 50 S.W.2d 658 (en banc), *trans'd,* 52 S.W.2d 417 (Ct. App. 1932). These cases all arose during the depression, when the many bank failures resulted in multiplication of suits for preferences in bank assets. It is arguable that the supreme court employed this somewhat technical distinction to limit its jurisdiction over these cases.

The supreme court has taken jurisdiction of three cases to which the superintendent or the commissioner or both were parties in some capacity other than in a representative capacity for a private concern undergoing liquidation. Old Reliable Atlas Life Soc'y v. Leggett, 364 Mo. 630, 265 S.W.2d 302 (1954) (declaratory judgment against the superintendent); Leggett v. General Indem. Exch., 363 Mo. 273, 250 S.W.2d 710 (1952) (action to dissolve an insurance exchange); Mutual Bank & Trust Co. v. Shaffner, 248 S.W.2d 585 (Mo. 1952) (declaratory judgment against commissioner and superintendent).

officials who are not adversaries when conducting a quasi-judicial hearing, are considered to be contesting parties when appearing before a reviewing court to defend a determination made at such a hearing.[51] The supreme court also has jurisdiction when a state officer intervenes in a case to represent the state's interests[52] or is named in his capacity as custodian of a state fund from which payment may be ordered.[53]

6.060. Conclusion

There is an increasing need to view the various aspects of local government and administrative law as parts of a single system by which the ever-increasing complexity of social change is accommodated, and legally and conceptually to organize and co-ordinate various institutions, ranging from drainage districts to the executive departments, into a more efficient system of regulation and services. This appears to have been the pervading objective in the framing of the 1945 Constitution.[54] Yet the supreme court has been unable to orient the allocation of original appellate jurisdiction to this integrated view of the governmental system. The effect of the court's restrictive approach, apparently predicated upon whatever basis is convenient to distinguish and refuse jurisdiction in certain types of cases, is to break up into jurisdictional segments the problems pertaining to state and local systems.

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51. *E.g.*, Wilson v. Morris, 369 S.W.2d 402 (Mo. 1963) (review of revocation of driver's license); Shelley v. Commission for the Blind, 309 Mo. 612, 274 S.W. 688 (1925) (en banc) (review of rejection of application for blind pension).

52. In the following cases the supreme court retained jurisdiction because the attorney general was held to be a contesting party: Gem Stores, Inc. v. O'Brien, 374 S.W.2d 109 (Mo. 1963) (en banc) (attorney general intervened in declaratory judgment action to test legality of Sunday closing laws); Schley v. Conservation Comm'n, 329 S.W.2d 736 (Mo. 1959) (action to enjoin arrests of patrons of private lake for fishing without license); Transport Rentals, Inc. v. Carpenter, 325 S.W.2d 745 (Mo. 1959) (declaratory judgment whether certain motor vehicles were subject to state registration fee); Spiking School Dist. v. Purported Enlarged School Dist., 362 Mo. 848, 245 S.W.2d 13 (1952) (declaratory judgment to test validity of consolidation of common school districts); Jones v. Fidelity Nat'l Bank & Trust Co., 362 Mo. 712, 243 S.W.2d 970 (1951) (attorney general intervened to argue that certain unpaid dividends should escheat to the state).

53. Mossman v. St. Joseph Lead Co., 254 S.W.2d 241 (Mo. Ct. App. 1953). See also Grant v. Neal, 381 S.W.2d 838 (Mo. 1964).

54. See Swindler, *Mo. Constitutions: History, Theory and Practice,* 23 Mo. L. Rev. 32, 58-59, 157, 160-62, 165-66, 169-70, 177-78 (1958). See also Comm. No. 22, *Address to the People,* Committee Reports of the Missouri Constitutional Convention 1943-1944, file no. 21, at 4:

> The governor is given the power to assign each of some existing seventy boards and bureaus to that division of the executive . . . to which its work is germane. This will simplify administration, and eliminate duplication of effort, thus facilitating the work of the department and reducing the cost of administration.

There are several possible defects in this restrictive approach. Litigation arising from the administration of state policies by corporate executive commissions has been divided among the appellate forums. The same is true of litigation arising from the alarming problems accompanying urban development.[55] Perhaps the courts of appeals are not as equipped to develop special competence in handling this litigation, because when a case meets the jurisdictional "amount" or raises a constitutional issue (which occurs frequently in the area of public law) it must be transferred to the supreme court. In other words, because of jurisdictional disadvantages, their experience in these matters must be acquired in piecemeal fashion.[56]

However, these defects may be illusory, since the supreme court possesses at least a theoretical means in article V, section ten by which it can supervise the courts of appeals, allocate to itself the more important cases for final hearing and assure uniformity in the case law.[57] Whether the court can in practice exercise this power depends upon whether it has time after disposing of the docket of original appeals which it *must* hear (regardless of whether those appeals present important questions of law). However, there is a further detriment to the system of public law which cannot be even theoretically resolved: appeals involving public bodies must pass initially through the inefficiencies and delays existing at the original appellate jurisdictional level. In addition, the time spent by courts in considering jurisdiction decreases the total number of hours available to effectively handle the merits of appeals. By thus weakening the efficiency of review of the accommodation processes in public law, the efficiency of those processes in general is decreased.

The allocation of jurisdiction along the lines of systems of public law, upon some basis other than convenience, is not inconceivable. It has been achieved, perhaps inadvertently, in the cases concerning the state system of

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55. See GENERAL ASSEMBLY COMM. ON LOCAL GOVERNMENT, INTERIM REP. 5 (1959):

> The ills that are besetting the county and community governments in Missouri have gathered almost imperceptibly during more than a century of governing operations until, today, their cumulative effect constitutes a powerful cancerous growth on the institutions of our local governments.

One might well consider as an anomaly the present situation in which the supreme court hears appeals because townships are parties, but not when cities are parties (§§ 6.041, .043). Since the latter units probably are involved in problems of greater number and magnitude with regard to such matters as urban development, their exclusion from the jurisdiction of the supreme court can be justified only by the need to allocate the work load among the appellate tribunals.

56. See State *ex rel.* Pitcairn v. Public Serv. Comm'n, 232 Mo. App. 609, 110 S.W.2d 367 (1937), discussed *supra* note 33.

57. See note 33 *supra.*

taxation.[58] However, there remains one dilemma: if the supreme court under the present system were to attempt a synthesis of jurisdictional rules and the concept of public governmental systems, it could do so only by abandoning its restrictive attitude, thereby increasing the number of cases heard by it on original appeal. As long as this is not feasible because of the press of its work load,[59] the court has no practical alternative but to continue its present efforts to reduce its work load by artificial and technical rules.

58. See §§ 3.030-.040.

59. For a discussion of the work load problem, see § 9.010, note 3.