

Fall 1979

## Taxpayer Standing in Missouri Courts: Alleging the Necessary Elements

Maureen A. McGhee

Follow this and additional works at: <https://scholarship.law.missouri.edu/mlr>



Part of the [Law Commons](#)

---

### Recommended Citation

Maureen A. McGhee, *Taxpayer Standing in Missouri Courts: Alleging the Necessary Elements*, 44 Mo. L. REV. (1979)

Available at: <https://scholarship.law.missouri.edu/mlr/vol44/iss4/6>

This Comment is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Missouri Law Review by an authorized editor of University of Missouri School of Law Scholarship Repository. For more information, please contact [bassettcw@missouri.edu](mailto:bassettcw@missouri.edu).

## TAXPAYER STANDING IN MISSOURI COURTS: ALLEGING THE NECESSARY ELEMENTS

Taxpayers' actions, *i.e.*, suits instituted by taxpayers against governmental units to seek relief for alleged illegal or improper acts,<sup>1</sup> have been recognized in the United States for many years.<sup>2</sup> It is a form of action currently available in nearly all jurisdictions,<sup>3</sup> either by statute or under common law, for challenging actions of such entities as states, counties, municipalities, school districts, and sewer districts.<sup>4</sup> In the twentieth century there has been a judicial trend toward easing the restrictions on maintaining such actions.<sup>5</sup>

The rule allowing taxpayers' actions was first recognized in Missouri in *Newmeyer v. Missouri & Mississippi R.R.*,<sup>6</sup> decided in 1873. The court, after discussing precedents from other jurisdictions, concluded "that the decisions which affirm the right of plaintiffs, (or those standing in the same relation to such controversies) to maintain the action, rest upon a more solid foundation of principle and reason than those holding the contrary doctrine."<sup>7</sup> In subsequent years, the *Newmeyer* decision was used repeatedly to justify taxpayers' actions in Missouri.<sup>8</sup> Although Missouri courts consider the right of a taxpayer to attack illegal official acts as one firmly embedded in Missouri's common law,<sup>9</sup> it is not free of uncertainties. Successful prosecution of a taxpayer suit necessitates knowledge of both the substantive requirements for taxpayer standing in Missouri and the elements of a taxpayers' suit that should be alleged in the petition.

At the outset, it should be noted that there are some statutory bases for taxpayers' actions in Missouri. These statutes confer standing upon tax-

---

1. *Collins v. Vernon*, 512 S.W.2d 470, 473 (Mo. App., D.K.C. 1974).

2. The earliest successful taxpayers' suit in the United States was apparently *Adriance v. Mayor of New York*, 1 Barb. 19 (N.Y. Sup. Ct. 1847). Other early cases include *Foster v. Coleman*, 10 Cal. 279 (1858); *City of New London v. Brainard*, 22 Conn. 553 (1853); *Colton v. Hanchett*, 13 Ill. 615 (1852); *Mayor of Baltimore v. Gill*, 31 Md. 375 (1869); *Carlton v. City of Salem*, 103 Mass. 141 (1869); *Barr v. Deniston*, 19 N.H. 170 (1848); *Sharpless v. Mayor of Philadelphia*, 21 Pa. 147 (1853).

3. Comment, *Taxpayers' Suits: A Survey and Summary*, 69 YALE L.J. 895, 895 (1960).

4. See generally 74 AM. JUR. 2d *Taxpayers' Actions* § 6 (1974).

5. Comment, *Taxpayers' Suits: A Survey and Summary*, 69 YALE L.J. 895, 901 (1960).

6. 52 Mo. 81.

7. *Id.* at 89.

8. *E.g.*, *Collins v. Vernon*, 512 S.W.2d 470, 473 (Mo. App., D.K.C. 1974).

9. *Everett v. County of Clinton*, 282 S.W.2d 30, 34 (Mo. 1955) ("taxpayers have always had the remedy of injunction at common law, without aid of statutory authority, to enjoin the illegal expenditure of public moneys").

payers under various circumstances. Representative of such statutory bases is Mo. Rev. Stat. section 108.240 (1978), which provides that a taxpayer has standing to seek an injunction against a municipality or school district to prevent the registration of bonds that were issued or funded illegally. Obviously, this statute is extremely narrow in scope—it applies only to actions against municipalities and school districts and can only be used to prevent the registration of bonds. It also appears that Mo. Rev. Stat. section 49.500 (1978), although couched in terms of “citizens,” may be construed as conferring standing on taxpayers. That section provides a method by which fifty resident, solvent and responsible citizens of any county may, under specified circumstances, have certain county contracts investigated. If it is found that a contract was not entered into in good faith or for a just consideration, and without due regard to the best interest of the county, the circuit court may set aside, reform, or cause to be enforced any such contract as “the court shall deem best under the law and the facts.”<sup>10</sup> The narrow breadth of this statute, too, is apparent—it is limited solely to actions challenging contracts entered into by a county.

While such statutory bases are available, it is important to realize that a taxpayers’ action founded upon statutory authority does not supplant the common law remedy.<sup>11</sup> Since taxpayers’ suits are regarded as existing at common law in Missouri, statutes authorizing such actions are regarded as merely cumulative and not exclusive.<sup>12</sup> Given the narrow scope of the statutory provisions, it would be wise not to rely solely upon them, but to proceed also under the common law remedy.

There are certain peculiarities and problem areas concerning the requirements for maintaining a taxpayers’ action under Missouri common law that should be considered when contemplating such a suit. First, taxpayers’ actions in Missouri apparently are limited to actions against governmental units or officials. Unlike the restricted coverage of the statutory bases for taxpayer standing, the common law remedy of taxpayers’ actions in Missouri is broad in the types of acts and entities that may be challenged. It also appears that any instrumentality of the government, state or local, is subject to suit at the instance of a taxpayer under the

10. RSMo § 49.500 (1978).

11. *Everett v. County of Clinton*, 282 S.W.2d 30, 34 (Mo. 1955).

12. *Id.* The court stated further:

The applicable rule is “that if the statute gives a remedy in the affirmative, without containing any express or implied negative, for a matter which was actionable at common law, this does not take away the common law remedy, but the party still may sue at common law, as well as upon the statute. In such cases the statute remedy will be regarded as merely cumulative.”

*Id.* at 34, quoting *Hickman v. City of Kansas*, 120 Mo. 110, 117, 25 S.W. 225, 226 (1894). However, this must not be confused with the question of adequate remedy at law. If such exists, it must be pursued; no equitable relief may be granted. See note 66 *infra*.

appropriate circumstances. For instance, Missouri courts have recognized that taxpayers' actions are maintainable to challenge acts of state officers,<sup>13</sup> municipal corporations,<sup>14</sup> counties,<sup>15</sup> and such limited-power governmental bodies as school boards<sup>16</sup> and sewer districts.<sup>17</sup> Such acts may be challenged on the grounds of being unconstitutional,<sup>18</sup> illegal,<sup>19</sup> or fraudulent.<sup>20</sup> The types of actions that may be challenged also are varied.<sup>21</sup> Missouri taxpayers have maintained actions to enjoin the issuance or sale of bonds;<sup>22</sup> to enjoin the spending of public tax monies for parochial school purposes<sup>23</sup> or other private purposes such as improvements of a privately owned road;<sup>24</sup> to enjoin the performance of illegal public contracts;<sup>25</sup> to enjoin the removal of a school build-

13. *Fahey v. Hackmann*, 291 Mo. 351, 237 S.W. 752 (1922).

14. *Wring v. City of Jefferson*, 413 S.W.2d 292 (Mo. 1967).

15. *Everett v. County of Clinton*, 282 S.W.2d 30 (Mo. 1955).

16. *Eberle v. Plato Consol. School Dist. No. C-5*, 313 S.W.2d 1 (Mo. 1958).

17. *Humphreys v. Dickerson*, 216 S.W.2d 427 (Mo. 1949).

18. *Berghorn v. Reorganized School Dist. No. 8*, 364 Mo. 121, 260 S.W.2d 573 (1953) (alleged violation of U.S. CONST. art. I, §§ 5-7, 10, amends. 1 & 14, and MO. CONST. art. IX, § 8); *Hight v. City of Harrisonville*, 328 Mo. 549, 41 S.W.2d 155 (En Banc 1931) (alleged violation of MO. CONST. art. 10, § 12).

19. *Moseley v. City of Mountain Grove*, 524 S.W.2d 444 (Mo. App., D. Spr. 1975); *Smith v. Hendricks*, 136 S.W.2d 449 (Spr. Mo. App. 1939).

20. *Denny v. Jefferson County*, 272 Mo. 436, 199 S.W. 250 (1917).

21. This is to be contrasted with federal taxpayer standing. In effect, a federal taxpayer may only challenge a federal spending program. See *Flast v. Cohen*, 392 U.S. 83 (1968).

The federal spending program must be authorized under the taxing and spending power and not all federal expenditures are founded upon this power. Note, *Taxpayer Standing to Litigate*, 61 GEO. L.J. 747, 756 (1973). The taxpayer must establish that the challenged enactment violates specific constitutional limitations imposed upon the exercise of the congressional taxing and spending power. See generally *Davis, Standing: Taxpayers and Others*, 35 CHI. L. REV. 601 (1968). The *Flast* Court declared that the establishment clause specifically limits the taxing and spending power but the Court declined to suggest what other constitutional provisions would satisfy that requirement. *Flast v. Cohen*, 392 U.S. at 103. It is obvious that taxpayer standing is much harder to establish in federal courts than in the Missouri state courts.

22. *E.g.*, *Stein v. Urie*, 465 S.W.2d 516 (Mo. 1971); *Arkansas-Missouri Power Corp. v. City of Potosi*, 355 Mo. 356, 196 S.W.2d 152 (1946); *Bauch v. City of Cabool*, 165 Mo. App. 486, 148 S.W. 1003 (Spr. 1912). But see *Moseley v. City of Mountain Grove*, 524 S.W.2d 444 (Mo. App., D. Spr. 1975) wherein the court held that a taxpayer may not enjoin the issuance of revenue bonds because these are not paid directly or indirectly by resort to taxation. The payment is made solely from revenues derived from the facility or utility to be financed by the bonds.

23. *Berghorn v. Reorganized School Dist. No. 8*, 364 Mo. 121, 260 S.W.2d 573 (1953); *McVey v. Hawkins*, 364 Mo. 44, 258 S.W.2d 927 (En Banc 1953).

24. *Miller v. Ste. Genevieve County*, 358 S.W.2d 28 (Mo. 1962).

25. *Everett v. County of Clinton*, 282 S.W.2d 30 (Mo. 1955) (action to enjoin the purchase and operation of a rock quarry by the county under an illegal contract); *Wegmann Realty Co. v. City of St. Louis*, 329 Mo. 972, 47 S.W.2d 770 (En Banc 1932) (to enjoin performance of a paving contract); *Hight v. City of*

ing;<sup>26</sup> to enjoin the printing on official ballots of a general election the names of candidates for office;<sup>27</sup> and even to enjoin the fluoridation of water.<sup>28</sup> Moreover, although the remedy normally sought in taxpayers' actions is an injunction,<sup>29</sup> that is not the only type of remedy available. Since these challenges of governmental action are generally considered equitable in nature,<sup>30</sup> taxpayers have available other forms of relief such as declaratory judgments<sup>31</sup> and recovery of money on behalf of the governmental unit.<sup>32</sup> Relief in the form of mandamus<sup>33</sup> or prohibition<sup>34</sup> is also possible.

Although there is little uncertainty with regard to the elements of taxpayers' actions mentioned above, a closer investigation of such suits in Missouri reveals many ambiguous and indefinite requirements. One such nebulous area concerns a theoretical concept of taxpayers' actions. In the majority of jurisdictions a taxpayers' suit is thought of as a derivative action,<sup>35</sup> *i.e.*, a right of action which belongs primarily to the taxing unit

Harrisonville, 328 Mo. 549, 41 S.W.2d 155 (En Banc 1931) (to enjoin contract to purchase electrical equipment); Hillside Sec. Co. v. Minter, 300 Mo. 380, 254 S.W. 188 (En Banc 1923) (injunction granted against recovery for work done on bridge pursuant to a void contract).

26. Williams v. School Dist. No. 5, 167 Mo. App. 476, 151 S.W. 506 (Spr. 1912); Tucker v. McKay, 131 Mo. App. 728, 111 S.W. 867 (St. L. 1908).

27. Stocke v. Edwards, 295 Mo. 402, 244 S.W. 802 (En Banc 1922).

28. Readey v. St. Louis County Water Co., 352 S.W.2d 622 (Mo. 1961), *cert denied*, 371 U.S. 8 (1962).

29. See, e.g., Wring v. City of Jefferson, 413 S.W.2d 292 (Mo. En Banc 1967); Miller v. Ste. Genevieve County, 358 S.W.2d 28 (Mo. 1962); Everett v. County of Clinton, 282 S.W.2d 30 (Mo. 1955); Hight v. City of Harrisonville, 328 Mo. 549, 41 S.W.2d 155 (En Banc 1931); Hawkins v. City of St. Joseph, 281 S.W. 420 (Mo. En Banc 1926).

30. Smith v. Hendricks, 136 S.W.2d 449, 452 (Spr. Mo. App. 1939); Jaffe, *Standing to Secure Judicial Review: Public Actions*, 74 HARV. L. REV. 1265, 1277 (1961). See generally 74 AM. JUR. 2d *Taxpayers' Actions* § 2 (1974).

31. See, e.g., Shively v. City of Keytesville, 241 Mo. App. 239, 238 S.W.2d 682 (K.C. 1951).

32. See, e.g., Smith v. Hendricks, 136 S.W.2d 449 (Spr. Mo. App. 1939).

No case has been cited in which taxpayers have recovered a judgment for the benefit of a corporation of which they are taxpayers; but, this fact does not necessarily mean that the taxpayers cannot maintain such a suit if they have a sufficient interest to entitle them to do so. . . .

. . . [A] taxpayer in a public corporation can, in a proper case, bring such a suit on behalf of himself and other taxpayers to recover on behalf of the corporation.

*Id.* at 453. This does not change the action from equity to one at law however. "If the petition states any cause of action it is clearly in equity and not at law." *Id.* at 452.

33. State *ex rel.* Cason v. Bond, 495 S.W.2d 385 (Mo. En Banc 1973).

34. Collins v. Vernon, 512 S.W.2d 470 (Mo. App., D.K.C. 1974).

35. See, e.g., Henderson v. McCormick, 70 Ariz. 19, 215 P.2d 608 (1950);

*Niloushy v. Abell*, 401 Mo. 416, 341 S.W.2d 842, 83 N.W.2d 904 (1957); Grob v. Nelson, 8 Wis. 2d 8, 98 N.W.2d 457 (1959). See generally 74 AM. JUR. 2d *Taxpayers' Actions* § 2 (1974).

with the taxpayers' right to bring the action derived from that right. Based on this theory, the general rule is that a demand on the proper public official to bring the action, and his refusal to do so, are conditions precedent to maintenance of the action.<sup>36</sup> In contrast, the Missouri courts apparently have not accepted the derivative nature concept of taxpayers' actions.<sup>37</sup> In general no demand on the proper public official to bring the action is required. As might be expected, though, there is an exception. In the limited situation wherein a taxpayer seeks to recover a money judgment on behalf of the taxing body, the suit is considered to be brought primarily for the benefit of the taxing unit and the majority rule apparently does apply in Missouri.<sup>38</sup> In such a case, the petition should include an allegation of demand on, and refusal by, the proper official to bring the suit.

The traditional rule in most jurisdictions is that the type of tax and the amount of tax paid is irrelevant.<sup>39</sup> Unfortunately, this too can be an area of uncertainty. It is probable that the payment of income or property taxes would be sufficient. And, although it is more questionable that payment of such taxes as gasoline or sales tax would suffice in Missouri, at least one other jurisdiction has dealt with this issue and has resolved the question in favor of the taxpayer.<sup>40</sup> It is also the opinion of some that the minuteness of a plaintiff's tax liability probably will not bar a taxpayer suit.<sup>41</sup> Recent Missouri court decisions have been silent in this regard, but in the 1892 decision of *Fugate v. McManama*,<sup>42</sup> the Missouri Court of Appeals held that the plaintiffs were not entitled to relief because there had been no evi-

36. See, e.g., *People ex rel. City of Chicago v. Schreiber*, 322 Ill. App. 452, 54 N.E.2d 862 (1944); *Evans v. Metropolitan Util. Dist. of Omaha*, 184 Neb. 172, 166 N.W.2d 411 (1969); *Mulder v. Village of Amherst*, 115 Ohio App. 117, 184 N.E.2d 602 (1962); *Miller v. Park City*, 126 Tenn. 427, 150 S.W. 90 (1912). See generally Annot., 17 A.L.R.2d 475, 487 (1951).

37. See *Clark v. Crown Drug Co.*, 348 Mo. 91, 95, 152 S.W.2d 145, 147 (1941) ("A single taxpayer alone may bring such a suit in order to determine the public interest."); *Newmeyer v. Missouri & Mississippi R.R.*, 52 Mo. 81, 89 (1873) ("The State is not a necessary party to the suit.").

38. See *McVey v. Hawkins*, 364 Mo. 44, 258 S.W.2d 927 (En Banc 1953); *Smith v. Hendricks*, 136 S.W.2d 449 (Spr. Mo. App. 1939).

39. See, e.g., *Irwin v. City of Manhattan Beach*, 65 Cal. 2d 13, 19, 415 P.2d 769, 772, 51 Cal. Rptr. 881, 884 (1966) (The common law required only that the plaintiff be a taxpayer supporting the governmental unit whose act is sought to be challenged.); *Wertz v. Shane*, 216 Iowa 768, 772, 249 N.W. 661, 663 (1933) (The right of a taxpayer to institute an action, if it exists at all, is not based on the amount of taxes paid, or on the form of taxes collected, but on the fact of the payment of taxes.).

40. *Regan v. Babcock*, 188 Minn. 192, 247 N.W. 12 (1933) (payment of auto license fee and state gasoline tax held sufficient for purposes of taxpayer standing).

41. Comment, *Municipal Taxpayers and Standing to Sue*, 2 BUFFALO L. REV. 140, 143 (1952).

42. 50 Mo. App. 39 (St. L. 1892).

dence presented on the amount of taxes paid by them.<sup>43</sup> Because modern courts have not spoken to this issue, the relevancy of the amount of taxes paid or payable still may be an open question in Missouri.

Similarly, there are two other areas of taxpayer standing that have received little judicial attention by Missouri courts, but nevertheless are worthy of note: the corporate status of a plaintiff and the residence of the plaintiff. In view of the numerous taxpayer proceedings instituted by corporate taxpayers in the past without objections on the basis of their corporate status,<sup>44</sup> it would seem that such a taxpaying entity has as much right to institute a taxpayers' action as does any other taxpayer. Consequently, the fact that the plaintiff-taxpayer is a corporation appears to be irrelevant.

On the other hand, the relevance or irrelevance of the plaintiff's residence for purposes of taxpayers' actions is not as apparent. It has been asserted that the place of residence is immaterial since a plaintiff's interest as a taxpayer is no less merely because he is not a resident of the taxing body.<sup>45</sup> Recently, though, in *Bopp v. Spainhower*,<sup>46</sup> the Missouri Supreme Court suggested that residence in the taxing unit is a requirement for taxpayer standing.<sup>47</sup> This would seem to preclude, for example, an Illinois or Kansas resident who frequently uses Missouri highways and occasionally pays a gasoline tax in Missouri from seeking to enjoin the construction of a Missouri highway.

The concept of taxpayers' suits as class actions presents another ambiguity. Many legal writers suggest that a taxpayers' action is invariably a class action,<sup>48</sup> *i. e.*, the taxpayer brings the action on behalf of himself and all other taxpayers similarly situated. Missouri courts appear to follow a

43. The answer does not deny the allegation that they are 'taxpaying citizens,' but the evidence is entirely silent upon the amount of taxes which they pay, or have paid, or are liable to pay; and, for aught that the record discloses, their interest in the matter may be almost infinitesimal . . . . Because the interests of the plaintiffs may be merely infinitesimal, so that their quest may be subject to the maxim *De minimis non curat lex*, we must hold that they do not disclose on this record any adequate reason for moving a chancellor to grant the extraordinary relief they seek.

*Id.* at 42-43 (emphasis in original).

44. See, *e.g.*, *Aquamsi Land Co. v. City of Cape Girardeau*, 346 Mo. 524, 142 S.W.2d 332 (1940); *Missouri Serv. Co. v. City of Stanberry*, 341 Mo. 500, 108 S.W.2d 25 (1937); *Hillside Sec. Co. v. Minter*, 300 Mo. 380, 254 S.W. 188 (En Banc 1923); *Civic League v. City of St. Louis*, 223 S.W. 891 (Mo. 1920).

45. Comment, *Municipal Taxpayers and Standing to Sue*, 2 BUFFALO L. REV. 140, 143 (1952).

46. 519 S.W.2d 281 (Mo. En Banc 1975).

47. *Id.* at 286. ("Since plaintiff resides in St. Louis County we rule that he does not have standing to attack the St. Louis City classification.")

48. See Comment, *Taxpayers' Suits: A Survey and Summary*, 69 YALE L.J. 895 (1960); Note, *Taxpayers' Suits as a Means of Controlling the Expenditure of Public Funds*, 50 HARV. L. REV. 1276 (1937).

different view. Taxpayer suits have been maintained in Missouri even though brought merely on behalf of the named plaintiffs.<sup>49</sup> As a practical matter, the distinction has little effect on the result as the courts' analyses apparently remain the same in either case.<sup>50</sup>

Nevertheless, there are some considerations related to bringing a taxpayers' suit as a class action that should not be disregarded. The petition would have to include allegations required for bringing a class action<sup>51</sup> such as adequate and fair representation of the class by the named plaintiffs.<sup>52</sup> Further, this requirement that the plaintiff adequately and fairly represent the class may be of importance in other contexts. For example, a public official wishing to implement an illegal action could attempt to insure its success by arranging a taxpayers' class action. At his request, a taxpayer might bring such a suit with less-than-vigorous presentation of his case, resulting in defeat and possible binding effects on other taxpayers. An attorney alert to the potential problem of such collusive suits may want to challenge the plaintiff-taxpayer's right to represent the class.

The foregoing elements and requirements of taxpayer standing may be uncertain and may present traps for the unwary, but usually do not pose difficult roadblocks to the maintenance of taxpayer actions in Missouri. The major obstacle to obtaining taxpayer standing in the Missouri courts has been the requirement that the injury sought to be remedied be "peculiar to the taxpayers . . . [and] distinct from the general public."<sup>53</sup> In Missouri, taxpayer standing is generally contingent on a showing by the taxpayer of a personal stake in the outcome. To satisfy this requirement the general rule in Missouri has been that the taxpayer must have a pecuniary interest in the subject of the action—he must show that the acts challenged will result in an increased tax burden to the taxpayer and to taxpayers as a class.<sup>54</sup> In taxpayers' suits the pecuniary interest doctrine

49. See, e.g., *Wring v. City of Jefferson*, 413 S.W.2d 292 (Mo. En Banc 1967); *Stocke v. Edwards*, 295 Mo. 402, 244 S.W. 802 (En Banc 1922); *Collins v. Vernon*, 512 S.W.2d 470 (Mo. App., D.K.C. 1974).

50. Compare *Collins v. Vernon*, 512 S.W.2d 470 (Mo. App., D.K.C. 1974) with *Everett v. County of Clinton*, 282 S.W.2d 30 (Mo. 1955).

51. Mo. R. Civ. P. 52.08.

52. *Hribernik v. Reorganized School Dist. R-3*, 276 S.W.2d 596 (St. L. Mo. App. 1955) (taxpayers' action to enjoin collection of school tax allegedly approved at void election, where the plaintiffs did not allege that they were chosen to represent whole class, and that they adequately and fairly represented whole class, did not qualify as representatives of class and could not maintain the action).

53. *Stocke v. Edwards*, 295 Mo. 402, 413, 244 S.W. 802, 804 (En Banc 1922).

54. See, e.g., *id.* ("plaintiff and other taxpayers will be specially and individually damaged by the threatened unlawful act of defendants, through an increase in the burden of taxation upon their property"); *Smith v. Hendricks*, 136 S.W.2d 449, 455 (Spr. Mo. App. 1939) ("taxpayers' burden must be increased"). The majority of other jurisdictions also follow the pecuniary interest doctrine. See, e.g., *Housing Auth. v. Richardson*, 196 So. 2d 489 (Fla. App. 1967); *Westen*



has been the dominant theme running throughout the Missouri opinions.<sup>55</sup>

The underlying rationale for the pecuniary interest doctrine is that taxpayers are, in equity, the owners of both the property and the public funds of a governmental unit by virtue of their tax payments, and that the waste or unlawful use of the property or fund would directly or indirectly result in an increase in taxes.<sup>56</sup> It is clear that taxpayers have the right to enjoin the unlawful expenditure of public funds because of their equitable ownership of such funds and their obligation to replenish the same in case they are expended.<sup>57</sup> This is certainly not unreasonable.

Yet, when strictly applied, this theory could reach absurd results. It is difficult to discern a taxpayer's personal stake in the outcome, based on a pecuniary interest, when there is only a slight possibility that his tax burden will be increased and the amount of the possible increase to the plaintiff is trifling.<sup>58</sup> In addition, this theory overlooks a factor equally as important as illegal increases in tax burdens—the essentially public interest nature of taxpayers' suits in insuring that illegal action by public officials will be remedied.<sup>59</sup> And, in litigation, the taxpayers' pecuniary interest may be used as a facade to cover the genuinely motivating interest which could be a mere desire to further a partisan political goal.<sup>60</sup> There

v. City of Allen Park, 37 Mich. App. 121, 194 N.W.2d 542 (1971). See generally 74 AM. JUR. 2d *Taxpayers' Actions* § 2 (1974).

55. See, e.g., *Everett v. County of Clinton*, 282 S.W.2d 30 (Mo. 1955); *Berghorn v. Reorganized School Dist. No. 8*, 364 Mo. 121, 260 S.W.2d 573 (1953).

56. See, e.g., *People v. Holten*, 287 Ill. 225, 231, 122 N.E. 540, 542 (1919); *Berghorn v. Reorganized School Dist. No. 8*, 364 Mo. 121, 137, 260 S.W.2d 573, 581 (1953). See generally *Annot.*, 17 A.L.R.2d 475 (1951).

57. See, e.g., *Castilo v. State Highway Comm'n*, 312 Mo. 244, 279 S.W. 673 (En Banc 1925).

58. No Missouri case has been cited, nor have we been able to find one, in which it is held that an injunction suit would lie on behalf of the taxpayers where the petition affirmatively showed, upon its face, that neither the taxpayers nor the corporation on whose behalf they sought to recover, had not suffered, or would not suffer any pecuniary loss, however infinitesimal.

*Smith v. Hendricks*, 136 S.W.2d 449, 457 (Spr. Mo. App. 1939).

59. See generally *Jaffe, Standing to Secure Judicial Review: Public Actions*, 74 HARV. L. REV. 1265 (1961).

60. Comment, *Taxpayers' Suits: A Survey and Summary*, 69 YALE L.J. 895 (1960).

Because the motive of a taxpayer-plaintiff is viewed as irrelevant, taxpayers' suits afford a means of mobilizing the self-interest of individuals within the body politic to challenge legislative programs, prevent illegality, and avoid corruption. Taxpayers' suits thus create an army of potential private attorneys general acting on whatever private incentives may induce them to spend the time and money to bring a taxpayers' suit: personal economic gain, partisan political objectives, desire to attract personal publicity, or to delay unwanted public projects, or to prevent

are conversely many valid interests of taxpayer-citizens the infringement of which would not give rise to any increased taxes. For instance, a government official's nonadherence to a political election process mandated by statute would impinge on a taxpayer-citizen's interest in seeing that officials abide by such election process, yet conceivably would not result in any increase in taxes, directly or indirectly. With a strict application of the pecuniary interest doctrine, an illegal official act that did not hit the taxpayers' pocketbook would go unchallenged.

Missouri courts could possibly adopt a more positive approach toward allowing such actions. For example,<sup>61</sup> assume a corporation's home office is situated in Missouri and next to a public highway with a major city park adjoining the highway on the other side. The corporation has a pressing need to expand its existing facilities, but the only practical method of accomplishing this is to extend its building over the public highway. In order to make this possible, the city directs a conveyance of land encompassing a portion of the highway to the corporation. Citizen-taxpayers, concerned that such expanded facilities will block their view and diminish their enjoyment of the city park, bring an action against the city seeking to enjoin the conveyance on the ground that it is unconstitutional. Is it likely that a motion to dismiss by the city will be sustained by the trial judge on the basis that the plaintiffs have failed to allege facts which demonstrate their standing to sue?

A study of Missouri case law indicates that suits of this nature are generally short-lived.<sup>62</sup> However, this situation is one in which it would be desirable for Missouri courts to rule in favor of the taxpayers on the standing issue and not follow the traditional "added tax burden" requirement. In the hypothetical there is no allegation of a financial injury to the plaintiff-taxpayers or of any increase in taxes. It is merely alleged that the city's action will ruin the plaintiffs' view of the city park—a purely aesthetic injury. If a Missouri court should find this injury adequate for purposes of taxpayer standing, it would expand the protected interests of taxpayers from pecuniary to other areas.

Extending the possible variations in the hypothetical example one step further, it soon becomes apparent that an injury or damage sufficient to confer standing on an individual may present itself in several forms: harm to aesthetic or environmental well-being may qualify as an injury deserv-

---

expenditures believed to be socially or economically unwise.

*Id.* at 904. It is not difficult, however, to see an inconsistency between this general rule that motives are irrelevant and the pecuniary interest doctrine. If a taxpayer brings a baseless suit, he forces the governmental unit to pay the costs of defending such suit and the possible additional costs caused by the delay in implementing the government action. This raises taxes, theoretically, for all taxpayers.

61. This hypothetical is based on the fact situation present in *McKenna v. Poelker*, No. 38988 (Mo. App., D. St. L., April 11, 1978), an unpublished opinion which was dismissed as moot after transfer to the Missouri Supreme Court.

62. See notes 53-55 and accompanying text *supra*.

ing of legal protection. This proposed advancement in the law of taxpayer standing would add a new dimension to such suits, moving beyond the narrow constraints of the past in which taxpayers' actions were merely methods of controlling the expenditure of public funds. A taxpayer's pecuniary interest would no longer be the only basis on which to gain taxpayer standing. The taxpayer would be able to address other and more varied action by public officials that closely affects him. To illustrate, if Missouri courts adopt the view espoused in the hypothetical decision, it would be possible for a Missouri taxpayer to obtain taxpayer standing to enjoin a Missouri state official from improperly permitting hunting on state property where the only injury that the taxpayer could suffer by the improper action would be harm to his environmental interest in protecting wildlife. In addition, this extension of protection to other interests of the taxpayer would further an objective of taxpayers' litigation, *i.e.*, enabling the activities of public authorities to be subjected to greater judicial scrutiny through the medium of taxpayers' suits.<sup>63</sup> Missouri courts could even further expand the scope of taxpayer actions, or could in the future contract it. While federal standing is constitutionally required,<sup>64</sup> the Missouri taxpayer standing requirement is apparently a judicially imposed doctrine of self-restraint.<sup>65</sup> It follows that relaxing the requirements for standing and broadening the scope of taxpayers' actions are within the power of Missouri courts.

Finally, it is generally true that equitable defenses are available in taxpayers' suits as they are in any other equitable proceeding. The same rules are applicable. In particular, the adequacy of legal remedies would be a good defense to a taxpayers' suit<sup>66</sup> as would the doctrine of laches.<sup>67</sup> Relief has even been denied on the broad ground that to grant the relief prayed for would be "inequitable."<sup>68</sup> The doctrine of unclean hands also seems to be an available defense in these types of actions in Missouri.<sup>69</sup> In this

63. Comment, *Taxpayers' Suits: A Survey and Summary*, 69 YALE L.J. 895, 904 (1960).

64. U.S. CONST. art. III, § 1.

65. An investigation of the Missouri Constitution reveals no express standing requirements. The Missouri Constitution does empower the Missouri Supreme Court to promulgate rules of procedure and practice for all Missouri courts. See MO. CONST. art. 5, § 5.

66. *E.g.*, *Glueck Realty Co. v. City of St. Louis*, 318 S.W.2d 206 (Mo. 1958) (plaintiff denied injunction in taxpayers' suit; proper remedy condemnation proceeding); *Civic League v. City of St. Louis*, 223 S.W. 891 (Mo. 1920) (plaintiff taxpayer denied injunction; proper remedy quo warranto).

67. *E.g.*, *Graves v. Little Tarkio Drainage Dist. No. 1*, 345 Mo. 557, 134 S.W.2d 70 (1939).

68. *Stamper v. Roberts*, 90 Mo. 683, 3 S.W. 214 (1887).

69. See *Peltzer v. Gilbert*, 260 Mo. 500, 169 S.W. 257 (1914). The general view in other jurisdictions, however, is that the defense of unclean hands is not available in taxpayer suits. See, *e.g.*, *Brooker v. Smith*, 108 So. 2d 790, 794 (Fla. App. 1959); *Stahl Soap Corp. v. City of New York*, 187 N.Y.S.2d 90, 91 (1959).

regard, it is interesting to note the general rule that the motives of the plaintiff are irrelevant to the issue of taxpayer standing.<sup>70</sup> As one Missouri court has said, "The mere fact that a taxpayer may have an interest in the litigation in addition to his financial interest as a taxpaying citizen is no defense, since his motive in exercising a legal right is not material."<sup>71</sup> Nonetheless, if the plaintiff's primary motive is such as to be dishonest, unethical, or unconscionable, the maxim of unclean hands may be successfully invoked in Missouri courts. This notion was demonstrated in *Peltzer v. Gilbert*,<sup>72</sup> where two taxpayers were denied relief on the ground that their motive was not to protect the county treasury but rather to help an accused in a criminal trial.

It is obvious that the law of taxpayer standing in Missouri consists of many areas that are indefinite and still developing, along with other areas that are relatively straightforward. Nonetheless, there are still technically required allegations the omission of which could be fatal to a petition. A cautious person desiring to challenge an act of a state or local governmental entity or official should include in his petition allegations of his status as a taxpayer and resident, the bases on which the action is challenged as being unconstitutional or illegal, and any theoretical possibility of an increased tax burden. However, it is hoped that in the future, even in the absence of a pecuniary injury, an allegation of an injury to other legally protected interests, such as the aesthetic or environmental interests of the plaintiffs, will be sufficient to satisfy the personal stake in the outcome requirement. If the plaintiff is seeking to recover a money judgment on behalf of the taxing unit, a demand on and refusal to bring the action by the proper official should be alleged. Naturally, should the plaintiff wish to bring a class action, the allegations required of such an action also must be pleaded. With inclusion of these elements, a Missouri taxpayer's standing to challenge a state or local governmental action is *prima facie* demonstrated and will survive a motion to dismiss.

MAUREEN A. MCGHEE

---

70. See note 65 *supra*.

71. *Everett v. County of Clinton*, 282 S.W.2d 30, 34 (Mo. 1955).

72. 260 Mo. 500, 169 S.W. 257 (1914).