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Jurisdictional Test for Judicial Review of Administrative Decisions in Missouri, The

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percentage of the deficiency that can be denied when there is creditor misbehavior.[43]

In the absence of either legislative reform or guidance from the Missouri Supreme Court,[44] the law regarding the award of deficiency judgments after creditor misbehavior is unclear in Missouri. Parties to a security agreement in the Kansas City and Springfield appeals districts will not know whether their appellate court will follow the St. Louis court and distinguish between lack of notice cases and cases in which the secured party buys improperly at his own private sale. It is also unknown whether the St. Louis court will follow the presumption position when the secured party buys at his own private sale or whether the court's distinction was only an easy way to reach a contrary result without contradicting its parallel courts. Finally, the result in cases involving a sale in which some aspect is not commercially reasonable is unknown.

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THE JURISDICTIONAL TEST FOR JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS IN MISSOURI

State ex rel. Schneider v. Stewart[1]

A restaurant-bar license was granted to Malvern, Inc., by the Acting Supervisor of Liquor Control, Stewart, which permitted Malvern to sell liquor by the drink. Relators Schneider and the City of Town and

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necessary to contest the deficiency judgment. For a general discussion regarding the award of attorneys' fees to the winning party, see 20 AM. JUR. 2d *Costs* §§ 72, 79-81 (1965); Sands, *Attorneys' Fees as Recoverable Costs,* 63 A.B.A.J. 510 (1977); Comment, *Court Awarded Attorney's Fees and Equal Access to the Courts,* 122 U. PA. L. REV. 636, 637-54 (1973-74).

43. One commentator has suggested that a deficiency be denied when the related purchase is for amounts up to $1500 and for amounts greater than that the burden of proof be explicitly placed on the secured party. HENSZEY, *supra* note 8, at 2036.

44. The *Gateway* case apparently will not be transferred to the Missouri Supreme Court. Automatic's motion to rehear or transfer the case was denied on February 16, 1979, by the St. Louis Court of Appeals and no motion to transfer was made to the supreme court within the required 15 days.

1. 575 S.W.2d 904 (Mo. App., D.K.C. 1978).

Country petitioned for a common law writ of certiorari[2] in the circuit court, and named the Supervisor as defendant.[3] Relators alleged that the Supervisor's classification of Malvern, Inc., as a resort[4] under Missouri's Liquor Control Law was erroneous, thereby removing any lawful authority for the license issuance. The writ issued ordering up the records on which the Supervisor had based his decision.

After certifying the records to the court, defendant Supervisor filed a motion to dismiss on the ground that neither relator had standing to challenge the administrative decision. The motion was taken under advisement but later was declared moot after a determination in favor of defendant Supervisor on the merits. Relators appealed and the standing issue again was raised by the Supervisor.

The Court of Appeals, Kansas City District, held that the standing issue involved was jurisdictional and could be considered at any stage of the proceedings. The court determined that relator Schneider's exclusive remedy was in the Administrative Procedure and Review Act[5] (APRA), but that Schneider was not a "person aggrieved"[6] so as to have standing

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2. In Missouri, both circuit and appellate courts have jurisdiction to issue and determine original remedial writs, including the common law writ of certiorari. Mo. CONST. art. V, §§ 4.1, 14(a); State *ex rel.* St. Louis Union Trust Co. v. Neaf, 346 Mo. 86, 92, 139 S.W.2d 958, 961 (1940); State *ex rel.* Modern Fin. Co. v. Bledsoe, 426 S.W.2d 737, 739 (St. L. Mo. App. 1968). The writ does not issue as a matter of right, but is discretionary. 346 Mo. at 92, 139 S.W.2d at 962; *In re* Hutchinson, 455 S.W.2d 21, 23-24 (Spr. Mo. App. 1970).

The common law writ of certiorari is a command by the issuing court to a lower judicial or quasi-judicial tribunal for the record of a proceeding in the lower tribunal to be forwarded to the issuing court. State *ex rel.* Modern Fin. Co. v. Bledsoe, 426 S.W.2d 737, 740 (St. L. Mo. App. 1968). The issuing court can review only questions of law, primarily questions concerning the jurisdiction of the lower tribunal. State *ex rel.* Police Retirement Sys. v. Murphy, 359 Mo. 854, 862, 224 S.W.2d 68, 73 (En Banc 1949). The writ does not permit the consideration of evidence or issues of fact. *Id.* Nonjurisdictional errors may be reached only if they appear on the face of the record. State *ex rel.* St. Louis Union Trust Co. v. Neaf, 346 Mo. 86, 92, 139 S.W.2d 958, 962 (St. L. Mo. App. 1968). This degree of review has been termed "narrow in its scope and inflexible in its character." State *ex rel.* Police Retirement Sys. v. Murphy, 359 Mo. 854, 862, 224 S.W.2d 68, 73 (En Banc 1949).

3. The petition was brought in three counts: Count I by Schneider as an individual and owner of property within the City; Count II by Schneider on his own behalf and on behalf of all other qualified voters in the City; and Count III by the City of Town and Country. The court did not consider Count II because Schneider failed to establish the elements for a class action under MO. SUP. CT. R. 52.08. 575 S.W.2d at 908. Schneider alleged injury in the depreciation in value of his residence. The City alleged that the grant of the liquor license created a public nuisance. 575 S.W.2d at 911, 913.

4. For purposes of Missouri's Liquor Control Law, the definition of "resort" is set out in RSMo § 311.095 (1978).

5. RSMo § 536.150 (1978).

6. RSMo § 536.150 (1978) contains no specific provision concerning the interest that a litigant must have to employ the remedy contained therein. *See* note 48 *infra*. A "person aggrieved" is the requirement for cases brought under RSMo § 536.100 (1978). *See* note 41 *infra*. The *Schneider* court would also apply this standard to § 536.150 cases because "[t]he question is one of aggrievement,

to proceed with this remedy. It was further determined that the City's only remedy was common law certiorari, but that the City was not a "party in substance"[7] and thus also lacked the requisite interest for standing. The case was remanded with directions to quash the writ.

Schneider helps clarify a court's jurisdiction to review administrative decisions. The court's analysis goes beyond the question of legal standing to seek review and establishes a framework to determine whether a person has presented a case on which the court can review the merits. Within this framework, the court implicitly considered a series of questions that may be summarized[8] as follows:

1. What is the status of the person seeking judicial review: private party, private non-party, or political subdivision?
2. Is the person employing an appropriate remedy[9] for his status?
3. Does the person have the requisite personal interest or standing to proceed with this remedy?
4. Has the person met all procedural requirements necessary to proceed with this remedy?[10]

If all elements of this test are met, the court can review the challenged administrative action, restrained only by the scope of the particular remedy being utilized.

Identifying the preceding issues as jurisdictional[11] has two significant

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whether the administrative decision adversely affects an interest the law protects." 575 S.W.2d at 910. *See also* State *ex rel.* Pruitt-Igoe Dist. Community Corp. v. Burks, 482 S.W.2d 75, 78 (Mo. App., D. St. L. 1972).

7. The phrase "party in substance" is generally used to describe the interest that a litigant must have to proceed under common law certiorari. State *ex rel.* Stewart v. Blair, 357 Mo. 287, 293, 208 S.W.2d 268, 272 (En Banc 1947). The *Schneider* court defined a party in substance as "one who has suffered injury to a substantial interest," where the injury was caused by the challenged decision. 575 S.W.2d at 910.

8. While the *Schneider* court did not explicitly set out this series of questions in its analysis, this approach appears to reflect the analytical process employed by the court.

9. In the legal sense, the term remedy "signifies and is limited to the judicial means or method whereby a cause of action may be enforced." 1 C.J.S. *Actions* § 3, at 967 (1936). A remedy is the "means by which a right is enforced." BLACK'S LAW DICTIONARY 1163 (5th ed. 1979). *See also* Merlino v. West Coast Macaroni Mfg. Co., 90 Cal. App. 2d 106, 115, 202 P.2d 748, 754 (1949); Alamo Corp. v. Thomas, 186 Tenn. 631, 639, 212 S.W.2d 606, 610 (1948); Goetz v. State Farm Mut. Auto. Ins. Co., 31 Wis. 2d 267, 273, 142 N.W.2d 804, 807 (1966).

10. This final question is arguably beyond the scope of *Schneider*. However, it is included to make the jurisdictional test complete.

11. The relators in *Schneider* argued that the standing issue was related to legal capacity to maintain an action, a defense waived under MO. SUP. CT. R. 55.27(a) unless asserted in a timely fashion. The court rejected this assertion, and held that the issue was jurisdictional. 575 S.W.2d at 909. *See also* 2 AM. JUR. 2d *Admin. Law* § 575, at 393 (1962). *See* State *ex rel.* Rouveyrol v. Donnelly, 365 Mo. 686, 698-99, 285 S.W.2d 669, 678 (En Banc 1956).

Missouri decisions have also held that issues concerning a proper remedy and adherence to the procedures of that remedy are jurisdictional. *See* Randles v. Schaffner, 485 S.W.2d 1, 3 (Mo. 1972) (procedure and remedy); Brogoto v. Wiggins, 453 S.W.2d 317, 318-19 (Mo. 1970) (remedy); State *ex rel.* Leggett v. Jensen, 318 S.W.2d 353, 359-60 (Mo. En Banc 1958) (remedy); Hagen v. Perryville Bd. of Aldermen, 550 S.W.2d 797, 799 (Mo. App., D.K.C. 1977) (procedure); Lafayette

results. First, any disposition on the merits without jurisdiction is void.[12] Second, as the *Schneider* court specifically held, a jurisdictional issue may be considered by the court at any stage of the proceedings.[13] In other words, the litigants cannot confer jurisdiction[14] nor can they waive jurisdictional issues.[15] A jurisdictional issue can be raised at any point in the proceedings by a litigant[16] or by the court *sua sponte*.[17]

The initial question of the jurisdictional test involves determining the status of the person seeking review. The term "private" is used to dis-

Fed. Sav. & Loan Ass'n v. Koontz, 516 S.W.2d 502, 504 (Mo. App., D. St. L. 1974) (procedure); McClain v. Board of Adjustment, 508 S.W.2d 301, 302 (Mo. App., D. St. L. 1974) (procedure); Moore v. Damos, 489 S.W.2d 465, 469 (Mo. App., D. St. L. 1972) (procedure); State *ex rel.* Burns v. Stanton, 311 S.W.2d 137, 140 (K.C. Mo. App. 1958) (procedure). *Contra,* Bresnahan v. Bass, 562 S.W.2d 385, 389 (Mo. App., D. St. L. 1978) (procedure, failure to make timely appeal under RSMo § 536.110 did not deny the court jurisdiction); Kopper Kettle Restaurants, Inc. v. City of St. Robert, 439 S.W.2d 1, 4 (Spr. Mo. App. 1969) (remedy, in dictum the court said that case would not be dismissed "merely because" petitioner "misconceives his precisely applicable remedy," however, in its holding the petitioner was dismissed for that very reason; the court reasoned that the petitioner was bound on appeal to the remedy elected in the trial court); State *ex rel.* Bond v. Simmons, 299 S.W.2d 540, 542 (St. L. Mo. App. 1957) (remedy, review sought under RSMo § 536.100 instead of the appropriate remedy in RSMo § 536.150 did not deny the court jurisdiction). Even the *Schneider* opinion creates confusion on this matter. Relator Schneider filed for review by common law writ of certiorari. The court determined that the appropriate remedy was in RSMo § 536.150 (1978). Nevertheless, the court did not question its jurisdiction until it reached the standing issue. 575 S.W.2d at 908-09. Perhaps the confusion in *Schneider* can be explained as a practical result. It would have been a waste of both the court's and Schneider's resources had the court dismissed the action because the wrong remedy had been employed without informing Schneider that he lacked standing even under the appropriate remedy.

The overwhelming weight of authority in Missouri supports the proposition that questions of standing, remedy, and procedure are jurisdictional issues. Yet, there is no guarantee that the courts will treat these issues as "purely jurisdictional" in all cases. In any event it is clear that these issues are not considered to be within the control of the litigants. Like "purely jurisdictional" matters, irregularities cannot be waived by the parties. Lafayette Fed. Sav. & Loan Ass'n v. Koontz, 516 S.W.2d 502, 504-05 (Mo. App., D. St. L. 1974).

12. Randles v. Schaffner, 485 S.W.2d 1, 2 (Mo. 1972); Bash v. Truman, 335 Mo. 1077, 1079, 75 S.W.2d 840, 842 (1934); Lafayette Fed. Sav. & Loan Ass'n v. Koontz, 516 S.W.2d 502, 504 (Mo. App., D. St. L. 1974).

13. 575 S.W.2d at 909. *See* Holt v. McLaughlin, 357 Mo. 844, 847, 210 S.W.2d 1006, 1008 (1948); Conrad v. Herndon, 572 S.W.2d 216, 218 (Mo. App., D.K.C. 1978).

14. Bash v. Truman, 335 Mo. 1077, 1079, 75 S.W.2d 840, 842 (1934); Lafayette Fed. Sav. & Loan Ass'n v. Koontz, 516 S.W.2d 502, 504 (Mo. App., D. St. L. 1974).

15. Kelch v. Kelch, 450 S.W.2d 202, 204 (Mo. 1970); 575 S.W.2d at 909. *See also* State *ex rel.* Nesbit v. Lasky, 546 S.W.2d 51, 53 (Mo. App., D. St. L. 1977); Lafayette Fed. Sav. & Loan Ass'n v. Koontz, 516 S.W.2d 502, 504-05 (Mo. App., D. St. L. (1974).

16. Randles v. Schaffner, 485 S.W.2d 1, 2 (Mo. 1972); Foster v. Foster, 565 S.W.2d 193, 195 (Mo. App., D. St. L. 1978); Angle v. Owsley, 332 S.W.2d 457, 459 (K.C. Mo. App. 1959).

17. Kelch v. Kelch, 450 S.W.2d 202, 205 (Mo. 1970); Conrad v. Herndon, 572 S.W.2d 216, 218 (Mo. App., D.K.C. 1978); Lafayette Fed. Sav. & Loan Ass'n v. Koontz, 516 S.W.2d 502, 504 (Mo. App., D. St. L. 1974).

tinguish a party or a non-party from a political subdivision.[18] "Party" refers to a person who was a party to the proceedings leading up to the administrative decision which is being challenged.[19] In *Schneider,* only Malvern, Inc.,[20] and Supervisor Stewart were parties.[21]

A "non-party" includes any person who was not involved in the proceedings leading up to the administrative decision.[22] Both relators in *Schneider* were non-parties: Schneider a private non-party[23] and the City of Town and Country a political subdivision.[24]

Once the status of the person seeking review has been determined, the jurisdictional test next focuses on the available remedies.[25] Statutory provisions authorizing a particular administrative action often include specific provisions for judicial review. Many of these review provisions are limited to private parties.[26] For example, the *Schneider* court pointed out that if Malvern, a private party, had been seeking judicial review, review

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18. The importance of this distinction is examined at note 24 *infra.*

19. 575 S.W.2d at 909-10. *See also* State *ex rel.* Pruitt-Igoe Dist. Community Corp. v. Burks, 482 S.W.2d 75, 77-78 (Mo. App., D. St. L. 1972).

20. Before the appeal, Malvern, Inc., was granted intervention as a defendant under Mo. SUP. CT. R. 52.12. 575 S.W.2d at 907. Of course, this has no relevance to Malvern's characterization as a "party," a status solely dependent upon its participation in the administrative proceedings.

21. The *Schneider* court was not faced with the need to classify Malvern, Inc., or Supervisor Stewart because neither was seeking judicial review. Both were defendants in the case. 575 S.W.2d at 907.

22. 575 S.W.2d at 909-10. *See also* State *ex rel.* Pruitt-Igoe Dist. Community Corp. v. Burks, 482 S.W.2d 75, 77-78 (Mo. App., D. St. L. 1972).

23. 575 S.W.2d at 909.

24. *Id.* at 912. A political subdivision appears to include any person or unit which is acting in a governmental capacity. Kostman v. Pine Lawn Bank & Trust Co., 540 S.W.2d 72, 73-74 (Mo. En Banc 1976); State *ex rel.* St. Francois County School Dist. R-III v. Lalumondier, 518 S.W.2d 638, 640-42 (Mo. 1975). In other words, a political subdivision is one which seeks to protect "public rights" which have been entrusted to it by state or local government. *Id. Accord, In re* Roadway, 357 S.W.2d 919 (Mo. 1962). A distinction has been made between a litigant asserting "private rights" and one asserting "public rights." *See generally* Davis, *Standing of a Public Official to Challenge Agency Decisions: A Unique Problem of State Administrative Law,* 16 AD. L. REV. 163 (1964).

25. *See* note 9 *supra.*

26. In Missouri, *see, e.g.,* agriculture, director of, frozen dessert manufacturer's licenses (§ 196.902); agriculture, director of, frozen dessert stop-sale order (§ 196.893); agriculture, director of, milk license proceedings (§ 416.490); agriculture, director of, milk stop-sale order (§ 416.505); agriculture, director of, stop-sale order (§ 196.893); bank tax, director's orders (§ 148.070); board of education, termination of teacher's contract (§ 168.120); board of registration for the healing arts (§ 334.100); cities, towns, villages, counties, charter form, determination of nuisance (§ 67.430); corporate franchise tax (§ 147.100); corporations, review of decisions affecting (§ 351.670); cosmetology, board of (§ 329.150); credit institutions tax, director's orders (§ 148.190); dairy license, suspension or revocation (§ 196.575); disposal plants, revocation of license (§ 269.110); drugs controlled, registration, suspension or revocation (§ 195.040); embalmers and funeral directors, state board of (§ 333.131); finance, director, action on banking facilities (§ 362.107); firemen's retirement system, St. Louis city (§ 87.145); income tax, assessment by director (§ 143.651); income tax, jeopardy assessments (§ 143.891); income tax, refund claim denied by director (§ 143.841); insurance, division of,

would have been governed by Mo. Rev. Stat. section 311.700.[27] When provided, such a remedy is the exclusive vehicle for judicial review.[28] In other words, a specific statutory provision for judicial review of a particular administrative action normally precludes other general statutory or common law remedies.[29]

Some provisions for judicial review of administrative decisions are

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cease and desist, injunctions (§ 374.046); insurance, license revocations (§ 375.141); insurance, public insurance adjusters, license hearing (§ 325.035); insurance director, unfair trade practice proceedings (§ 375.944); Kansas-Missouri air quality commission (§ 203.600); mediation, state board of, issues between labor organization and public body (§ 105.525); merit system (§§ 36.370, .380, .390); motor fuel use tax (§§ 142.442, .452, .571); motor vehicle fuel distributors, licenses (§ 142.080); motor vehicle safety inspection permit (§ 307.360); motor vehicle safety responsibility law (§ 303.290); motor vehicles, lighting equipment (§ 307.035); nonintoxicating liquor, revocation of licenses (§ 312.370); optometry, board of (§ 336.180); physicians' or surgeons' licenses, revocation or suspension (§ 334.100); plumbing and sewer inspection, board of (§ 341.190); police retirement board (§§ 86.037, .227, .740); public service commission (§§ 386.500, .510); real estate commission orders (§ 339.080); social services, department of, director's action (§ 208.100); social services, department of physical examination reports as evidence (§ 208.075); teachers' license revocation (§ 168.071); unemployment compensation (§ 288.210); workmen's compensation (§§ 287.141, .490).

27. RSMo § 311.700 (1969) provided in part:

> Any party to the proceedings who is aggrieved by any final decision, finding, rule or order of the supervisor may file with the supervisor of liquor control his application for a review within fifteen days after notice of such decision shall have been mailed to said party. Within ten days after receipt of such application for review, the supervisor shall transmit to the circuit court of the county wherein the party aggrieved resides, a certified copy of the entire record of the proceedings under review, including a transcript of the evidence heard in cases in which a hearing is required by law. The filing of such application for review shall not stay enforcement of the supervisor's decision. Such action shall be given precedence over all other civil cases and shall be heard by the court as soon as possible after the filing thereof, except that they shall not be heard ahead of cases arising under the workmen's compensation and unemployment compensation laws of this state. The review shall be conducted by the court without a jury. The reviewing court may affirm the decision of the supervisor or may reverse or modify it when such decision is not authorized by law and, in cases in which a hearing is required by law, when such decision is not supported by competent substantial evidence on the whole record. The supervisor or any other party to the proceedings may secure a review of the final judgment of the circuit court by appeal in the manner and form provided by law for appeals from the circuit court in civil cases.

This section has been replaced by RSMo § 311.691 (1978). The new provision provides for review for any person aggrieved by an official action of the Supervisor of Liquor Control.

28. 575 S.W.2d at 909. *See also* Brogoto v. Wiggins, 458 S.W.2d 317, 318-19 (Mo. 1970); Kehr v. Garrett, 512 S.W.2d 186, 190 (Mo. App., D. St. L. 1974); American Hog Co. v. County of Clinton, 495 S.W.2d 123, 127 (Mo. App., D.K.C. 1973); *In re* City of Duquesne, 313 S.W.2d 65, 69 (Spr. Mo. App. 1958). *But see* State *ex rel.* Toedebusch Transfer, Inc. v. Public Serv. Comm'n, 520 S.W.2d 38, 49 (Mo. En Banc 1975) ("extraordinary circumstances" require use of common law prohibition).

29. *See* cases cited note 28 *supra*. It is the general rule in Missouri, as well as in other states, that where a statute establishing an agency makes specific provision for judicial review of the agency's determinations, the statutory method is exclusive, *i.e.*, courts will not permit any other method of bringing the adminis-

broad enough to include private non-parties.[30] Previous decisions indicated that such provisions provide the exclusive remedy for a non-party just

trative determination into court for review. Brogoto v. Wiggins, 458 S.W.2d 317, 318-19 (Mo. 1970); *In re* City of Duquesne, 313 S.W.2d 65, 69 (Spr. Mo. App. 1958); F. COOPER, ADMINISTRATIVE AGENCIES AND THE COURTS 331 (1951). For an in-depth analysis of this exclusivity, see 2 F. COOPER, STATE ADMINISTRATIVE LAW 605-11 (1965). This approach seems contrary to the general rule that unless a remedial statute contains an express or implied negative, any existing common law remedy remains, *i.e.*, the statutory remedy is merely cumulative. *See* Everett v. County of Clinton, 282 S.W.2d 30, 34 (Mo. 1955); Lajoie v. Central West Cas. Co., 228 Mo. App. 701, 716, 71 S.W.2d 803, 813-14 (K.C. 1934). Perhaps the exclusivity rule can be explained by examining potential alternative remedies. One possibility is an extraordinary writ. These writs, however, will not issue if another adequate remedy exists. *A fortiori* an extraordinary writ will not issue where the legislature has provided a specific statutory remedy. *See* note 53 *infra*.

The second alternative remedy might be the Administrative Procedure and Review Act, RSMo ch. 536 (1978). Yet by expression of legislative intent, APRA remedies are unavailable if some other provision for judicial review is provided by statute. RSMo §§ 536.100, .150 (1978). It follows that the specific provision therefore becomes the exclusive remedy.

30. In Missouri, *see, e.g.*, accountancy board of (§ 326.132); administrative hearing commission (§ 161.332); agricultural product inspector's decisions (§ 265.070); agriculture, director of, commercial feed law (§ 266.210); agriculture, director of, meat inspection law (§§ 265.320, .370, .470); agriculture, director of, pesticide regulation (§ 281.095); air conservation commission (§ 203.130); air conservation commission, orders of executive secretary (§ 203.130); ambulance attendants, attendant-driver, hearing on license, revocation, suspension, probation (§ 190.171); ambulatory surgical centers, denial or revocation of license (§ 197.221); banking board from orders of directors of finance (§§ 361.094, .095); blind pensions, decisions of division of family services (§ 209.110); board of adjustment, city zoning (§ 89.110); board of registration for the healing arts (§ 334.160); boarding houses for the aged, licenses, denied, revoked, or suspended (§ 198.430); brucellosis control law, impoundment of cattle (§ 267.531); casualty and surety rate regulations (§ 379.505); chiropractic examiners, board of (§ 331.070); commercial feed law (§ 266.210); division of health, nursing home licensing proceedings (§ 198.141); drainage district assessment (§ 242.280); fertilizer regulatory law, actions of director (§ 266.347); finance, director of, financing institutions licensing law (§ 364.040); fire marshal, state (§ 320.265); fraternal benefit societies (§ 378.480); geologist, state, orders of, to oil and gas council (§ 259.100); hazardous waste management commission (§§ 260.400, .415); hospitals, denial or revocation of license (§ 197.071); human rights, commission on (§§ 296.050, 314.070); income tax, revenue, department (§ 161.273); income tax sales tax, determinations by director (§ 144.261); insurance holding companies (§ 382.300); insurance medical malpractice joint underwriting association law (§ 383.190); insurance director, disapproval of policy form (§ 376.675); land reclamation commission (§§ 444.600, .680, .700); liquified petroleum gas registration suspension order (§ 323.090); liquor license, suspended or revoked (§ 311.691); mental health licensed institutions, licenses denied, suspended, revoked (§ 202.915); milk board, state (§ 196.959); mine inspection director (§ 293.680); natural resources, department of (§ 260.400); oil and gas council (§ 259.170); pesticides, regulation of (§ 281.095); planning and zoning decisions, second and third class counties (§ 64.660); prevailing wages on public works, determinations (§ 290.260); radiation control, findings and orders of division of health (§ 192.470); retirement system, political subdivisions (§ 70.605); sales tax determinations (§ 144.261); securities law (§ 409.412); small loans, revocation of licenses (§ 367.190); soft drinks, license to manufacturer (§ 196.436); tax commission, state, decisions (§ 138.470); taxes, assessments, decisions (§ 138.430); title insurance companies (§§ 381.180, .190); zoning adjustment board, Jackson county (§ 64.281); zoning enforcement officer, second, third and fourth class counties (§ 64.870).

as for a private party.[31] The *Schneider* court, however, suggested that non-parties may not be so limited, stating: "Other schemes for judicial review of agency action outside the Administrative Procedure and Review Act enlarge, rather than restrict, citizen access to the courts."[32]

Judicial review of some administrative decisions is mandated by the Missouri Constitution.[33] While it is settled that a constitutional right to judicial review exists, it is equally well established that the power to provide the method for obtaining judicial review remains in the legislature.[34] The Administrative Procedure and Review Act[35] was enacted in 1945[36] to provide for general implementation of this constitutional right.[37] The APRA provides a private non-party a remedy for judicial review.[38] *Schneider* indicates that a private party can also seek review under the Act,[39] absent an exclusive remedy elsewhere.[40]

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31. State *ex rel.* Ballard v. Luten, 555 S.W.2d 855, 858 (Mo. App., D. St. L. 1977); *In re* City of Duquesne, 313 S.W.2d 65, 69 (Spr. Mo. App. 1958). *See generally* 2 F. COOPER, STATE ADMINISTRATIVE LAW 605-11 (1965).

32. 575 S.W.2d at 911 n.5. This remark appears to indicate that, unlike a private party, a specific provision for review by a non-party does not preclude the non-party's use of other remedies. However, if the rationale for declaring that the specific provision is exclusive for a private party is sound, there is no apparent reason why it should not be equally applicable to a non-party. *See* note 28 *supra*. In addition, this approach has no apparent basis in prior Missouri cases.

Although the court's language does not lend itself easily to another interpretation, a case cited by the court may explain its reasoning. In State *ex rel.* Summers v. Public Serv. Comm'n, 366 S.W.2d 738 (K.C. Mo. App. 1963), petitioners were afforded review pursuant to RSMo § 386.510 (1978) even though they might not have had a sufficient interest in the subject matter to obtain review through other remedies. Perhaps the *Schneider* court's statement that schemes for review outside the APRA enlarge access to the courts simply means that even though review is not cognizable through an APRA remedy, another statutory remedy may exist.

33. MO. CONST. art. V, § 18 (amended 1976).

34. Warnecke v. State Tax Comm'n, 340 S.W.2d 615, 618 (Mo. 1960); State *ex rel.* Missouri Power & Light Co. v. Riley, 546 S.W.2d 792, 797 (Mo. App., D.K.C. 1977); Lafayette Fed. Sav. & Loan Ass'n v. Koontz, 516 S.W.2d 502, 504 (Mo. App., D. St. L. 1974); State *ex rel.* Burns v. Stanton, 311 S.W.2d 137, 140 (K.C. Mo. App. 1958).

35. RSMo ch. 536 (1978).

36. The original 1945 provisions were part of the Model State Administrative Procedure Act. The Model Act has been adopted by 27 jurisdictions: Arkansas, Connecticut, District of Columbia, Georgia, Hawaii, Idaho, Illinois, Iowa, Louisiana, Maryland, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New York, North Carolina, Oklahoma, Rhode Island, South Dakota, Tennessee, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

37. State *ex rel.* Walmar Inv. Co. v. Mueller, 512 S.W.2d 180, 183 (Mo. App., D. St. L. 1974).

38. 575 S.W.2d at 911. *See also* Bank of Belton v. State Banking Bd., 554 S.W.2d 451, 454 (Mo. App., D.K.C. 1977); State *ex rel.* Pruitt-Igoe Dist. Community Corp. v. Burks, 482 S.W.2d 75, 77-78 (Mo. App., D. St. L. 1972).

39. 575 S.W.2d at 909. *See also* State *ex rel.* Pruitt-Igoe Dist. Community Corp. v. Burks, 482 S.W.2d 75, 77-78 (Mo. App., D. St. L. 1972). A private party clearly may use the APRA absent an exclusive remedy elsewhere. The majority of APRA cases are filed by private parties. *See, e.g.*, Bank of Belton v. State Banking Bd., 554 S.W.2d 451 (Mo. App., D.K.C. 1977); State *ex rel.* Walmar Inv. Co. v. Mueller, 512 S.W.2d 180 (Mo. App., D. St. L. 1974).

40. *See* notes 26-29 and accompanying text *supra*.

Section 536.100, part of the original 1945 enactment,[41] provides for judicial review for "Any person . . . aggrieved by a final decision in a contested case."[42] A "contested case" is defined by statute as "a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing."[43] This language has been construed as including only those cases which statutorily require, absent waiver,[44] a hearing to be held before the administrative body and a record of the hearing to be made.[45] Thus a contested case need not be "contested" at all.[46]

There are some cases where administrative action is authorized without a hearing or the making of a record.[47] Under the original APRA no statutory provision provided for judicial review of these decisions. This void was filled in 1953 by the addition of section 536.150.[48] Sections

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41. RSMo § 536.100 (1978) provides:

> Any person who has exhausted all administrative remedies provided by law and who is aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, shall be entitled to judicial review thereof, as provided in sections 536.100 to 536.140, unless some other provision for judicial review is provided by statute; provided, however, that nothing in this chapter contained shall prevent any person from attacking any void order of an agency at any time or in any manner that would be proper in the absence of this section. Unreasonable delay on the part of any agency in deciding any contested case shall be grounds for an order of the court either compelling action by the agency or removing the case to the court for decision.

42. "Any person" includes a non-party as well as a party. *See* notes 38-39 *supra.*

43. RSMo § 536.010 (1978).

44. RSMo § 536.060 (1978) provides:

> Nothing contained in sections 536.060 to 536.095 shall preclude the informal disposition of contested cases by stipulation, consent order, or default, or by agreed settlement where such settlement is permitted by law. Nothing contained in sections 536.060 to 536.095 shall be construed . . . to prevent the waiver by the parties (including, in a proper case, the agency) of procedural requirements which would otherwise be necessary before final decision, or . . . to prevent stipulations or agreements among the parties (including, in a proper case, the agency).

See also State *ex rel.* Leggett v. Jenson, 318 S.W.2d 353, 356-57 (Mo. En Banc 1958); Moore v. Damos, 489 S.W.2d 465, 468 (Mo. App., D. St. L. 1972); Kopper Kettle Restaurants, Inc. v. City of St. Robert, 439 S.W.2d 1, 3 (Spr. Mo. App. 1969).

45. Vorbeck v. McNeal, 560 S.W.2d 245, 250 (Mo. App., D. St. L. 1977). *See also* cases cited note 44 *supra.*

46. Shewmaker, *Procedure Before, and Review of Decision of, Missouri Administrative Agencies,* 37 V.A.M.S. 145, 164 (1953).

47. *See, e.g.,* State *ex rel.* Leggett v. Jenson, 318 S.W.2d 353 (Mo. En Banc 1958); State *ex rel.* State Tax Comm'n v. Walsh, 315 S.W.2d 830 (Mo. En Banc 1958); State *ex rel.* Walmar Inv. Co. v. Mueller, 512 S.W.2d 180 (Mo. App., D. St. L. 1974).

48. RSMo § 536.150 (1978) provides:

> 1. When any administrative officer or body existing under the constitution or by statute or by municipal charter or ordinance shall have rendered a decision which is not subject to administrative review, determining the legal rights, duties or privileges of any person, including

536.100 and 536.150 are mutually exclusive. A person seeking review of a "contested case" must employ the remedy provided in section 536.100.[49] A person seeking review of a "non-contested case"[50] must employ the remedy provided in section 536.150.[51]

Historically, persons seeking review of administrative decisions have resorted to various common law remedies, primarily the common law writ of certiorari. The *Schneider* court rejected this alternative by holding that a litigant who is provided a remedy by the APRA is precluded from using common law certiorari.[52] The rationale is that the common law writ does not issue in the presence of another adequate remedy.[53]

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the denial or revocation of a license, and there is no other provision for judicial inquiry into or review of such decision, such decision may be reviewed by suit for injunction, certiorari, mandamus, prohibition or other appropriate action, and in any such review proceeding the court may determine the facts relevant to the question whether such person at the time of such decision was subject to such legal duty, or had such right, or was entitled to such privilege, and may hear such evidence on such question as may be properly adduced, and the court may determine whether such decision, in view of the facts as they appear to the court, is unconstitutional, unlawful, unreasonable, arbitrary, or capricious or involves an abuse of discretion; and the court shall render judgment accordingly, and may order the administrative officer or body to take such further action as it may be proper to require; but the court shall not substitute its discretion for discretion legally vested in such administrative officer or body, and in cases where the granting or withholding of a privilege is committed by law to the sole discretion of such administrative officer or body, such discretion lawfully exercised shall not be disturbed.

2. Nothing in this section shall apply to contested cases reviewable pursuant to sections 536.100 to 536.140.

3. Nothing in this section shall be construed to impair any power to take summary action lawfully vested in any such administrative officer or body, or to limit the jurisdiction of any court or the scope of any remedy available in the absence of this section.

49. State *ex rel.* Leggett v. Jenson, 318 S.W.2d 353, 358 (Mo. En Banc 1958); State *ex rel.* Walmar Inv. Co. v. Mueller, 512 S.W.2d 180, 183 (Mo. App., D. St. L. 1974); Moore v. Damos, 489 S.W.2d 465, 468 (Mo. App., D. St. L. 1972); State *ex rel.* Bond v. Simmons, 299 S.W.2d 540, 542 (St. L. Mo. App. 1957).

50. The term "non-contested case" is not statutorily defined. However, courts have used the term to encompass those cases which are not "contested cases," *i.e.*, cases where there is no statutory requirement for a hearing to be held and a record of the hearing to be made. State *ex rel.* Wilson Chevrolet, Inc. v. Wilson, 332 S.W.2d 867, 870 (Mo. 1960); State *ex rel.* State Tax Comm'n v. Walsh, 315 S.W.2d 830, 832, 834 (Mo. En Banc 1958).

51. *See* notes 49-50 *supra*.

52. 575 S.W.2d at 908.

53. *Id. See* State *ex rel.* Modern Fin. Co. v. Bledsoe, 426 S.W.2d 737, 740 (St. L. Mo. App. 1968); State *ex rel.* Hamilton v. Guinotte, 156 Mo. 513, 527, 57 S.W. 281, 285 (1900). The same rationale should apply to other common law remedies since it is generally held that no extraordinary legal or equitable remedy will lie where another adequate legal remedy exists. *See, e.g.*, State *ex rel.* Keystone Laundry & Dry Cleaners, Inc. v. McDonnell, 426 S.W.2d 11, 15 (Mo. 1968) (mandamus); State *ex rel.* Deering Milliken, Inc. v. Meyer, 449 S.W.2d 870, 873 (St. L. Mo. App. 1970) (prohibition); Thompson v. City of Malden, 118 S.W.2d 1059, 1064 (Spr. Mo. App. 1938) (injunction).

All administrative decisions fall within either section 536.100 or section 536.150, with the possible exception of cases where the person seeking review is a political subdivision.[54] If a specific provision outside of the APRA does not provide an exclusive remedy for judicial review,[55] the Act becomes the exclusive remedy. Therefore, under *Schneider,* a private party or a private non-party never has a common law remedy available.[56] However, this situation should not prejudice private persons, provided that the litigant meets the statutory requirements of the Act,[57] because the scope of review for common law certiorari is much narrower than the statutory scope of APRA review.[58]

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54. *See* notes 63, 67-69 and accompanying text *infra.*

55. *See* notes 26-32 and accompanying text *supra.*

56. A question arises as to whether a common law remedy exists when a litigant has lost his statutory remedy because of reasons such as laches. By use of the term "exclusive," the courts seem to infer that if the remedy is lost, it does not lose its exclusivity, *i.e.,* the litigant still cannot employ other remedies. It has been held that where a litigant fails to comply with appropriate statutory schemes outside of the APRA he has no right to proceed with a remedy provided in the APRA. State *ex rel.* Johnson v. Burks, 463 S.W.2d 586, 588 (St. L. Mo. App. 1971). It can be expected that if the litigant loses his APRA remedy, courts will hold that he cannot pursue a common law remedy. This seems consistent with the general rule of exclusive statutory remedies. Mennemeyer v. Hart, 359 Mo. 423, 429, 221 S.W.2d 960, 963 (1949); State *ex rel.* Slibowski v. Kimberlin, 504 S.W.2d 237, 240 (Mo. App., D.K.C. 1973).

A second question arises where a litigant historically might have been accorded standing to challenge certain administrative decisions before APRA, but cannot meet the standing requirements of APRA to make a similar challenge. *See* notes 73-74 and accompanying text *infra.*

57. *See* note 80 and accompanying text *infra.*

58. Common law certiorari permits only a limited review that has been described as "narrow in scope and inflexible in its character." State *ex rel.* Police Retirement Sys. v. Murphy, 359 Mo. 854, 862, 224 S.W.2d 68, 73 (En Banc 1949); State *ex rel.* St. Louis Union Trust Co. v. Neaf, 346 Mo. 86, 92, 139 S.W.2d 958, 961 (1940). The writ does not permit the consideration of evidence or issues of fact. State *ex rel.* Police Retirement Sys. v. Murphy, 359 Mo. at 862, 224 S.W.2d at 73. Non-jurisdictional errors may be reached only if they appear on the face of the record. State *ex rel.* St. Louis Union Trust Co. v. Neaf, 346 Mo. at 92, 139 S.W.2d at 962.

The scope of review in contested cases under RSMo § 536.100 (1978) is much broader than this common law remedy. This scope of review is detailed in RSMo § 536.140 (1978). The power to review evidence when applying the "substantial and competent evidence" test is a key factor in defining the scope of review in a contested case. Wood v. Wagner Elec. Corp., 355 Mo. 670, 674, 197 S.W.2d 647, 649 (En Banc 1946).

There is some confusion as to the scope of review of a non-contested case under RSMo § 536.150 (1978). Section 536.150 provides that:

> [I]n any such review proceeding the court may determine the facts relevant to the question whether such person at the time of such decision was subject to such legal duty, or had such right, or was entitled to such privilege, and may hear such evidence on such question as may be properly adduced, and the court may determine whether such decision, in view of the facts as they appear to the court, is unconstitutional, unlawful, unreasonable, arbitrary, or capricious, or involves an abuse of discretion.

The scope of review provided in § 536.150 clearly is much broader than that available through common law certiorari. The intent of § 536.150 was that the

The law has developed anomalously regarding a political subdivision's right to seek review under the APRA.[59] In *State ex rel. St. Francois County School District R-III v. Lalumondier,*[60] the Missouri Supreme Court concluded that a challenge of an administrative decision by a political subdivision in a non-contested case did not involve "private rights" as contemplated by article 5, section 18 of the Missouri Constitution.[61] The court further concluded that a political subdivision was not "any person" within the meaning of section 536.150.[62] Therefore, the court determined that a political subdivision had no constitutional right to review, nor a statutory remedy in, section 536.150.[63]

The anomaly is created by the supreme court's previous holding in *In re St. Joseph Lead Co.*[64] that a political subdivision could seek judicial review of a contested case under section 536.100.[65] The court reasoned that the constitutional protection of "private rights" in article 5, section 18, establishes only a minimum standard of review, not a limitation on the

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several types of actions specified therein were to be made more flexible and adaptable, permitting the court "to determine for itself the facts relevant to the question at issue—a sort of statutory certiorari for instance." State *ex rel.* State Tax Comm'n v. Walsh, 315 S.W.2d 830, 835 (Mo. En Banc 1958). Section 536.150 does not contemplate a review of a record made before the agency because there is no requirement that a record be made in non-contested cases. Rather, the remedy in § 536.150 provides that evidence will be received in the reviewing court and a record made during review. *Id.* Therefore, not only does the court have the power to test the evidence under the "substantial and competent evidence" standard, it must do so to reach a decision. Courts have overwhelmingly agreed that § 536.150 in effect requires a hearing *de novo* with the reviewing court functioning essentially as an administrative tribunal. *Schneider,* 575 S.W.2d at 908; Karzin v. Collett, 562 S.W.2d 397, 399 (Mo. App., D. St. L. 1978); State *ex rel.* Walmar Inv. Co. v. Mueller, 512 S.W.2d 180, 182 (Mo. App., D. St. L. 1974). While Mo. CONST. art V, § 18 (amended 1976) does not mandate such a comprehensive review of non-contested cases, it is clear that the legislature has provided a remedy which gives such a statutory right. State *ex rel.* Leggett v. Jenson, 318 S.W.2d 353, 357-59 (Mo. En Banc 1958); State *ex rel.* Walmar Inv. Co. v. Mueller, 512 S.W.2d 180, 182-83 (Mo. App., D. St. L. 1974).

While the scope of review under § 536.150 seems clear, a recent unreported decision by the Court of Appeals, Kansas City District, evidences some continuing judicial confusion. In Van Kirk v. Board of Police Comm'rs, No. 30313 (Mo. App., D.K.C. 1978), *transferred,* No. 61170 (Mo. En Banc. Sept. 11, 1979), the court held that the circuit court need not review evidence where a litigant was seeking review under § 536.150. The court reasoned that Mo. CONST. art V, § 18 did not reach past the contested case in mandating application of the "substantial and competent evidence" test. Two judges dissented from the majority opinion, and argued that the weight of authority holds that § 536.150 does provide the litigant with a right to have evidence heard in the reviewing court. Upon transfer, the Missouri Supreme Court disposed of the case on different grounds. Van Kirk v. Board of Police Comm'rs, No. 61170 (Mo. En Banc, Sept. 11, 1979)

59. 575 S.W.2d at 912.
60. 518 S.W.2d 638 (Mo. 1975).
61. *Id.* at 643.
62. *Id.*
63. *Id.*
64. 352 S.W.2d 656 (Mo. 1961).
65. *Id.* at 661.

legislative power to provide for review beyond the minimum standard.[66] The court further determined that section 536.100 had broadened the right to review and that a political subdivision could be "any person aggrieved" within the meaning of that statute.[67]

There is no logical basis for the conflict between these two decisions. It does not appear that the *Lalumondier* court intended to overrule *St. Joseph Lead*.[68] Yet the cases are so incongruous that this conflict must be resolved before the availability of an APRA remedy to a political subdivision can be properly assessed.[69] This conflict also casts doubt on the availability of other remedies for a political subdivision. The *Schneider* court concluded that the *Lalumondier* rule denied the City a remedy under section 536.150. The court thereafter concluded that the City could pursue common law certiorari.[70] However, the holding in *Lalumondier* was based on the premise that absent express statutory authorization, no appeal or other review was available for a political subdivision.[71] A literal interpretation of *Lalumondier* would preclude a political subdivision from a remedy by any common law method.[72]

The jurisdictional question of standing follows the determination of a remedy. The terminology used in determining standing varies depending upon the remedy selected.[73] Irrespective of the terminology used, however, *Schneider* holds that the interest required for standing is the same.[74] The pleadings must allege that the administrative decision has "directly affected an interest in a manner personal and distinct from injury to the

66. *Id.* at 660-61.

67. *Id. Accord,* State *ex rel.* State Highway Comm'n v. Weinstein, 322 S.W.2d 778, 784 (Mo. En Banc 1959); Smith v. Missouri State Highway Comm'n, 488 S.W.2d 230, 232-35 (Mo. App., D.K.C. 1972). *But see* Kostman v. Pine Lawn Bank & Trust Co., 540 S.W.2d 72 (Mo. En Banc 1976); Kansas City v. Reed, 546 S.W.2d 727 (Mo. App., D.K.C. 1977).

68. The *Lalumondier* court cited *St. Joseph Lead* with approval, but did not give recognition to the apparent conflict. 518 S.W.2d at 640.

69. *See* Note, *Standing of Political Subdivisions to Secure Judicial Review of Noncontested Cases In Missouri,* 40 Mo. L. REV. 653 (1975), where the author advocates adoption of the *St. Joseph Lead* approach for all cases. *See generally* 2 F. COOPER, STATE ADMINISTRATIVE LAW 545-51 (1965); 3 K. DAVIS, ADMINISTRATIVE LAW TREATISE § 22.75 (1958); L. JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTIONS 537-43 (1965); Davis, *Standing of a Public Official to Challenge Agency Decisions: A Unique Problem of State Administrative Law,* 16 AD. L. REV. 163 (1964); *Annot.,* 5 A.L.R.2d 576 (1949).

70. 575 S.W.2d at 912.

71. 518 S.W.2d at 642.

72. Such an interpretation would also preclude the use of any statutory remedy outside of the APRA, absent express statutory authorization for review for a political subdivision.

73. *See, e.g.,* RSMo § 536.100 (1978) (speaks of a "party aggrieved"); RSMo § 386.500 (1978) (speaks of "interested persons"); RSMo § 336.180 (1978) (speaks of a "party in interest"). RSMo § 536.150 (1978) makes no provision concerning the necessary personal interest. The *Schneider* court held that the aggrievement standard applied. 575 S.W.2d at 910. Cases involving common law certiorari speak of a "party in substance." *See* note 7 *supra.*

74. 575 S.W.2d at 909. The court did recognize at least one exception where the standard is that of an "interested person." *Id.* at 911. This exception is

public."[75] This standard is vague and can be applied only on a case-by-case basis.[76] The *Schneider* court advocated a "strict standing test" to preserve

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largely confined to review under RSMo § 386.500 (1978) of the Public Service Commission Act which provides in part:

> After an order or decision has been made by the commission, the public counsel or any corporation or person or public utility interested therein shall have the right to apply for a rehearing in respect to any matter determined therein, and the commission shall grant and hold such rehearing, if in its judgment sufficient reason therefore be made to appear. . . .

RSMo § 386.510 (1978) provides for judicial review for persons who are denied rehearing or are unsatisfied by the result. The standing requirement under §§ 386.500, .510 is described in State *ex rel.* Consumers Pub. Serv. Co. v. Public Serv. Comm'n, 352 Mo. 905, 920-21, 180 S.W.2d 40, 46 (Mo. En Banc 1944), with the court stating:

> Considering the Public Service Commission Act as a whole, it seems apparent that parties to cases before the Commission, whether as complainants or intervenors are not required to have a pecuniary interest, or property or other rights, which will be directly or immediately affected by the order sought or even its enforcement.

See also State *ex rel.* Missouri Power & Light Co. v. Riley, 546 S.W.2d 792 (Mo. App., D.K.C. 1977); State *ex rel.* Summers v. Public Serv. Comm'n, 366 S.W.2d 738 (K.C. Mo. App. 1963); 2 F. COOPER, STATE ADMINISTRATIVE LAW 541-44 (1965).

75. 575 S.W.2d at 911.

76. *See* Hertz Corp. v. State Tax Comm'n, 528 S.W.2d 952 (Mo. En Banc 1975) (city not aggrieved by valuation set by county board of equalization); *In re* Roadway, 357 S.W.2d 919 (Mo. 1962) (private individuals could not appeal order to vacate road in that the order affected only public interest and not private rights); State *ex rel.* Rouveyrol v. Donnelly, 365 Mo. 686, 285 S.W.2d 669 (En Banc 1956) (neither Commissioner of Finance nor bank had standing to challenge decision of board of bank appeals to grant charter to another bank); Bank of Belton v. State Banking Bd., 554 S.W.2d 451 (Mo. App., D.K.C. 1977) (bank aggrieved by order of Commissioner of Finance); State *ex rel.* Pruitt-Igoe Dist. Community Corp. v. Burks, 482 S.W.2d 75 (Mo. App., D. St. L. 1972) (tenants of housing complex not aggrieved by decision of board of building appeals); Stickelber v. Board of Zoning Adjustment, 442 S.W.2d 134 (K.C. Mo. App. 1969) (litigant who was neither a resident nor property owner not aggrieved by decision of board of zoning adjustment); Lindenwood Improvement Ass'n v. Lawrence, 278 S.W.2d 30 (St. L. Mo. App. 1955) (landowners not aggrieved by decision of the board of adjustment).

For general definitions of the interest requirement, see May Dep't Stores Co. v. State Tax Comm'n, 308 S.W.2d 748 (Mo. 1958); Feeler v. Reorganized School Dist. No. 4, 290 S.W.2d 102 (Mo. 1956); Everett v. County of Clinton, 282 S.W.2d 30 (Mo. 1955); Farmer's Bank v. Kostman, 577 S.W.2d 915 (W.D. Mo. App. 1979); *In re* Estate of Soengen, 412 S.W.2d 533 (St. L. Mo. App. 1967); *In re* Weston Benefit Assessment Special Road Dist., 294 S.W.2d 353 (K.C. Mo. App. 1956); Village of Grandview v. McElroly, 222 Mo. App. 787, 9 S.W.2d 829 (K.C. Ct. App. 1928).

Similar standing requirements are found in the federal courts. For influential recent decisions on the federal approach, see Duke Power v. Carolina Environmental Study Group, Inc., 438 U.S. 59 (1978); Warth v. Seldin, 422 U.S. 490 (1975); Schlesinger v. Reservists Comm., 418 U.S. 208 (1974); United States v. Richardson, 418 U.S. 166 (1974); United States v. Students Challenging Regulatory Agency Procedures, 412 U.S. 669 (1973); Sierra Club v. Morton, 405 U.S. 727 (1972); Barlow v. Collins, 397 U.S. 159 (1970); Association of Data Processing Serv. Organizations, Inc. v. Camp, 397 U.S. 150 (1970). *See also* 2 F. COOPER, STATE ADMINISTRATIVE LAW 535-59 (1965); Hasl, *Standing Revisited: The Aftermath of Data Processing,* 18 ST. LOUIS U.L.J. 12 (1973).

the stability and reliability of government rulings in accordance with the doctrine of administrative finality.[77]

The final question of the jurisdictional test concerns the procedural requirements of the remedy chosen. Even though it is unclear whether these requirements are "purely" jurisdictional,[78] it is clear that a petition for review may be dismissed because of failure to comply with the procedural requirements of the appropriate remedy.[79] The litigant should take care to choose the correct remedy in the first instance. If he fails to do so, he may be unable to fulfill timely the remedy's unique procedural requirements.[80]

A considerable amount of confusion and conflict has hampered the right to judicial review of administrative decisions. This state of the law has continued despite frequent litigation and comprehensive legislative treatment of the subject. *State ex rel. Schneider v. Stewart* begins to unravel this confusion with a logical and systematic approach which will promote certainty in this critical area of law. The jurisdictional test will generate a body of law which enhances, rather than inhibits, the use of judicial resources in effectively responding to the present increase in administrative action.

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77. 575 S.W.2d at 912-13. *See* Davis, *Standing of a Public Official to Challenge Agency Decisions: A Unique Problem of State Administrative Law,* 16 AD. L. REV. 163 (1964).

78. *See* note 11 *supra.*

79. Hagen v. Perryville Bd. of Alderman, 550 S.W.2d 797, 799 (Mo. App., D.K.C. 1977); Lafayette Fed. Sav. & Loan Ass'n v. Koontz, 516 S.W.2d 502, 504 (Mo. App., D. St. L. 1974); McClain v. Board of Adjustment, 508 S.W.2d 301, 302 (Mo. App., D. St. L. 1974); State *ex rel.* Burns v. Stanton, 311 S.W.2d 137, 140 (K.C. Mo. App. 1958).

80. The various differences in statutory procedural requirements are too numerous to discuss here. Each statutory remedy will dictate the procedural requirements to be followed. *See* notes 26 & 30 *supra.* However, it should be noted that one of the most important differences in the statutes is the time period within which review can be sought. *See, e.g.,* Lafayette Fed. Sav. & Loan Ass'n v. Koontz, 516 S.W.2d 502, 504 (Mo. App., D. St. L. 1974); Moore v. Damos, 489 S.W.2d 465, 469 (Mo. App., D. St. L. 1972).