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Quo Warranto in Florida

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QUO WARRANTO IN FLORIDA

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The modern information in the nature of a quo warranto has been defined as an information, criminal in form, presented to a court of competent jurisdiction by the attorney general for the purpose of correcting the usurpation, misuse, or nonuser of a public office or corporate franchise.[1] In its broadest sense quo warranto is a writ of inquiry as to the warrant for doing the act complained of; it lies to test the right of a person to hold an office or franchise or to exercise some right or privilege the peculiar powers of which are derived from the state.[2] Blackstone defines quo warranto as a high prerogative writ, in the nature of a writ of right for the King, which lay against him who obtained or usurped any office, franchise, or liberty of the Crown, and which also lay in case of nonuser or long neglect of a franchise or in case of misuser or abuse of it.[3]

HISTORY

The origin of quo warranto is, at least among American judges, generally said to be obscured by antiquity and little known save that the writ came into existence early in the history of the systematization of English law.[4] The ancient writ became obsolete in England because of both the finality of judgment against the Crown and the complicated, cumbersome nature of the proceeding. It was supplanted in time by the remedy of information in the nature of a quo warranto, which in its origin was criminal—designed not only to oust the usurper of the franchise claimed by him but also to punish him by fine for such usurpation.[5] While history does not fix pre-

[1]HIGH, EXTRAORDINARY LEGAL REMEDIES §591 (3rd ed. 1896).

[2]State *ex rel.* Davis v. Clarke, 96 Fla. 518, 118 So. 308 (1928); *Ex parte* Smith, 96 Fla. 512, 118 So. 306 (1928); State *ex rel.* Merrill v. Gerow, 79 Fla. 804, 85 So. 144 (1920).

[3]3 BL. COMM. *263.

[4]*See* Nebraska *ex rel.* Wakely v. Lockwood, 3 Wall. 236, 238 (U.S. 1865); Brooks v. State *ex rel.* Richards, 26 Del. (3 Boyce) 1, 35-36, 79 Atl. 790, 795 (Sup. Ct. 1911); Buckman v. State *ex rel.* Spencer, 34 Fla. 48, 56, 15 So. 697, 699 (1894).

[5]Buckman v. State *ex rel.* Spencer, 34 Fla. 48, 15 So. 697 (1894).

cisely the date of inception of this latter remedy, it was in use contemporaneously with the writ of quo warranto well prior to express statutory recognition early in the eighteenth century.[6]

By constitutional and statutory enactments the various English statutes relating to quo warranto have been made part of the judicature of the various states. The Supreme Court of Florida observed in 1894:[7]

> ". . . for some time before the revolution the writ was regarded in England, though criminal in form, as a civil proceeding to test the right of a party to exercise a franchise, and of ousting a wrongful possessor. It has always been considered as a civil remedy at law by the great majority of the American courts, and our own court has so regarded it."

As regards any differences between the two actions, our Supreme Court stated as early as 1868 that ". . . the terms *'quo warranto,'* and 'information' in the nature of a *quo warranto,* are used as synonymous and convertible terms, the object and end of each being substantially the same."[8] The fact that the terms are for all practical purposes synonymous should be kept in mind.

Courts Authorized to Issue Quo Warranto

Authority for quo warranto proceedings finds expression both in our Constitution and in our statutes.[9] The Constitution itself confers both original and appellate jurisdiction in quo warranto proceedings upon the Supreme Court,[10] and concurrent original jurisdiction upon the various circuit courts[11] and the Court of Record in and for Escambia County.[12]

In the leading Florida case,[13] which is also one of the leading

[6] 9 Anne, c. 20 (1710); *see* Brooks v. State *ex rel.* Richards, 26 Del. (3 Boyce) 1, 35-36, 79 Atl. 790, 795 (Sup. Ct. 1911).

[7] *See* Buckman v. State *ex rel.* Spencer, 34 Fla. 48, 57, 15 So. 697, 699 (1894).

[8] State *ex rel.* Att'y Gen. v. Gleason, 12 Fla. 190, 208 (1868).

[9] Fla. Stat. §§80.01-80.04, 165.30, 542.02, 618.23, 619.09, 637.55 (1949).

[10] Fla. Const. Art. V, §5.

[11] Fla. Const. Art. V, §11.

[12] Fla. Const. Art. V, §39.

[13] State *ex rel.* Att'y Gen. v. Gleason, 12 Fla. 190, 209 (1868) (judgment of ouster entered against Lieutenant-Governor Gleason).

cases in the United States on quo warranto, our Supreme Court held that a constitutional reference to quo warranto[14] similar to that of the current Article V, Section 5, includes an information in the nature of quo warranto and that such a constitutional grant of power can be exercised by the Supreme Court without legislative action prescribing the manner of its exercise.

PARTIES

The power to file an information in the nature of quo warranto being incident to his office, the Attorney General of Florida is the proper party to bring it against a person holding public office for the purpose of inquiring into the title of such individual.[15] The bench cannot inquire into the motives prompting this filing, whether they be those of the Attorney General or those of a third person allegedly influencing his action,[16] nor can it grant or withhold leave to file.[17] Of course the court, upon considering the return to the writ and taking into account the effect of the requested remedy upon the public interest, may refuse to grant such remedy; adjudication of the substantive issues involved is strictly a judicial function, even when the request for a certain type of judgment emanates from the Attorney General.[18]

The proper practice, in a proceeding in the nature of quo warranto to inquire into title to a public office, is to institute proceedings in the name of the State of Florida upon relation of the Attorney General. In any such proceeeding any mention of a relator other than the Attorney General is mere surplusage and in no way affects either the validity of the information or the absolute control of the case on behalf of the state by the Attorney General.[19] This is true because the entire authority and responsibility is vested in the Attorney General[20] and cannot be delegated by him to anyone else

[14]FLA. CONST. Art. VI, §5 (1868).

[15]State *ex rel.* Moodie v. Bryan, 50 Fla. 293, 39 So. 929 (1905); State *ex rel.* Att'y Gen. v. Gleason, 12 Fla. 190 (1868).

[16]State *ex rel.* Att'y Gen., *supra* note 15; State *ex rel.* Landis v. S. H. Kress & Co., 115 Fla. 189, 155 So. 823 (1934).

[17]State *ex rel.* Landis v. S. H. Kress & Co., *supra* note 16.

[18]Winter Haven v. State *ex rel.* Landis, 125 Fla. 392, 170 So. 100 (1936).

[19]State *ex rel.* Moodie v. Bryan, 50 Fla. 293, 39 So. 929 (1905); State *ex rel.* Landis v. S. H. Kress & Co., 115 Fla. 189, 155 So. 823 (1934).

[20]State *ex rel.* Davis v. Rose, 97 Fla. 710, 122 So. 225 (1929).

or even cast upon the courts.[21] Similarly, the general common law rule is that a private individual, without the intervention of the Attorney General, cannot file an information in the nature of quo warranto to test the existence of a public franchise.[22] Only by virtue of our statutes may a private individual today file a quo warranto information when the Attorney General refuses to act upon complaints of usurpation of public office without title[23] or of unauthorized action based allegedly on a franchise.[24] The Attorney General has absolute discretion as to whether he will bring a quo warranto proceeding on information furnished him by private citizens,[25] but the Legislature has granted to the citizenry for their

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[21]State *ex rel.* Moodie v. Bryan, 50 Fla. 293, 39 So. 929 (1905).

[22]State *ex rel.* Harris v. King, 134 Fla. 58, 183 So. 926 (1938); State *ex rel.* Wurn v. Kasserman, 131 Fla. 234, 179 So. 410 (1938); State *ex rel.* Johnson v. Sarasota, 92 Fla. 563, 109 So. 473 (1926).

[23]FLA. STAT. §80.01 (1949) provides: "Any person claiming title to an office which is exercised by another shall have the right, upon refusal by the attorney general to institute proceedings in the name of the state upon such claimant's relation, or upon the attorney general's refusal to file a complaint setting forth his name as the person rightfully entitled to the office, to file an information or institute an action in the name of the state against the person exercising the office, setting up his own claim. In this case the court is authorized and required to determine the right of the claimant to the office, if he so desires. However, in this, as well as in all other proceedings of this character, no person shall be adjudged entitled to hold an office except upon full proof of his title to the office." For an able historical discussion see the various opinions in State *ex rel.* St. Petersburg v. Noel, 114 Fla. 175, 154 So. 214 (1934).

[24]FLA. STAT. §165.30, enacted as Fla. Laws 1949, c. 25275, on June 13 provides: "Any person, or persons, association of persons, or corporation, who shall be the owner or owners of lands located and situate within the territorial boundary of a city, town or hamlet within the state shall have the right, upon refusal of the attorney general to institute proceedings in the name of the state upon the relation of such person or persons, to institute proceedings upon writs of quo warranto, or upon information in the nature of such writs, in the name of the state, to attack or challenge the validity of the municipal corporation wherein such lands are located, and the legal existence of its corporate franchises. In all such proceedings, the said municipal corporation and the members of its governing body shall be made parties defendant. The information filed in such proceedings shall set forth under oath a prima facie case of right in the relator or relators to challenge the validity of the municipal corporation of [*sic*] the exercise by it of its municipal franchises."

[25]State *ex rel.* Att'y Gen. v. Gleason, 12 Fla. 190 (1868); *cf.* Farrington v. Flood, 40 So.2d 462 (Fla. 1949).

additional protection a right in each claimant to bring the proceeding on his own relation.[26] Furthermore, he may have his own counsel as regards his claim; [27] and if the Attorney General institutes the proceeding without making all claimants parties any omitted claimant can, upon making out a prima facie case by sworn petition and by giving satisfactory security for such costs as may be awarded against him, insist that he be made a party.[28] Each party claiming without the consent of the Attorney General is bound by a judgment against him, but the state is not bound; conversely, the judgment in a proceeding instituted by the Attorney General does not bind a claimant that is not a party.[29] In summary, then, anyone with what may be termed a "real" interest at stake, that is, a claimant of title to a public office or a property owner within a municipality, has, upon the refusal of the Attorney General to act, sufficient interest under the statutes to institute proceedings on his own behalf in the name of the state.

The foregoing discussion presents the constitutional and statutory provisions of a general nature, but the Supreme Court has extended the remedy even further. In 1936 Mr. Justice Terrell characterized quo warranto as a remedial as well as a prerogative writ, and added that ". . . this court will not refuse to extend its use on proper showing made."[30] He continued:[31]

> ". . . it is well settled that when the enforcement of a public right is sought, the people are the real party to the cause. The relator need not show that he has any real or personal interest in it. It is enough that he is a citizen and interested in having the law upheld, but this, like all other rules of law, has its limitations."

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[26]See notes 23, 24 *supra.*

[27]FLA. STAT. §80.02 (1949).

[28]FLA. STAT. §80.03 (1949).

[29]FLA. STAT. §80.04 (1949).

[30]State *ex rel.* Pooser v. Wester, 126 Fla. 49, 50, 170 So. 736, 737 (1936); see also State *ex rel.* Watkins v. Fernandez, 106 Fla. 779, 143 So. 638 (Sept. 1932) (reviewing many instances in which the common law writ of quo warranto has been extended and employed for purposes other than those for which it was originally conceived); State *ex rel.* Bauder v. Markle, 107 Fla. 742, 142 So. 829 (July 1932).

[31]State *ex rel.* Pooser v. Wester, 126 Fla. 49, 52, 170 So. 736, 738 (1936).

The relators, as citizens and taxpayers, were seeking to invalidate an election in which many voted who were unqualified by reason of having failed to register and pay the poll taxes required by law. While denying relief on the ground of resulting confusion, disorder, and public injury outweighing the individual rights of complainants, the Court emphatically defended the right of the relators, as citizens and taxpayers, to bring a proceeding in quo warranto to enforce public rights. Subsequent decisions have not altered this position.

Scope Today

It is apparent from the basic definition of quo warranto[32] that its normal purposes are to test the right or title to office and to remedy usurpation or misuse of franchise; and the generally accepted rule is that in the absence of statutory provisions to the contrary it is the only proper remedy available in such instances.[33] Conversely, it is not available when the law provides another remedy sufficient to effect the relief sought.[34]

Injunction will not lie to prevent usurpation of a franchise or office, even though the respondent has not entered upon the duties of the office. The remedy is at law, by quo warranto, to be invoked after entry or an attempt to exercise authority by virtue of the election or appointment.[35]

Quo warranto, like the writ of mandamus, never lies to enforce performance of a private contract.[36] It may, however, be employed to determine the right of an officer of a private corporation to ex-

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[32]See notes 1, 2, 3 *supra.*

[33]Winter v. Mack, 142 Fla. 1, 194 So. 225 (1940); *see* McSween v. State Live Stock Sanitary Board, 97 Fla. 750, 761, 122 So. 239, 244 (1929). For a similar federal statement of the law see Selser v. City of Stuart, 135 F.2d 211 (5th Cir.), *cert. denied,* 320 U.S. 769 (1943); Morin v. City of Stuart, 111 F.2d 773 (5th Cir. 1940). Note, however, the availability of a bill in equity in attacking illegal exercise of authority by a municipal corporation lacking de facto as well as de jure existence, Farrington v. Flood, 40 So.2d 462 (Fla. 1949), *explaining* Chavous v. Goodbread, 156 Fla. 599, 23 So.2d 761 (1945).

[34]State *ex rel.* Landis v. Duval County, 105 Fla. 174, 141 So. 173 (1932) (adequate remedy provided by statute).

[35]Winter v. Mack, 142 Fla. 1, 194 So. 225 (1940); MacDonald v. Rehrer. 22 Fla. 198 (1886).

[36]*See* State *ex rel.* Moodie v. Bryan, 50 Fla. 293, 366, 39 So. 929, 952 (1905).

ercise an office.[37] A corporation is a creature of the law and cannot exist without governmental authority. Furthermore the grant of its franchise, or charter, is always subject to the condition that it will exercise its privileges properly; and whenever it violates this trust by doing acts inconsistent with the nature of the grant the state may proceed by quo warranto against it to prevent such unauthorized acts or even to oust it of its entire franchise. To justify the employment of quo warranto to oust an official the office must be of a public nature;[38] but here again the essentially public origin of even a private corporation as a matter of law has exerted its influence. Offices held public in nature range from municipal officers[39] and harbormasters[40] to official nominees chosen in a party primary,[41] members of a county executive committee of the Democratic party,[42] and even officers of a corporation commonly called "private" because of its membership as distinct from a so-called public corporation such as a municipality.[43] When any official usurps a position of public trust created by the people of Florida the remedy is in quo warranto; but mere abuse of discretion in discharging the functions of the office, as distinguished from the title itself to such office, cannot be attacked by quo warranto.[44]

The right of a city to exercise jurisdiction over certain lands is properly tested by quo warranto,[45] whether assailed on the ground that the inclusion of the lands in question was illegal because they

[37]Gentry-Futch Co. v. Gentry, 90 Fla. 595, 106 So. 473 (1925).

[38]State *ex rel.* St. Petersburg v. Noel, 114 Fla. 175, 154 So. 214 (1934).

[39]State *ex rel.* Page v. Dannelly, 139 Fla. 320, 190 So. 593 (1939).

[40]State *ex rel.* Watson v. Friend, 152 Fla. 74, 11 So.2d 182 (1942); Winter v. Mack, 142 Fla. 1, 194 So. 225 (1940).

[41]State *ex rel.* Page v. Dannelly, 139 Fla. 320, 190 So. 593 (1939); State *ex rel.* Jones v. Fernandez, 107 Fla. 849, 143 So. 642 (1932); State *ex rel.* Watkins v. Fernandez, 106 Fla. 779, 143 So. 638 (1932).

[42]State *ex rel.* Feltman v. Hughes, 49 So.2d 591 (Fla. 1950); *accord,* State *ex rel.* Merrill v. Gerow, 79 Fla. 804, 85 So. 144 (1920), in which, however, the facts showed that the Republican Party was at the time too small to qualify as a political party and that therefore its state chairmanship was not subject to quo warranto proceedings.

[43]Davidson v. State *ex rel.* Banks, 20 Fla. 784 (1884). An excellent presentation of the theory underlying this availability of quo warranto appears in Brooks v. State *ex rel.* Richards, 26 Del. (3 Boyce) 1, 37-39, 79 Atl. 790, 796 (Sup. Ct. 1911).

[44]State *ex rel.* Landis v. Valz, 117 Fla. 311, 157 So. 651 (1934).

[45]State *ex rel.* Harrington v. Pompano, 136 Fla. 730, 188 So. 610 (1939).

have not been furnished proper municipal benefits[46] or on the ground that the municipality has not legally incorporated.[47] And, as already noted, upon the refusal of the Attorney General to act any landowner may today institute quo warranto proceedings against a municipal corporation,[48] although prior to the statutory authorization the Court held that such proceedings against a municipality could be brought by the Attorney General only.[49]

The Attorney General alone is by statute[50] entrusted with authority to attack the validity of creation and right to do business of certain types of corporations, namely, agricultural cooperative marketing associations and nonprofit cooperative associations. The legislative words "but not otherwise" appear to exclude the right of an individual to bring the proceedings if the Attorney General refuses to do so. It should also be noted that the Attorney General is specifically designated as the official vested with the power to test the authority of a foreign corporation to continue to do business in Florida after violating the statutory prohibition of combinations restricting trade or commerce.[51]

Federal and state offices are within the control of the respective governments creating them; and, since the one has no power to declare vacant an office established by the other, it cannot proceed by quo warranto to oust an incumbent. Much the same proposition holds true in regard to corporations. Though Florida courts may exercise both injunctive and quo warranto jurisdiction to prevent levy of taxes by a municipality, federal courts may not exercise quo warranto jurisdiction.[52]

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[46]*E.g.*, South Miami v. State *ex rel.* Landis, 140 Fla. 740, 192 So. 624 (1939); State *ex rel.* Att'y Gen. v. Avon Park, 108 Fla. 641, 149 So. 409 (1933).

[47]*Compare* Farrington v. Flood, 40 So.2d 462 (Fla., May 3, 1949), *with* Heyward v. Hall, 144 Fla. 344, 198 So. 114 (1940). Note that both decisions were rendered prior to the enactment of FLA. STAT. §165.30 (1949); see note 24 *supra.*

[48]See note 24 *supra.*

[49]*E.g.*, Robinson v. Jones, 14 Fla. 256 (1873); see notes 24, 47 *supra.*

[50]FLA. STAT. §§618.23, 619.09 (1949).

[51]FLA. STAT. §542.04 (1949) provides: "Every foreign corporation violating any of the provisions of this chapter is denied the right and prohibited from doing business within this state. The Attorney General shall enforce this provision by injunction, or other proper proceedings, in the name of the State of Florida." *Cf.* FLA. STAT. §542.03 (1949), relating to domestic corporations.

[52]Morin v. City of Stuart, 111 F.2d 773 (5th Cir. 1940).

PROCEDURE

Generally speaking, proceedings in quo warranto are governed by the same principles and rules that govern other civil actions.[53] Ordinary statutes of limitation, however, whether civil or penal, have no application to quo warranto proceedings brought to enforce a public right. Laches cannot generally be imputed to the state, which is not as a rule estopped or barred by laches from proceeding in quo warranto to enforce a public right.[54] When, however, certain citizens waited for some four months before attempting to invalidate a primary election on the ground that more than half the voters were not qualified because of their failure to register and pay poll taxes, and sought quo warranto less than one month before the general election, the Court denied relief on the ground of laches.[55]

The information, as a general rule in quo warranto proceedings instituted by the Attorney General in the name of the state and alleging usurpation of a public office or franchise, need merely allege in general terms that the person holding the office or the person or corporation enjoying the franchise does so without lawful authority; the respondent must then show his constitutional or statutory authority, whereupon the Attorney General must in turn assume the burden of setting forth any facts outside that authority.[56] The return cannot prevail by merely alleging due appointment or election to office, but must also show that the respondent has met all the requisites qualifying him to take possession of the office.[57] On the other hand, an information filed by a claimant as relator upon the refusal of the Attorney General to do so must establish his own title in order to oust the candidate declared elected, inasmuch as

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[53]State *ex rel.* Law v. Saxon, 25 Fla. 342, 5 So. 801 (1889); *cf.* State *ex rel.* Johnson v. Sarasota, 92 Fla. 563, 109 So. 473 (1926); State *ex rel.* Att'y Gen. v. Gleason, 12 Fla. 190 (1868).

[54]*See* Landis *ex rel.* Quigg v. Reeve, 106 Fla. 28, 29, 142 So. 654 (1932). *But cf.* an exception even to this rule in Winter Haven v. State *ex rel.* Landis, 125 Fla. 392, 170 So. 100 (1936).

[55]State *ex rel.* Pooser v. Wester, 126 Fla. 49, 170 So. 736 (1936).

[56]State *ex rel.* Davis v. City of Stuart, 97 Fla. 69, 120 So. 335 (1929), citing CRANDALL, FLORIDA COMMON LAW PRACTICE 672 (1928); Simonton v. State *ex rel.* Turman, 44 Fla. 289, 31 So. 821 (1902); Enterprise v. State *ex rel.* Att'y Gen., 29 Fla. 128, 10 So. 740 (1892).

[57]State *ex rel.* Law v. Saxon, 25 Fla. 342, 5 So. 801 (1889).

he is for practical purposes in the position of plaintiff.[58] By parity of reasoning, in proceedings by the Attorney General, a third person will not be declared entitled to the office if the information fails to show that he is so entitled; the incumbent is merely ousted upon his failure to establish his title.[59]

In proceedings to oust a foreign corporation from its permit to do business in the state the information need not set out the ultimate facts on which the Attorney General relies with the certainty required in an indictment or declaration, since he is acting for the sovereign in demanding that respondent show why it should not be ousted.[60]

Great particularity is required in the answer or plea,[61] which must be responsive; and all the facts necessary to constitute a good title must be set up.[62] In proceedings involving the right to elective office a mere denial that the relator received the number of votes alleged in the information, or that he received a majority of the votes cast at the election, or that he received a majority of the legal votes, and a plea that the respondent is "not guilty," or that he is not usurping the office, are insufficient in law.[63] A motion to quash, or a demurrer in the earlier quo warranto proceedings, has the same effect as in any other proceedings; it admits the truth of the factual allegations in the information.[64]

In original proceedings in the Supreme Court its Rules of Practice 27 and 30, to which latter the practitioner is referred by Rule 31, should be carefully observed. In proceedings before the circuit courts Florida Common Law Rules 54, 58 and 57 govern. In either event the petition for the writ must conform to the statutes on quo warranto.[65] Attention is again called to Sections 80.01 - 80.04 of Florida Statutes 1949, as well as, in certain special instances, to

[58]State *ex rel.* Clark v. Klingensmith, 121 Fla. 297, 163 So. 704 (1935); *cf.* FLA. STAT. §81.01 (1949).

[59]State *ex rel.* Att'y Gen. v. Philips, 30 Fla. 579, 11 So. 922 (1892).

[60]State *ex rel.* Landis v. S. H. Kress & Co., 115 Fla. 189, 155 So. 823 (1934).

[61]State *ex rel.* Landis v. S. H. Kress & Co., *supra* note 60; Enterprise v. State *ex rel.* Att'y Gen., 29 Fla. 128, 10 So. 740 (1892).

[62]*E.g.*, State *ex rel.* Att'y Gen. v. Gleason, 12 Fla. 190 (1868).

[63]*E.g.*, State *ex rel.* Smith v. Anderson, 26 Fla. 240, 8 So. 1 (1890).

[64]Attorney General *ex rel.* Wilkins v. Connors, 27 Fla. 329, 9 So. 7 (1891).

[65]Note that FLA. STAT. §47.10, even before the recent abolition of rule days, expressly exempted quo warranto and the other extraordinary writs from its provisions relating to date of returns.

Sections 104.10, 165.30, 542,03, 618.23, and 619.09.

The concurrent jurisdiction of the Supreme Court, the circuit courts, and the Court of Record in and for Escambia County to issue quo warranto[66] does not give the practitioner unlimited choice of forum. The Supreme Court will not try questions of fact.[67] Although the Court early held that the right to trial by jury on factual issues arising in proceedings by information in the nature of quo warranto is guaranteed by Section 3 of the Declaration of Rights of our Constitution,[68] this holding is limited to proceedings in the circuit court; in original quo warranto proceedings in the Supreme Court there is no right of jury trial, even though disputed factual issues may arise.[69] In such event the Supreme Court may at the outset decline to take jurisdiction of the cause without prejudice to the right of the relator to institute proceedings in the circuit court; or upon reaching issue it may dismiss the proceedings without prejudice; or it may appoint a commissioner to take testimony and refer this to it, together with his findings, which are advisory only.[70]

The writ is discretionary and not of right; and the judiciary may exercise its discretion in either granting or withholding judgment of ouster.[71] The scope of relief obtainable as regards an office was well expounded in 1868:[72]

> "A writ of *quo warranto* affirms an existing right to an office, or it destroys and sets aside the pretended claim of an usurper; it controls him in the exercise of the office in no legitimate sense, and it does not supervise its exercise, but destroys the power to act, by denying the right to hold the office and pronouncing judgment of ouster."

Again, in an action in quo warranto to test the right of individual respondents to be a body corporate as trustees of a county fair, the

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[66]See notes 10-12 *supra.*

[67]R. PRAC. SUP. CT. FLA. 27(1)(b).

[68]Buckman v. State *ex rel.* Spencer, 34 Fla. 48, 15 So. 697 (1894); *accord,* State *ex rel.* Clark v. Klingensmith, 126 Fla. 124, 170 So. 616 (1936).

[69]*E.g.,* State *ex rel.* Davis v. Avon Park, 117 Fla. 565, 158 So. 159 (1934).

[70]State *ex rel.* Clark v. Klingensmith, 126 Fla. 124, 170 So. 616 (1936). A fourth possible method is also mentioned.

[71]Winter Haven v. State *ex rel.* Landis, 125 Fla. 392, 170 So. 100 (1936).

[72]State *ex rel.* Att'y Gen. v. Gleason, 12 Fla. 190, 206 (1868).

Court held that the relator was not entitled to an accounting for taxes levied and collected by them, accounting being beyond the legitimate scope of such a proceeding.[73]

While appeal may be taken from a refusal to issue quo warranto,[74] an order, entered without a motion for new trial, vacating a judgment of ouster and allowing time for amending the answer may not be so reviewed, since such order is neither a final judgment nor an order granting a new trial.[75]

CONCLUSION

While the Attorney General still has absolute discretion, complete authority, and unlimited responsibility in quo warranto proceedings, private individuals in their capacity as taxpayers and citizens have been granted the privilege of instituting these proceedings upon his refusal to act. As indicated by the more recent cases and the enactments of the Legislature, the rights and powers of individual citizens in quo warranto proceedings are continually on the increase, with the result that their opportunities for utilizing this remedy are now greater than at any other time in the history of our state.

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[73]State *ex rel.* Landis v. Prevatt, 110 Fla. 29, 148 So. 578 (1933).

[74]*E.g.*, State *ex rel.* Bridges v. Henry, 60 Fla. 246, 53 So. 742 (1910); *cf.* FLA. CONST. Art. V, §5.

[75]State *ex rel.* Davis v. Safety Harbor, 101 Fla. 644, 135 So. 140 (1931); *cf.* FLA. STAT. §§59.02, 59.04 (1949).