Certiorari Power of the Florida Supreme Court to Review Decisions of the District Courts of Appeal

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Almost three years have elapsed since the effective date of the new constitutional amendment which governs Florida's judicial system. Among the most profound changes brought about by the amendment are the limitations placed upon the certiorari jurisdiction of the supreme court, as opposed to its previously unlimited jurisdiction. For most purposes, the newly created district courts of appeal are final appellate courts.

In a number of opinions the supreme court has made a concerted effort to apprise the Bar of the limitations placed upon its power of review. It should be noted that even though it can be shown that the supreme court has jurisdiction to review by certiorari, the court, at its discretion may refuse to exercise this power. The scope of this article is limited to a survey of the interpretation and treatment of that part of the new constitutional amendment which limits the supreme court's jurisdictional power to review, by certiorari, the decisions of the district courts of appeal.

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1. Fla. Const. art. V, § 4(2): "The supreme court may review by certiorari any decision of a district court of appeal that affects a class of constitutional or state officers, or that passes upon a question certified by the district court of appeal to be of great public interest, or that is in direct conflict with a decision of another district court of appeal or of the supreme court on the same point of law...." This amendment was adopted on November 6, 1956, and became effective on July 1, 1957.


3. See N & L Auto Parts Co. v. Doman, 117 So.2d 410 (Fla. 1960); Seaboard Air Line R.R. v. Branham, 104 So.2d 356 (Fla. 1958); Lake v. Lake, 103 So.2d 639 (Fla. 1958); Ansin v. Tlurston, 101 So.2d 808 (Fla. 1958), wherein it is stated at p. 811 as a justification for the court's time and effort: "It is of obvious importance that there should be developed consistent rules for limiting issuance of the writ of certiorari to cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between decisions."

4. Certiorari is not granted as a matter of course. It lies in the sound judicial discretion of the reviewing court. State v. Live Oak, P. & G.R.R., 70 Fla. 564, 70 So. 550 (1915); Seaboard Air Line R.R. v. Ray, 52 Fla. 634, 42 So. 714 (1906). The enabling provision, supra note 1, through the consistent use of the words "may review" plainly makes the reviewing power discretionary as opposed to mandatory. See Walker v. United States Fid. & Guar. Co. 101 So.2d 437 (Fla. App.), cert. denied without opinion, 102 So.2d 728 (Fla. 1958), as an example of the supreme court's refusal to exercise its power of review. The supreme court's power to review district courts of appeal decisions by appeal is a matter of right to the litigant, and such jurisdiction is obligatory. Generally, the litigant may appeal "only from decisions initially passing upon the validity of a state statute or a federal statute or treaty, or initially construing a controlling provision of the Florida or federal constitution" by the district court of appeal. Fla. Const. art. V, § 4(2).
The certificatory provision of the Florida Constitution provides that "the supreme court may review by certiorari any decision of a district court of appeal ... that passes upon a question certified by the district court of appeal to be of great public interest. ..." 6

The important thing to note under this provision is that the district court of appeal must sanction the review by certifying the question 8 and the task of the litigant becomes one of persuading the district court that the question should be certified. 7 Prudence should dictate, however, that the petition to certify should not be filed in the district court until that court has passed upon the question. 8

Once the district court of appeal determines that the question is one of "great public interest," that determination is not open for review by the supreme court. 9 In Susco Car Rental System of Florida v. Leonard, 10 the district court of appeal held a car rental company liable for the negligence of a driver who had borrowed the car from the original rental-bailee. By the oral and written terms of the rental contract, such operation of the car was unauthorized. Subsequently, the liability question was certified to the supreme court. The respondent, contesting jurisdiction, contended that the question was not one of "great public interest" in a constitutional sense. 11 The supreme court held that the language of the constitution forbade review of that part of the district court's decision. 12

5. Fla. Const. art. V, § 4(2). In the federal practice, the United States Supreme Court's jurisdiction to review questions certified by the Courts of Appeal is obligatory, 28 U.S.C. § 1254(3) (1958). See Stern & Gressman, Supreme Court Practice 257-263 (2d ed. 1954). The United States Supreme Court has been able to effectively control the number of cases certified by expressing admonition when the question was not a substantially important one. See Biddle v. Luvisch, 266 U.S. 173, 175 (1924); Boston Store of Chicago v. American Graphophone Co., 246 U.S. 8, 16 (1918).

6. United States v. Dahlberg, 120 So.2d 585 (Fla. 1960). The costs incurred in having the supreme court review a certified question are divided between the litigants. Fla. App. Rule 4.6(e).

7. Cases in which questions were deemed to be of "great public interest" other than those discussed infra are: Collins v. Coastal Petroleum Co., 118 So.2d 796 (Fla. App. 1960) (whether the Trustees of the Internal Improvement Fund were without lawful authority to repudiate their action in authorizing a corporation to recover all minerals from certain described areas of gulf, river and lake bottoms); Carraway v. Revell, 112 So.2d 71 (Fla. App. 1959) (the character of gross negligence necessary to sustain recovery under the Florida guest statute, the court taking judicial notice that trial courts throughout the state were applying different standards which effected the right of litigants as well as the interest of the insurers).

8. See Louisville, N.A. & C. Ry. v. Pope, 74 Fed. 1, 10 (7th Cir. 1896), wherein it was stated in response to a motion that certain questions in the case be certified: "If the suggestion of counsel may be entertained that a question in the cause should for any reason be certified, the suggestion must come at the argument of the case upon its merits when the court can be fully advised whether the questions involved are so intricate and doubtful and essential to be resolved that the instruction of the supreme court is necessary or desirable."


10. 103 So.2d 243 (Fla. App. 1958).

11. Supra note 9 at 834.

12. Supra note 9 at 835.
An analogy was drawn to the practice in other jurisdictions with reference to conflicts among intermediate appellate courts. When it is provided that the question in conflict may be certified to the higher court, the reviewing court cannot inquire as to whether there is a conflict.¹³

In Walker v. United States Fidelity & Guaranty Co.¹⁴ the district court had before it the question of whether a surety on an official bond, furnished by a deputy sheriff, was liable in damages for the unlawful acts of the deputy sheriff while under color of his office, as distinguished from acts done by virtue of his office.¹⁵ In 1939, the supreme court in Malone v. Howell¹⁶ had decided this same question in favor of the surety. The district court probably had some doubt as to the propriety of the Malone decision, but apparently felt compelled to adhere to it under the doctrine of stare decisis.¹⁷ The appellant petitioned the district court to certify the question to the supreme court.¹⁸ His contention was that the doctrine announced in the Malone case had been discredited by recent decisions rendered in other jurisdictions, and that there had been a change in conditions and philosophies of government which had found their place in the jurisprudence of Florida.¹⁹ A majority of the court ruled that the question was one of great public interest and certified it to the supreme court. Judge Sturgis dissented,²⁰ being persuaded that the question was moot; that the authorities supporting the Malone decision were sound; and that the question did not have the constitutional importance ascribed to it by the certificate. Judge Sturgis' meaning attached to "moot" was not explained. Certainly, it was not moot in the sense that a supreme court decision on review could not change the effect of the district court decision on the litigants.²¹ If it was meant that a question that has been previously decided by the supreme court is no longer a "question" in the constitutional sense, the dissenting position is tenable.²²

¹³. 2 A.M. JUR. Appeal and Error § 14 (1954), and cases cited. The Florida Supreme Court review of district courts of appeal decisions involving conflicts is discussed infra.
¹⁴. 101 So.2d 437 (Fla. App. 1958).
¹⁵. The bond and liability thereon is provided for in FLA. STAT. § 30.09(1) (1959).
¹⁶. 140 Fla. 693, 192 So. 224 (1939).
¹⁸. Id. at 438.
¹⁹. Ibid.
²⁰. See note 17 supra at 439.
²¹. See Carraway v. Revell, 116 So.2d 16, 19 (Fla. 1959), where the supreme court, on review of a certified question, modified the district court's order and remanded the case for further proceedings.
²². At least two federal courts of appeal have taken this position with reference to certifying questions to the United States Supreme Court. Glynn v. Krippner, 60 F.2d 406, 409 (8th Cir. 1932): "When a question has been decided by the Supreme Court, it is, so far as the inferior federal courts are concerned, a question no longer."; Lau Ow Bew v. United States, 47 Fed. 641, 645 (9th Cir. 1891): "We cannot put ourselves in the attitude of asking instructions upon a point already decided." See Joyner v. Bernard, 160 Fla. 681, 36 So.2d 364 (1948); Higbee v. Housing Auth., 143 Fla. 560, 197 So. 479 (1940); Utley v. City of St. Petersburg, 121 Fla. 268, 163 So. 523 (1935).
Unfortunately, the supreme court, exercising its discretion to do so, simply denied the petition without taking the opportunity to decide whether the re-examination type questions are "questions" in a constitutional sense. If such questions are not reviewable as questions of "great public interest," re-examination by the supreme court of its prior decisions can only be obtained when the district court refuses to follow the prior supreme court decision. Review by certiorari could then be requested on the "direct conflict theory." This, however, requires that district courts boldly recede from former decisions of the state's highest court. Reluctance to do this under the doctrine of stare decisis will deter progress. Decisions that have outlived their usefulness should no longer be controlling. For this reason, it is submitted that "questions of great public interest" should encompass the re-examination type question when the district court determines that the petition to certify has merit.

**Directed Conflict Jurisdiction**

"The supreme court may review by certiorari any decision of a district court of appeal that . . . is in direct conflict with a decision of another district court of appeal or of the supreme court on the same point of law . . ." As was probably anticipated, this source of jurisdiction has provided by far the biggest portion of the district court cases which are sought to be reviewed by the supreme court.

The court has repeatedly stated the purpose of this provision to be uniformity in the law. The constitution forbids the supreme court's whimsical selection of cases for review simply because it has some notion that the decision below was unjust. The conflict jurisdiction limits the function of the supreme court to that of a "supervisory body" which has as its primary aim the avoidance of conflicts in authority which may be binding as a precedent on the Florida trial courts. The court is not concerned with the rights of the individual litigants or the justice of the case. Each litigant coming to the supreme court from the district

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23. Walker v. United States Fid. & Guar. Co., 102 So.2d 728 (Fla. 1958). Although no inferences can ordinarily be drawn from a refusal to issue a writ of certiorari, one can hardly escape the inference that the supreme court was not yet willing to recede from its prior decision.

24. See note 1 supra.

25. Reluctance was expressed in Walker v. United States Fid. & Guar. Co., 101 So.2d 437, 438 (Fla. App. 1958), as follows: "It is our view that such re-examination should be made by our Supreme Court which first pronounced the doctrine as the law of Florida."


27. N & L Auto Parts Co. v. Doman, 117 So.2d 410, 411 (Fla. 1960); Ansin v. Thurston, 101 So.2d 808, 810 (Fla. 1958); Lake v. Lake, 103 So.2d 639, 642 (Fla. 1958).


29. Id. at 810.


31. See note 27 supra.
court has already had one trial and one appellate review by right of appeal. That is said to be sufficient to satisfy the mere requirements of fair justice.\textsuperscript{32}

The petition for certiorari must contain an affirmative allegation that the district court's decision is in direct conflict with the prior decision or decisions.\textsuperscript{33} An allegation that the decision below is "in conflict with and by implication seeks to overrule" the prior decision is insufficient.\textsuperscript{34} Where the direct conflict is alleged, the court will examine the district court's opinion and if there is a prima facie showing of a probable conflict, the writ of certiorari will be issued. Then, after a more thorough study of the allegedly conflicting decisions,\textsuperscript{35} aided by oral argument and briefs, the writ may be discharged, or the decision below may be modified or quashed.\textsuperscript{36}

The case of Williams v. Noel\textsuperscript{37} should caution the petitioner that thorough research is necessary before the petition is filed. The petitioner in Williams asserted that the district court decision was in conflict with only one prior supreme court decision. After determining that there was not a conflict as alleged, the petition was discharged.\textsuperscript{38} As a basis for a rehearing, it was alleged that the supreme court had overlooked five additional cases which were not mentioned in the original petition. A rehearing was denied on the grounds that the appellate rules do not allow the petitioner for rehearing to rely on a "new ground or position from that taken in the original argument or briefs upon which the cause was submitted. . . ."\textsuperscript{39} The court went on to say that it had not overlooked the cases mentioned in the petition for rehearing, but had discovered and considered them in the original consideration of the case.\textsuperscript{40}

An all-inclusive definition or interpretation of the intent of the word "conflict" as used in a constitutional sense with reference to "points of law," is not yet available.\textsuperscript{41} However, the cases that have interpreted this provision offer some direction to the prospective petitioner.

\textsuperscript{32} Lake v. Lake, 103 So.2d 639, 642 (Fla. 1958).
\textsuperscript{33} Seaboard Airline R.R. v. Branham, 104 So.2d 356 (Fla. 1958).
\textsuperscript{34} Id. at 358.
\textsuperscript{35} "The value of a case as a contribution to judicial authority lies, not in the court's opinion, but in its decision, which is expressed by the judgment and mandate of the court, the opinion merely states the question submitted to and considered by the court and general principles of law which the court took as its guide in determining such questions." 2 FLA. JUR. Appeals § 366 (1955). The following cases were cited: Atlantic Coast Line R.R. v. Lakeland, 94 Fla. 347, 115 So. 669 (1927); McKinnon v. Johnson, 57 Fla. 120, 48 So. 910 (1909).
\textsuperscript{36} Butler v. Gay, 122 So.2d 189 (Fla. 1960); Frank v. Jensen, 118 So.2d 545 (Fla. 1960); Seaboard Airline R.R. v. Branham, 104 So.2d 356 (Fla. 1958).
\textsuperscript{37} 112 So.2d 3 (Fla. 1959).
\textsuperscript{38} Id. at 6.
\textsuperscript{39} FLA. APP. RULE 4.5(c); Williams v. Noel, 112 So.2d 5, 7 (Fla. 1959).
\textsuperscript{40} Id. at 8.
\textsuperscript{41} As a good example of how learned writers differ as to when two decisions are in conflict, compare Roehner & Roehner, Certiorari—What is a Conflict Between Circuits, 20 U. CHI. L. REV. 656 (1953) and the disagreement with Stern, Denial of Certiorari Despite a Conflict, 66 HARV. L. REV. 465 (1953). In Florida, it
In *Sunad, Inc. v. City of Sarasota*, a majority of the court justified jurisdiction on the basis of a conflict between a district court decision and *obiter dictum* as gratuitously announced in a prior supreme court opinion. Three Justices dissented, reasoning that *obiter dictum* is "not a prior adjudication of a point of law" as contemplated by the constitution.

The supreme court will only review a decision of a district court that is accompanied by an opinion, although it is of no significance, for the purpose of determining conflict jurisdiction, that the district court of appeal, in its opinion, failed to consider or discuss the allegedly conflicting decision. In *Lake v. Lake*, the district court disposed of the case with a *per curiam* opinion consisting only of the word "affirmed." The supreme court refused to go behind the opinion and search the record to determine an alleged conflict. The district courts of appeal "are and were meant to be courts of final appellate jurisdiction," and it is assumed "that an appeal to a district court of appeal will receive earnest, intelligent, fearless consideration and decision." Since no rule of law was announced in the case, there was no possibility of non-uniformity with other decisions and hence, no constitutional need for review.

A multitude of cases processed through the district courts involved the so called "substantial evidence rule." This rule presents itself when there is alleged error in findings of fact, directed verdicts and judgments notwithstanding the verdict. The issue on appeal in this situation involves an evaluation or weighing of the evidence. In deciding these issues, a district court of appeal cannot set a patently irreconcilable precedent as each case turns upon the quantum and character of evidence available in the record for the purpose of proving the material facts. Hence, the cause lacks the vital conflict which is necessary to the jurisdiction of the supreme court. Neither will the court review the ultimate effect of the circumstantial evidence and the justifiable inferences to be drawn therefrom as determined by a district court of appeal.

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References:

42. 122 So.2d 611 (Fla. 1960).
43. Id. at 615 (dissenting opinion). The dissenting view seems to be in accord with the rationale of South Fla. Hosp. Corp. v. McCrea, 118 So.2d 25 (Fla. 1960) and *Lake v. Lake*, 103 So.2d 639 (Fla. 1958).
44. Lake v. Lake, 103 So.2d 639 (Fla. 1958).
46. 98 So.2d 761 (Fla. App. 1957).
47. Supra note 44.
48. Supra note 44 at 642.
49. Supra note 44 at 643.
50. Where a finding of fact is based on some competent substantial evidence an appellate court will not overrule the finding. *Tomberlin v. City of Miami*, 117 So.2d 735 (Fla. 1960); *Tucker Brothers, Inc. v. Menard*, 90 So.2d 908 (Fla. 1956).
51. Florida Power & Light Co. v. Bell, 113 So.2d 697 (Fla. 1959).
52. Nielson v. City of Sarasota, 117 So.2d 731 (Fla. 1960).
It is not yet clear whether the court will review a case in which the alleged conflict arises from the application of the same principle of law to reach a different result on the same undisputed material facts. In *Florida Power & Light Co. v. Bell*,\(^{58}\) the court stated that review under these conditions was conceivable. Again in *Nielsen v. City of Sarasota*,\(^{64}\) Justice Thornal stated that:

While conceivably there may be other circumstances, the principal situations justifying the invocation of our jurisdiction to review decisions of Courts of Appeal because of alleged conflicts are (1) the announcement of a rule of law which conflicts with a rule previously announced by this Court, or (2) the application of a rule of law to produce a different result in a case which involves substantially the same controlling facts as a prior case disposed of by this court. Under the first situation the facts are immaterial. It is the announcement of a conflicting rule of law that conveys jurisdiction to us to review the decision of the Court of Appeal. Under the second situation the controlling facts become vital and our jurisdiction may be asserted only where the Court of Appeal has applied a recognized rule of law to reach a conflicting conclusion in a case involving substantially the same controlling facts as were involved in allegedly conflicting prior decisions of this court.\(^{65}\)

Yet in *N & L Auto Parts Company v. Doman*,\(^{66}\) which was decided between the *Bell* case and the *Nielsen* case in point of time, the court held that it would “not look into the facts in order to determine whether a conflict exists.”\(^{65}\) The district court of appeal had held\(^{65}\) that a salesman was in the course of his employment when he fell and injured himself while walking from a taxi to his motel room where he was spending the evening. The salesman was returning from a movie during the late evening and although the trip to the movie was a personal errand, such deviation from the course of his employment came to an end when he debarked from the taxi in front of the motel.\(^{65}\) This decision was alleged to be in conflict with *Foxworth v. Florida Industrial Commission*.\(^{66}\) In the latter case, the claimant was attending a business convention in a hotel. He decided to go to a nearby shopping center in order to purchase some gifts for his family. On the way out of the lobby, he fell and injured himself. The supreme court held that the claimant was not within the course of his employment when he fell, and that the deviation occurred when he left the chair in which he was sitting.\(^{61}\) In determining whether the

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53. 113 So.2d 697 (Fla. 1959).
54. 117 So.2d 731 (Fla. 1960).
55. *Id.* at 734.
56. 117 So.2d 410 (Fla. 1960).
57. *Id.* at 412.
59. See note 56 *supra* at 411.
60. 86 So.2d 147 (Fla. 1955).
two cases were in conflict, the majority of the court in the \textit{Doman} case was of the opinion that in both cases the same principle of law was applied; \textit{i.e.}, "when an employee deviates from his employment and is injured while engaged in a purely personal mission, he is not entitled to benefits under the workmen's compensation law."\footnote{N & L Auto Parts Co. v. Doman, 117 So.2d 410, 411 (Fla. 1960).} Therefore, there was no conflict in legal precedent. Justice Roberts, dissenting, was of the opinion that the two cases "form patent and irreconcilable precedents,"\footnote{Id. at 412.} upon substantially the same facts. The majority position would have been more tenable if it had been decided that the facts in the two cases were not "substantially" the same.\footnote{By statute passed in 1959, \textit{Fla. Stat.} \textsection{} 440.27 (1959), review of all workmen's compensation cases will be by writ of certiorari directly to the supreme court from the Florida Industrial Commission. Perhaps, the supreme court will have another opportunity to explain the two cases alleged to be in conflict.} However, they apparently deemed it unnecessary to reach this question, although the dissenting opinion did. The majority held merely that they would not look into the facts to determine a conflict.\footnote{\textit{Supra} note 62 at 412. The exception to this statement is the rare case in which the material facts are "on all fours" with a prior case. See Larnel Builders, Inc. v. Martin, 110 So.2d 649 (Fla. 1959).} Hence, it appears, despite what was announced in the \textit{Bell} and \textit{Nielsen} cases, that conflicts arising out of different conclusions in applying the same principle of law to substantially the same facts, are not "conflicts" in a constitutional sense.

Where the district court of appeal improvidently exercises its jurisdiction, the remedy of the appellee is a petition to the supreme court for a writ of prohibition.\footnote{Diamond Berk Insurance Agency, Inc. v. Goldstein,\footnote{\textit{Ibid.}} the appellant filed his notice of appeal in the district court instead of the trial court as provided in the appellate rules. The district court held\footnote{\textit{Supra} note 66 at 421.} that this error did not deprive it of jurisdiction to review the merits of the case. The appellee petitioned the supreme court for a writ of certiorari alleging a conflict with \textit{Counne} v. \textit{Saffan}.\footnote{87 So.2d 586 (Fla. 1956).} The supreme court held that certiorari was not the proper remedy and granted leave to the petitioner to apply for a writ of prohibition which was afterwards granted\footnote{State v. Carroll, 102 So.2d 129 (Fla. 1958).} on the authority of \textit{Counne} v. \textit{Saffan}.\footnote{See note 41 \textit{supra}.}

Under all the limitations placed upon the review of district court decisions, the "conflict" theory offers the disgruntled litigant the most attractive route for supreme court review. This is understandably so. It is not too difficult to find in most appellate decisions a point which lends itself to an argument that it is in conflict with one of the many prior decisions.\footnote{While concordance is not always to be expected between...}
the supreme court's conception of "conflict" and that of the litigants, the experience thus far would indicate that a more objective and careful analysis of his case would save the litigant money as well as the court's time.

**Decisions Affecting a Class of Constitutional or State Officers**

Only one case has reached the court in which an interpretation of "a class of constitutional or state officers" was made. In *Hakam v. City of Miami Beach*, a municipal police officer sought review of a declaratory decree affecting his rights under the municipality's Civil Service Act. On appeal, the district court affirmed the circuit court decree without an opinion. In the petition to the supreme court for review by certiorari, the police officer asserted that he was a constitutional or state officer within the meaning of the constitution. The petition was denied on the authority of *Lake v. Lake* which held that district court decisions without opinions are not reviewable. However, the court went on to say that "it is quite obvious that a police officer of a municipal corporation is not a 'constitutional or state officer' as contemplated by the germane constitutional provision." A seemingly safer position would have been a holding bottomed on the latter reason. Assume that in a subsequent case a class of constitutional or state officers are affected by a district court decision rendered without an opinion. Under the rule of the *Hakam* case the supreme court would be powerless to review. Furthermore, the petition for review of the *Lake* case was based on an alleged conflict between the district court decision and a prior supreme court decision. Since there was no opinion, a conflict in announced legal precedents did not exist. Consequently, there was no need to review the *Lake* decision, since the only purpose of the "conflict" jurisdiction is to provide uniformity in legal precedents. It is submitted that the reason for the provision permitting supreme court review of decisions affecting a class of constitutional or state officers is the public importance attached to this type of question. The supreme court should effectuate this purpose without the self-imposed and unnecessary limitations announced in the *Hakam* case.

As obiter dictum for informational purposes, the *Lake* case contained the following illustrations as cases affecting a class of constitutional or state officers which would warrant review by the supreme court: 

[A] decision relating to all superintendents of public instruction because of its effect on the school system; one dealing with all sheriffs because of the effect upon law enforcement; one concerning

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72. FLA. CONST. art. V, § 4(2).
73. 108 So.2d 608 (Fla. 1959).
74. 105 So.2d 42 (Fla. App. 1958).
75. supra note 73 at 609.
76. 103 So.2d 639 (Fla. 1958).
77. supra note 73 at 609.
78. supra note 46.
all taxing officials because of the influence upon public finances.79
(Emphasis added.)

As the word "class" denotes more than one officer; query, would a decision affecting the state comptroller's office be properly reviewable by certiorari since there is only one such officer?

It may be that only those offices created by the constitution or state statutes come within this provision.80 In that event, review may be obtainable by right of appeal if the validity of the statute or a construction of the constitution is in issue.81

CONCLUSION

Undoubtedly, the supreme court is placing a strict interpretation on its power to review decisions from district courts of appeal. Contrary to a popular notion, especially among laymen, it is not a higher court of general appellate review. Neither are the district courts of appeal mere intermediate courts on the route to the supreme court. With the limitations placed upon the power of review of the supreme court, the responsibility of directing and promulgating future Florida law, especially private law, lies to a great extent with the district courts of appeal.

The supreme court's attitude of not being concerned with the rights of the individual litigant and the justice of the case is justifiable. First, the district courts of appeal are quite competent to administer appellate justice. Additional review for the sake of justice is not necessary.82 Secondly, the supreme court could not devote the necessary time and deliberation to the fulfillment of its obligatory constitutional duties, if it considered every case in which an interesting legal question arose, or in which the court was led to the prima facie impression that the decision below was unjust.

One could only conclude, after reading the number of cases which failed to show the jurisdiction of the supreme court, that lawyers would

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79. Lake v. Lake, 105 So. 2d 639 (Fla. 1958).
80. See 8A Words and Phrases 458 (1951) and cases cited for such a judicial construction of a "constitutional or state officer." Cf. Armstrong v. City of Tampa, 106 So. 2d 407 (Fla. 1958), which held that a municipal ordinance was not a state statute within the constitutional provision authorizing direct appeals to the supreme court in cases involving construction of a state statute; State ex rel. Clyatt v. Hocker, 39 Fla. 477, 486, 22 So. 721, 723 (1897), wherein it was stated that a state officer is "a person in the service of the government, who derives his position from a duly and legally authorized election or appointment, whose duties are continuous in their nature, and defined by rules prescribed by government, and not by contract, consisting of the exercise of important public powers, trusts, or duties, as a part of the regular administration of the government, the place and the duties remaining, though the incumbent dies or is changed . . . ."
82. Lake v. Lake, 103 So. 2d 639, 642, (Fla. 1958): "The quality of justice may not be gauged by the treatment accorded one litigant without regard for his adversary. Justice should be done, but not overdone. When a party wins in the trial court he must be prepared to face the opponent in the appellate court, but if he succeeds there, he should not be compelled the second time to undergo the expense and delay of another review."
be well advised to spend a little more time and effort in their petition demonstrating to the supreme court its jurisdiction to reach the merits of the decision below. The petitioner, in preparing his petition, should keep foremost in his mind that review of district courts of appeal decisions by certiorari is in the interest of the law, its appropriate exposition and enforcement, and not in the interest of justice to the litigant.