Judicial Review of Administrative Action in Florida -- Mandamus

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sion and disorder and will produce injury to the public which outweighs individual right of complainant to have relief, quo warranto will not be granted even though it clearly appears that complainant may be ordinarily entitled to relief.¹⁹

The public interest requires that one properly entitled should discharge the duties of a public office. In pursuance of this policy, a public officer with imperfections in his title should be ousted. Time, however, can heal and make perfect his title by removal of his disqualifications. Thus mollified, public interest wanes and an adjudication of the rights of the litigants inter se would serve no useful purpose. A recent case well illustrates this principle. There is was said that quo warranto would not be granted to challenge the office of a judge of the Circuit Court because the judge had been appointed in violation of the constitutional provision that no legislator shall during his term be appointed or elected to any civil office that has been created or the emoluments thereto increased during his term as member of the Legislature²⁰ which had increased Circuit Judges' salaries, where judge's term as legislator had expired at time when quo warranto proceedings were brought.²¹

The writ of quo warranto along with other extraordinary legal remedies occupies an important position in our governmental scheme by its remedial effect on errors of the executive and legislative departments; it is another of the many checks and balances. Although the writ had its origin in antiquity, it has a quality of flexibility which lends itself to progress. As has been said herein the writ is discretionary, thereby enabling the courts to fit the remedy to the social and economic conditions extant where circumstances compel a step forward.

¹⁹ State ex rel Pooser v. Wester, 126 Fla. 49, 170 So. 736 (1936). Pooser et al filed an information in the nature of a quo warranto seeking to invalidate a primary election but waited until less than a month before the November election. Held that confusion and disorder would result in injury to the public which outweighed the individual right of the individual.

²⁰ Art. III, Sec. 5, Fla. Const.

²¹ State ex rel Hauhtorne v. Wischert, supra. Note 5.

JUDICIAL REVIEW OF ADMINISTRATIVE ACTION IN FLORIDA—MANDAMUS

In a previous issue of this publication,¹ a discussion was begun of the extraordinary common law writs and their use in Florida as a means of asserting judicial control over administrative processes. There

¹ See "Certiorari to Administrative Tribunals in Florida" Vol. 2 Miami Law Quarterly 181.
is presented herewith a treatment of the use of the writ of mandamus. As has been seen, the writ of certiorari lies to review administrative action where it is judicial in character; that is, where it involves the resolution of controversies between adverse claimants (including claims against the state). The writ of mandamus, on the other hand, lies to review action which partakes of an executive or legislative character; as, for example, the issue of licenses or the formulation of regulations. In such cases the court is prevented by constitutional provisions from itself assuming to exercise the legislative or executive function, but can determine only whether the action has been unlawfully or arbitrarily withheld. Since mandamus is compulsory in form, it cannot be used in situations when prohibitory action is desired, and in such cases recourse must be had to equity.

Mandamus, as defined by the Supreme Court of Florida, is a command issuing from a court of law of competent jurisdiction, in the name of the state or sovereign, directed to some inferior court, tribunal, or board, or to some corporation or person, requiring the performance of a particular duty therein specified. This duty results from the official station of the party to whom the writ is directed, or from operation of laws. The Constitution of the State of Florida has conferred the power to issue this writ upon both the Supreme Court and the Circuit Courts. Proceedings which originate in the Circuit Courts may be reviewed by the Supreme Court on a writ of error, but not by appeal. The authority to issue the writ is said to be a general grant of power to the courts, thus permitting the legislature to prescribe the manner of obtaining and issuing process.

The decisions of this state seem to be in complete accord in requiring that in order to warrant the granting of a writ of mandamus, it must appear that the realtor has the clear legal right to the performance of the particular duty by the respondent. In addition, it is always properly issued to protect a realtor against unreasonable and

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5 Marbury v. Madison, 1 Cranch 137, 2 L.Ed. 60 (1803); Buckwalter v. Lakeland, supra; State ex rel. West v. Florida Coast Line Canal & Transp. Co., 73 Fla. 1006, 75 So. 582 (1917).
6 Const. of Fla., 1885 Art. V, Sec. 5 and 11; Overstreet v. State ex rel. Carpenter, 115 Fla. 151, 155 So. 928 (1934); State ex rel. Sovereign Camp, W.O.W. v. Halifax Hospital Dist., 112 Fla. 223, 150 So. 517 (1933).
7 Hogan v. State, 85 Fla. 27, 95 So. 617 (1923).
8 State v. Johnson, 13 Fla. 33 (1889).
9 State v. Gray, 92 Fla. 1123, 111 So. 242 (1927).
prohibitive regulations of a state administrative agency. 10

However to interpret this rule and to determine when the writ will properly issue, the governing exclusionary rules must also be reviewed. This extraordinary writ will not issue: where there is another adequate remedy; 11 where there is a special statutory remedy; 12 to correct alleged errors in rendering judgment; 13 in cases of doubtful rights; 14 to command an officer to perform a futile act, or one which the officer cannot legally perform at the time the petition is filed or the writ granted; 15 where the duty sought may be performed at the discretion of the officer; 16 to compel a series of continued acts

10 Seaboard Air Line Ry. v. State, 96 Fla. 524, 118 So. 305 (1928)
11 State ex rel. Long v. Carey, 121 Fla. 515, 164 So. 199 (1935). Mandamus held not to lie to compel county commissioners to increase tax levy on non-exempt and non-homestead property to meet obligations of county bonds which were issued prior to adoption of constitutional amendment exempting homesteads from ad valorem taxation, in view of relator's statutory remedy to have assessment on his homestead declared illegal, and in view of relator's remedy by injunction.
12 Ibid. note 10. Where the entire record before the court shows a regulation of a state board to be unreasonable and prohibitive, the circuit court has authority to order peremptory writ of mandamus to protect in proper manner the rights of the relator.
13 Dykeman v. Petteway, 96 Fla. 74, 117 So. 696 (1928). Cannot be maintained to correct alleged errors in rendering a judgment where there is an adequate remedy by writ of error. Judge Petteway declined to recognize the writ because it was directed to Judge Edwards and not to him.
14 State ex rel. Allen v. Rose, 123 Fla. 544, 167 So. 21 (1936). Court held it would not issue mandamus to compel state racing commission of the State of Florida, "to convene forthwith and, without any undue delay, by resolution revise your said rule which presently requires the registry of dogs in the American Kennel Club as a condition or qualification for the racing of such dogs in this state, so that the registration of such dogs in the National Coursing Association stud book shall also constitute sufficient registration qualifications for the racing of such dogs in this state . . . ." Where duty is discretionary, mandamus does not lie.
15 State ex rel. Walker v. Best, 121 Fla. 304, 163 So. 696 (1935). Mandamus held not to lie to compel town clerk to publish copy of amendment to town charter together with notice of special elections to be held on November 5, 1935, where statute required publication of proposed change once each week for four consecutive weeks, next preceding election, first publication to be not less than 25 days prior to election, and only 15 days were available between return of writ and election date.
16 State ex rel. Allen v. Rose, supra, Note 14. Court held that the making of appropriate rules of racing was a discretionary power of the racing commission.
where the court cannot furnish the superintendence without which its mandate becomes nugatory;\textsuperscript{17} to command an act which is not ministerial but which is in the judicial discretion of the judge;\textsuperscript{18} where substantial rights of parties not before the court are involved;\textsuperscript{19} where third parties seek to intervene, in absence of statute, as no such right existed at common law;\textsuperscript{20} to enforce the performance of private contracts;\textsuperscript{21} to compel the payment of an unliquidated, unadjudicated, and disputed claim;\textsuperscript{22} nor will it lie generally if barred by the equitable doctrine of laches.\textsuperscript{23}

\textsuperscript{17} \textit{State ex rel. West v. Florida Coast Line Canal \\& Transp. Co.}, supra, Note 5. Court held that mandamus would not lie to compel Canal Company to do acts which were too general in nature; namely, involving complete operation of canal which court could not superintend effectively.

\textsuperscript{18} \textit{State ex rel. North St. Lucie River Drainage Dist. v. Kanner}, 152 Fla. 400, 11 So. 2d. 889 (1943). Court held that mandamus would not issue to compel Judge to enter a decree pro confesso against lands described in bill, as the act, involved to a certain extent, judicial discretion of judge. Relator has remedy by review on appeal if action turns out to be erroneous.

\textsuperscript{19} \textit{State v. Richard}, 50 Fla. 284, 39 So. 152 (1905). Mandamus will not lie to have previous sales and certifications of the lands to the state for the non-payment of taxes due thereon declared illegal and void where certificates are held by the state, thus having an interest in the question of their validity or invalidity, and the state not being made a party to this suit.

\textsuperscript{20} \textit{State v. Atl. Coast Line Ry. Co.}, 67 Fla. 458, 65 So. 654 (1914). Court dismissed City of Bartow's "Bill of Intervention" in the mandamus proceedings as no statutes authorize such intervention and as such City has no locus standi in the proceeding.

\textsuperscript{21} \textit{Fla. Cent. Ry. Co. v. State}, 31 Fla. 482, 13 So. 103 (1893). Contracts undertaking to obligate a railroad company to establish its depot exclusively at a particular point are void as against public policy. Court held mandamus would not lie to enforce a private right unless person seeking enforcement was the relator. Where it is in effect a public right the people are regarded as the real party.

\textsuperscript{22} \textit{Howell v. State}, 54 Fla. 199, 45 So. 453 (1907). Court denied mandamus to compel the Mayor and members of the municipal council of the town of Leesburg to restore Edwards to the office of marshal and inspector of Leesburg, of which office he had been wrongfully and illegally deprived by being wrongfully and illegally removed therefrom by said city council, as said writ was indefinite, vague and uncertain as to profits, emoluments, or advantages of the office of marshal and inspector.

\textsuperscript{23} \textit{Perkins v. Lee}, 142 Fla. 154, 194 So. 315 (1940). This was an original proceeding in mandamus instituted by L. A. Perkins, former Marshal of the Supreme Court, against J. M. Lee, as Comptroller, for the
A writ of mandamus will not be issued to a tax collector who has refused to collect taxes, nor do the courts have the power to compel the governor of the state to perform any act which may be his duty to perform in his political capacity, or which he, officially, is required to perform by the constitution or laws of the state. The State Administration Board, if properly and impartially acting within statutory powers, is not subject to mandamus controlling the manner of performing its duties. In so far as legal rights and the effects of administrative decisions of quasi-legislative or quasi-executive character are concerned, the courts will not review such decisions for mere procedural errors or erroneous conclusions of fact, where the administrative agency, in arriving at a decision, violated no rule or law and the record as an entirety does not show abuse of delegated authority or arbitrary action. An individual is not authorized to prosecute mandamus to compel a justice of the peace to issue a warrant in a criminal case.

Thus, in analysis, the writ of mandamus may be properly brought only to require a public officer to perform a duty of office, lack of performance of which has injured the realtor personally as an individual, either through a private or public injury, and which duty the public officer has an unqualified obligation, entirely devoid of discretion, to perform.

Issuance of a state warrant in payment of certain back salary. Court held relator was not guilty of laches in presenting his requisition to the Comptroller for his back salary. Mandamus is a remedial process, which is awarded, not as a matter of right, but in the exercise of a sound judicial discretion and upon equitable principles. It is generally regarded as not embraced within statutes of limitation applicable to ordinary actions, but as subject to the equitable doctrine of laches.

25 State v. Drew, 17 Fla. 67 (1879).
26 State ex rel. Hester v. State Board of Administration, 30 So. 2d 356 (Fla. 1947); State v. Johnson, 109 Fla., 263, 147 So. 254 (1933).
27 State ex rel. Williams v. Whitman, 116 Fla. 196, 156 So. 705 (1934).
29 State ex rel. Buckwalter v. Lakeland, supra. Note 2; not allowed in: Baker v. State ex rel. Hi-Hat Liquors, 31 So. 2d 275 (Fla. 1947), profits or commercial advantages which holder of a retail liquor package store license might gain in the elimination of competition of another holder of a license were too elusive and uncertain to entitle it to maintain a mandamus proceeding, as a person enforcing a special interest or private right, to compel revocation of the license of the other holder of a license, on ground that his place of business was within 300 feet of a school site in violation of statute; State ex rel. S. A. Lynch Corp. et al, v. Danner et al., 33 So. 2d 45 (Fla. 1947).