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## Chapter Eight: “In Other Classes of Cases Provided by Law”

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## CHAPTER EIGHT

*“in other classes of cases provided by law”*

### 8.010. THE POTENTIAL SIGNIFICANCE OF THE PROVISION

This jurisdictional category first appeared in the 1945 constitution. Surprisingly, only one case was found which considers it: *United Bhd. of Carpenters v. Industrial Comm’n.*<sup>1</sup> In this case the supreme court acknowledged that the provision gives the general assembly power to vest original appellate jurisdiction in the court over classes of cases not falling within one of the other eight categories.<sup>2</sup> The commission had appealed to the supreme court pursuant to a statute stating that “appeals from all final orders and judgments entered by the [circuit] court in review of . . . decisions of the department *may* be taken directly to the supreme court.”<sup>3</sup> Because the general assembly had not unequivocally manifested an intention to establish a class of cases in which the supreme court *must* have original appellate jurisdiction, the provision was held void. The court did not fully articulate its reasoning, but apparently meant that the “other classes of cases” provision shares with the other eight categories the pervading purpose of article V, section three to establish a mutually exclusive system of original appellate review.<sup>4</sup> Thus it seems that, because the permissive “may” appeared in the statute, the general assembly indicated no intent to establish an exclusive class.

The court further noted in dictum<sup>5</sup> that even if mandatory language had been present, this particular statute would have been void under article III, section twenty-three of the constitution which requires that “no bill shall contain more than one subject which shall be clearly expressed in the title.” The establishment of a new jurisdictional class was treated as a separate subject requiring a separate bill.

### 8.020. CONSIDERATIONS FOR FUTURE LEGISLATION

The *Brotherhood of Carpenters* case provides two guidelines for future action by the general assembly: (1) in order to vest appellate jurisdiction

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1. 352 S.W.2d 633 (Mo.), *trans’d*, 363 S.W.2d 82 (Ct. App. 1962).
  2. Upon our own examination . . . of the various specifically named classes of cases, we hold that none apply to this case. If appellate jurisdiction is in this court it is only because this case is one of a class over which the legislature has vested exclusive appellate jurisdiction in this court pursuant to the . . . constitutional provision. *Id.* at 634.
  3. Mo. Laws 1957, at 574, § 8. (Emphasis added.)
  4. See *Starr v. Mitchell*, 231 S.W.2d 299, 301 (Mo. Ct. App. 1950), *trans’d*, 361 Mo. 908, 237 S.W.2d 123 (1951).
  5. 352 S.W.2d at 635.

over a specific class of cases with the supreme court, the courts of appeals must in addition be expressly divested of jurisdiction, and (2) there must be strict compliance with the usual procedural requirements for the passage of legislation.

Implicit in the opinion is the warning that the supreme court will continue to guard carefully the boundaries of its jurisdiction as it has done in the past. Holdings prior to 1945 conclusively established that the general assembly had no power to confer jurisdiction beyond the confines of the original eight categories.<sup>6</sup> Further, the court has consistently striven to maintain the integrity of the respective categories against erosion by judicial decision, refusing to take jurisdiction of cases juxtaposed between two categories but not strictly conforming to the technical requisites of either.<sup>7</sup> This history of

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6. *State ex rel. Pitcairn v. Public Serv. Comm'n*, 92 S.W.2d 881 (Mo. 1936). See the discussion of this and similar holdings, § 6.051(a), note 33. In *Rourke v. Holmes St. Ry.*, 257 Mo. 555, 166 S.W. 272 (1914) (en banc) (see "Introduction," note 36 for the full history of this case), the supreme court held that:

By giving the Legislature this special and particular authority [to raise the jurisdictional 'amount in dispute'], the Constitution withheld from it any further power to act in the matter and where, as in the case at bar, it attempted to act by making a new classification of subjects regardless of the amount in controversy, it . . . transcended the only authority which the Constitution gave it . . . *Id.* at 564, 166 S.W. at 276.

In general, the general assembly cannot confer jurisdiction on the supreme court by any act that does not conform to the categorical definition of jurisdiction in the constitution. *Cf. Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803). However, in *State v. Thayer*, 158 Mo. 36, 58 S.W. 12 (1900), the supreme court apparently did not consider this limitation on the legislative prerogative. The court stated that no absolute right of appeal from criminal convictions existed at common law and that if such a right currently existed, it was by virtue of legislative act. The court then construed a relevant statute and concluded that it gave the defendant the right to appeal to the supreme court. However, the court overlooked (at least did not discuss) the fact that the defendant had been convicted of a misdemeanor, whereas the constitution specified that the supreme court should have appellate jurisdiction in "all cases of felony." Cases decided after *Thayer* conclusively established that the supreme court does not have jurisdiction of a misdemeanor appeal unless a constitutional issue is raised. See § 7.010.

7. An example is the degree to which the "state officer a party" and "title to office under this state" provisions for supreme court jurisdiction have been circumscribed by definitions of "officer" unique to each provision. See § 4.020, note 9. Thus, in *State ex rel. Consol. School Dist. v. Ingram*, 317 Mo. 1141, 298 S.W. 37 (1927), *trans'd*, 2 S.W.2d 113 (Ct. App. 1928), the official who was a party was not a "state officer" for purposes of jurisdiction, but did hold an "office under this state" so that if title thereto had been involved the supreme court would have had jurisdiction.

*State v. Zinn*, 141 Mo. 329, 42 S.W. 938 (1897), involved malicious trespass to land. Being a criminal action, it was like the cases included in the felony category; but as a misdemeanor it did not technically fall within that category. In addition, since the defense was a claim of title to the land, it fell close to, but not technically within, the title to real estate category, because the defense did not necessitate an adjudication of title. Supreme court jurisdiction was denied in this case and also in *State v. McNeary*, 88 Mo. 143 (1885), which was, in an analogous fashion, juxtaposed between the felony

restriction implies that the general assembly must explicitly define the boundaries of any class of cases it wishes to divert to the supreme court.

There are two major problems inherent in the present allocation of appellate jurisdiction: (1) inflexibility in the means by which the appellate work load may be equalized between the supreme court and courts of appeals, and (2) complexity in the case law defining the categories. The new category affords no solution to the first problem unless it gives the general assembly the power to divest the supreme court of jurisdiction specified in the other eight categories. The difficulty is that the new category, while affirmatively granting the power to enlarge the jurisdiction of that court, does not *expressly* provide for divestment. It therefore is doubtful that inclusion of the category was intended to create the legislative power to divest as part of a program of equalization.<sup>8</sup>

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and construction of revenue laws categories. See the discussion of these cases in *State v. Lauridson*, 312 S.W.2d 140, 142 (Mo.), *trans'd*, 318 S.W.2d 511 (Ct. App. 1958). See also *Automobile Club v. Hoffmeister*, 332 S.W.2d 957 (Mo.), *trans'd*, 338 S.W.2d 348 (Ct. App. 1960), an action for declaratory judgment to ascertain whether a certain activity constituted the practice of law. The court rejected a contention that the case fell within the inherent jurisdiction of the supreme court to control the practice of law, which left the matter in a void, incapable of conforming to any of the categorical formulae that vest jurisdiction. The supreme court has also held that its superintending power (Mo. CONST. art V, § 4) does not permit it to have original appellate jurisdiction of a case properly within the jurisdiction of the court of appeals where that court is incapable of rendering a decision. *State ex rel. Allen v. Trimble*, 321 Mo. 230, 10 S.W.2d 519 (1928) (en banc).

8. The only interpretation which would permit the legislature to divest existing categories would be to read "other classes" as meaning "new" classes which replace the existing categories. However, this interpretation is probably contrary to the plain meaning of "other classes" and would attribute to the drafters of the constitution an unexpressed intention to retain the enumerated categories until revised by the legislature.

The history of the new category does not support such an intention. It had its genesis in proposals offered to the 1943-1944 convention, which recognized the inherent inflexibility of enumerated jurisdictional categories that are incapable of being modified or extended by any legislative or rule making body (see "Introduction," note 30 for a discussion of these proposals).

The new provision was probably designed to give the general assembly the power denied it in *State ex rel. Pitcairn v. Public Serv. Comm'n*, 92 S.W.2d 881 (Mo. 1936), discussed § 6.051(a), note 33. This case held that the general assembly could not provide that appeals involving review of orders of the Public Service Commission lie to the supreme court. In effect, the general assembly attempted to create a new class of exclusive jurisdiction. The *Brotherhood of Carpenters* case (which like *Pitcairn* involved a state commission) recognized that the new provision vested the legislature with power to establish such a category.

Cases involving a review of decisions of administrative bodies are susceptible of being defined as another "class of cases" by the general assembly. A possible purpose for the category was to give the general assembly power to vest jurisdiction of appeals from state executive bodies in the supreme court in order to realize the benefits of having such bodies and the appellate tribunal located in the same city. See PROP. NO. 290, § 1,

The category does provide a means for obviating the complexity in certain areas of decision. That is, if attentive to the guidelines set out above, the general assembly might establish classes of cases that *must* be appealed directly to the supreme court. These classes would supersede the awkward case law in the troublesome areas. The dilemma is, however, that in attempting to solve the problem of complexity, the general assembly would compound the problem of equalization. The only changes which could be effected would lie in the direction of increasing the work load of the supreme court<sup>9</sup> and, at the same time, deprive that court of the judicial precedent which, while unwieldy, is the only presently existing means by which it can limit its case load.

The paucity of cases considering this category indicates that the legislative power granted by it has not been exploited. It may be concluded that this addition to the 1945 constitution has had little if any effect upon appellate jurisdiction in Missouri, and that its inherent defects neutralize any benefit sought to be gained by its inclusion.

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PROPOSALS OF THE MISSOURI CONSTITUTIONAL CONVENTION 1943-1944, which provided that all appeals from decisions of the Public Service Commission should go to the supreme court.

9. See "Conclusion," notes 9-12 and accompanying text.