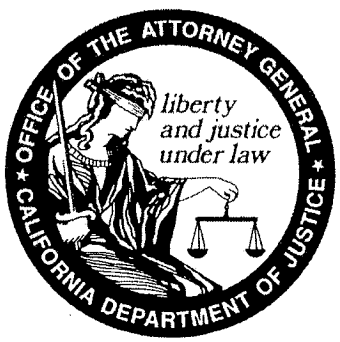
QUO WARRANTO

Resolution of Disputes -- Right to Public Office



1990

California Attorney General's Office

OPINION UNIT – P.O. BOX 944255, SACRAMENTO, CA 94244-2550

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I

HISTORY AND BACKGROUND OF THE QUO WARRANTO PROCEEDING

Quo warranto (Latin for "by what authority") is a legal action most typically brought to resolve disputes concerning the right to hold public office or exercise a franchise. California law provides that the action may be brought either by the Attorney General or by others acting with the consent of the Attorney General.

Quo warranto actions—which in almost all instances provide the only method to challenge a claim to public office—have proven to be an effective means of preserving the integrity of public office while minimizing the threat of unlimited litigation for those holding office. Courts have held that quo warranto is a "plain, speedy and adequate" remedy for this purpose.

A. Early History

Quo warranto was originally used as a writ filed by early English monarchs to challenge claims of royal subjects to an office or franchise supposedly granted by the crown. Wide use was made of quo warranto by King Edward I after the year 1274 to challenge local barons and lords who held lands or title on questionable authority. The independence of the barons had grown after they compelled the king to sign the Magna Carta, and the king's use of the writ helped to reassert regal power—and enhance royal wealth—at the expense of the barons, since many feudal charters could not be documented. (Baker, *An Introduction to English Legal History* (1979) pp. 125-126.) The king and the nobles compromised title disputes in the Statute of Quo Warranto of 1290.

Their ongoing struggle both strengthened central government in a time when nation-states were being formed and promoted the growth of due process and individual freedom. Formal authority to initiate a quo warranto action was transferred to the Attorney General by King Henry VIII in a 16th Century court reform measure intended to streamline the action. *(Ibid.)*

In 1683, King Charles II relied on the Crown's quo warranto powers to dramatically curtail the growing independence of the City of London. The following year, in an equally dramatic use of a related proceeding known as scire facias, the king revoked the charter of the province of Massachusetts because it had founded Harvard College without royal authority. After this period, private and irregular jurisdictions in England were generally abolished by acts of Parliament, and quo warranto emerged in its modern form in 1710 in the reign of Queen Anne. (See *Internat. Assn. of Fire Fighters v. City of Oakland* (1985) 174 Cal.App.3d 687, 695-96; quoting High, Extraordinary Legal Remedies (3rd ed. 1896) pp. 544-556.)

B. Modern Use of Quo Warranto

In California, the 1872 code formally abolished the equitable writs of scire facias and quo warranto, substituting a statutory action by which the Attorney General, acting in the name of the people of the State, could bring an action against any person who unlawfully usurped, intruded into, held or exercised any public office or franchise. (*People v. Dashaway Association* (1890) 84 Cal. 114, 118; see generally Note (1963) 15 Hastings L.J. 222.)

References to quo warranto writs in the state constitution that were added after 1872 caused some confusion, but the constitution was amended in 1966 to delete any reference to the writ. The procedure is established solely as an action at law authorized by statute. Those procedures are contained in sections 803-811 of the Code of Civil Procedure and in sections 1 through 11 of the California Code of Regulations.

Although "quo warranto," the customary name for the action, is no longer found in the statute itself—the statutory title is "Actions for the Usurpation of an Office or Franchise"—for reasons of history and convenience the term continues to be widely employed in court decisions, treatises, and at least one collateral statute. (See generally 8 Witkin, California Procedure (3d ed. 1985) Extraordinary Writs, § 6, p. 645; Gov. Code, § 1770, subd. (b).) Thus, what began as a legal device used by monarchs to centralize their authority has evolved into a statutory proceeding to determine whether holders of public office or franchises are legally entitled to hold that office or exercise those powers.

II

NATURE OF THE REMEDY OF QUO WARRANTO

With one exception, the action authorized by section 803 of the Code of Civil Procedure that we call quo warranto may be brought only by the Attorney General, in the name of the people of the State, or by a private party acting with the Attorney General's consent.

It may be brought against:

A. Any person who usurps, intrudes into, or unlawfully holds or exercises any public office or franchise; or

B. Any corporation, either de jure or de facto, which usurps, intrudes into, or unlawfully holds or exercises any franchise within California. (Code Civ. Proc., § 803.)

The remedy of quo warranto is vested in the people, and not in any private individual or group, because disputes over title to public office are viewed as a public question of governmental legitimacy and not merely a private quarrel among rival claimants. It is the Attorney General who must control the suit. No matter how significant an interest an individual or entity may have, there is no independent right to sue. (*Oakland Municipal Improvement League v. City of Oakland* (1972) 23 Cal.App.3d 165, 170.) This requirement is jurisdictional. The court may not hear the action unless it is brought or authorized by the Attorney General. (*Cooper v. Leslie Salt Co.* (1969) 70 Cal.2d 627, 633.)

The sole exception to the Attorney General's exclusive control of quo warranto actions is found in section 811 of the Code of Civil Procedure. The section authorizes the legislative bodies of local governmental entities to maintain an action against those holding franchises within their jurisdiction, and the Attorney General's consent is not required. The section requires that the franchise be of a type authorized by the local jurisdiction. (*San Ysidro Irrigation Dist. v. Super. Ct.* (1961) 56 Cal.2d 708, 716.) This section was added by the Legislature in 1937 because local government was viewed as able to respond more effectively to this type of local problem. (See Note, (1963) 15 Hastings L.J. 199, 224; (1937) 11 So.Cal.L.R. 1, 50-51.)

Although the Attorney General occasionally brings a quo warranto action on the initiative of his or her office, or at the direction of the Governor, usually the action is

filed and prosecuted by a private party who has obtained the Attorney General's consent, or "leave to sue," in quo warranto. The private party who obtains leave to sue is termed the "relator." The action is brought in the name of the People of the State of California "on the relation of" the private party who has been granted permission to bring the action. The addition of a relator does not convert a quo warranto into a private action. The matter is always brought and prosecuted on behalf of the public. (*People v. City of Huntington Beach* (1954) 128 Cal.App.2d 452, 455.)

Even though permission has been granted to a private party to sue, the action does not lose its public character. The Attorney General remains in control of the action and, for instance, may dismiss it over the objection of the private party bringing it or refuse to permit appeal of an adverse ruling. (*People v. Petroleum Rectifying Co.* (1937) 21 Cal.App.2d 289, 291-292.)

Quo warranto is intended to prevent a continuing exercise of an authority unlawfully asserted, and is not appropriate to try moot or abstract questions. Where the alleged usurpation has terminated, quo warranto will be denied. (*People v. City of Whittier* (1933) 133 Cal.App. 316, 324; 25 Ops.Cal.Atty.Gen. 223 (1955).) By the same token, because quo warranto serves to end a continuous usurpation, no statute of limitations applies to the action. (*People v. Bailey* (1916) 30 Cal.App. 581, 584, 585.)

The remedies available in a quo warranto judgment do not include correction or reversal of acts taken under the ostensible authority of an office or franchise. Judgment is limited to ouster or forfeiture (and possibly a fine or damages), and may not be imposed

retroactively upon prior exercise of official or corporate duties.[1] (*Ensher, Alexander & Barsoom, Inc. v. Ensher* (1965) 238 Cal.App.2d 250, 255.)

Normally, quo warranto is the *exclusive* remedy in cases in which it is available. (*Cooper v. Leslie Salt Co.*, *supra*, 70 Cal.2d at pp. 632-633.) Title to an office may not be tried by mandamus, by injunction, by writ of certiorari, or by petition for declaratory relief. (*Stout v. Democratic County Central Com.* (1952) 40 Cal.2d 91 (mandamus); *Internat. Assn. of Fire Fighters v. City of Oakland*, *supra*, 174 Cal.App.3d at pp. 693-694 (injunction); *Hull v. Super. Ct.* (1883) 63 Cal. 174, 177 (writ of certiorari); *Cooper v. Leslie Salt Co.*, *supra*, 70 Cal.2d at 634 (declaratory relief).)[2]

On the other hand, the existence of other remedies does not prevent the state from bringing a quo warranto proceeding. (*Citizens Utilities Co. v. Super. Ct.* (1976) 56 Cal.App.3d 399, 405; 18 Ops.Cal.Atty.Gen. 7 (1951).) For example, the fact that criminal proceedings may be brought against a corporation does not prevent the state from initiating ouster proceedings through quo warranto. (*Id.* at 406; 22 Ops.Cal.Atty.Gen. 122 (1953).) Quo warranto tries *title* to public office; it may not be used to remove an incumbent for *misconduct* in office. (*Wheeler v. Donnell* (1896) 110 Cal. 655.)

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[1] The Superior Court is authorized, however, to award damages in favor of a rightful claimant to an office (Code Civ. Proc. § 807) and to impose a fine of up to $5,000 (Code Civ. Proc., § 809). (See § V, *infra*.)

[2] The courts have sanctioned the determination of the right to hold office in other proceedings where that action is considered incidental to the main relief of the action. (See discussion, *infra*, pp. 8-9.)

In the past, quo warranto proceedings were frequently utilized to challenge the validity of completed annexation proceedings.[3] Mandamus pursuant to Code of Civil Procedure section 1085 was used to challenge incomplete annexations. (See generally *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 271; *Hills for Everyone v. Local Agency Formation Com.* (1980) 105 Cal.App.3d 461, 470.) Today, a statutory procedure exists to challenge such completed annexations,[4] and quo warranto, although still available, is rarely utilized.

At present, the most common application of the quo warranto procedure is adjudicating the right of individuals to hold public office. A "public" office is one in which "the incumbent exercises some of the sovereign powers of government." (*Stout v. Democratic County Central Com.*, *supra*, 40 Cal.2d at 94.) Not all offices are "public" offices. In *Stout*, the court held that a party "committeeman" exercises the powers of a political party, not the sovereign power of the public. (*Ibid.*)

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[3] See also 36 Ops.Cal.Atty.Gen. 37, 42 (1960) [leave to sue granted to test validity of annexation proceedings]; 35 Ops.Cal.Atty.Gen. 214, 216 (1960) [leave to sue granted to test validity of annexation proceedings]; 35 Ops.Cal.Atty.Gen. 123, 124 (1960) [leave to sue granted to test validity of annexation proceedings]; 28 Ops.Cal.Atty.Gen. 369, 373 (1956) [leave to sue granted to determine validity of city's incorporation proceedings]; 27 Ops.Cal.Atty.Gen. 33, 35 (1956) [leave to sue granted to test title to office]; 25 Ops.Cal.Atty.Gen. 332, 341 (1955) [leave to sue granted to test legality of formation of water district]; 24 Ops.Cal.Atty.Gen. 146, 151-152 (1954) [leave to sue granted to test legality of annexation]; 22 Ops.Cal.Atty.Gen. 113, 121 (1953) [leave to sue granted to test alleged unlawful exercise of a corporate franchise]; 20 Ops.Cal.Atty.Gen. 249, 251 (1952) [leave to sue granted to determine validity of annexation proceeding]; 20 Ops.Cal.Atty.Gen. 93, 94 (1952) [leave to sue granted to determine validity of annexation proceeding]; 17 Ops.Cal.Atty.Gen. 179, 181 (1951) [leave to sue granted to test right to hold office of city judge]; 17 Ops.Cal.Atty.Gen. 149, 150 (1951) [leave to sue granted to test legality of formation of water district]; 17 Ops.Cal.Atty.Gen. 136, 138 (1951) [leave to sue granted to test legality of annexation proceedings]; and 11 Ops.Cal.Atty.Gen. 246, 247 (1948) [leave to sue granted to test legality of annexation proceedings].

[4] See Gov. Code, § 56103; Code Civ. Proc., §§ 860 et seq.

While quo warranto is regarded as the exclusive remedy to try title to public office, under certain circumstances a court will consider title to an office in a mandamus proceeding under section 1085 of the Code of Civil Procedure when title is "incidental" to the primary issue to be resolved by the action. Generally, this occurs when a de facto officer brings an action such as mandamus to recover some incident of office, such as salary, and a determination as to whether the petitioner is entitled to recover the incident of office must necessarily be preceded by a ruling as to whether the petitioner is entitled to the office. (See *Klose v. Super. Ct.* (1950) 96 Cal.App.2d 913 and cases cited therein.) The court must decide whether title may be decided in the action "incidentally" to the ostensible primary issue. (*Stout v. Democratic County Central Com.*, *supra*, 40 Cal.2d at 94; see also *Lungren v. Deukmejian* (1988) 45 Cal.3d 727.)[5]

III

APPLICATION TO THE ATTORNEY GENERAL FOR LEAVE TO SUE IN QUO WARRANTO

Application to the Attorney General for leave to sue in quo warranto may be made by a private person or local agency pursuant to the rules and regulations issued by the Attorney General. (C.C.R., tit. 11, §§ 1-11, Appendix B.) It is unusual for the Attorney General's Office to initiate such suits; most are brought by private parties after consent has been granted.

[5] In *Lungren*, the California Supreme Court held that mandamus is not available to a claimant to public office unless the claimant has a present interest in the office and a present right to assume it. (*Lungren*, *supra*, 45 Cal.3d at pp 731-732.)

The procedure must begin with service by the proposed relator (or that person's attorney) on the proposed defendant, and subsequently on the Attorney General, of an application for leave to sue in quo warranto. This application must include the following:

a. A verified proposed complaint prepared for the signature of the Attorney General, a deputy attorney general, and the attorney for the relator, as attorneys for the plaintiff, and one copy of the proposed complaint.

b. A verified statement of facts necessary to rule on the application.

c. Points and authorities in support of the application.

d. Copy of the notice to the proposed defendant of the filing of the application giving the proposed defendant 15 days to appear and show cause why leave to sue should not be granted. (Twenty days are permitted if the notice is served outside the county in which the action is brought.)

e. Proof of service of all of the above documents upon the proposed defendant.

Upon receipt of this letter and the accompanying documents, the Attorney General's Office sends a letter of acknowledgment to the proposed relator with a copy to the proposed defendant.

The proposed defendant is allowed 15 or 20 days, depending upon where service is made, to file a written response with the Attorney General opposing the application. This response should include the proposed defendant's verified statement of the facts, points and authorities in support of the opposition, and proof of service of these documents upon the proposed relator.

The proposed relator is allowed 10 days to reply.

These times may be shortened or extended as provided in sections 3 and 4 of the regulations. In addition, the deputy attorney general assigned to review the application papers may, in his or her discretion, request any further information, points and authorities, or discussion deemed necessary for the office's consideration of the application.

A proposed relator may request that the complaint be filed in court immediately. Under section 10 of the Code of Regulations this may be done in unusual cases upon a sufficient showing of urgent necessity. In most cases where this is allowed, the urgent necessity presented is the imminent running of time under a statute of limitations on a collateral issue (there is no statute of limitations on quo warranto itself) which could make later filing legally or practically impossible.

Immediate filing may also be allowed in cases where there is a need to preserve the status quo, pending a decision on the application by the Attorney General. In all cases where such a request is granted, the practice of the Attorney General's Office is to require that the proposed relator file a document, entitled "Provisional Leave to Sue," in court with the complaint. The complaint and the Provisional Leave to Sue must be signed by the Attorney General or a deputy. The relator may take no further action in court (except to have the summons issued) until the Attorney General's Office has ruled on the application for leave to sue.

In examining applications for leave to sue in quo warranto, the Attorney General's Office requires that all facts to be alleged in the complaint be set forth in detail. While

broad, generalized allegations may be legally sufficient for many types of pleadings in California, the Attorney General's Office believes that quo warranto litigation is expedited by immediately placing all of the facts before the defendant and the court, and therefore requires great specificity in factual allegations. Moreover, such alleged facts must be based upon direct evidence, not on information and belief. (27 Ops.Cal.Atty.Gen. 249, 253 (1956).) The California Supreme Court has upheld the Attorney General's refusal to permit quo warranto actions unless the supporting affidavits contain factual allegations so specific that perjury charges may be brought if any material allegation is false. (*Lamb v. Webb* (1907) 151 Cal. 451, 455-456.) This same certainty has also been required in the complaints. In addition, the Attorney General's Office frequently requires documents, maps, etc., to be submitted for examination.

IV

CONSIDERATION AND DETERMINATION BY THE ATTORNEY GENERAL ON THE APPLICATION FOR LEAVE TO SUE IN QUO WARRANTO

A. Criteria Utilized by the Attorney General

After the proposed relator and the proposed defendant have submitted all materials, the application is taken under consideration by the Attorney General's Office. In deciding whether to grant leave to sue, the primary issue considered by the office is whether a public purpose will be served. As stated in 39 Ops.Cal.Atty.Gen. 85, 89 (1962):

> "In deciding whether to grant or deny leave to sue, the Attorney General must not only consider the factual and legal

> problems involved, but also the overall public interest of the people of this state . . ."

Or, as stated in 35 Ops.Cal.Atty.Gen., *supra*, at page 124:

> "This office has the duty to conduct a preliminary investigation of proposed quo warranto litigation to determine whether a substantial issue of fact or law exists which should be judicially determined (11 Ops.Cal.Atty.Gen. 182, 183; 27 Ops.Cal.Atty.Gen. 33, 35), and leave should be granted only if there is some public interest to be served. (*People v. Bailey*, 30 Cal.App. 581, 584.)"

(See also 67 Ops.Cal.Atty.Gen. 151 (1984); 40 Ops.Cal.Atty.Gen. 78, 81 (1962); 37 Ops.Cal.Atty.Gen. 172, 175 (1961).) The "public purpose" requirement has been interpreted as requiring "a substantial question of law or fact which calls for judicial decision." (67 Ops.Cal.Atty.Gen., *supra*, at p. 153; 25 Ops.Cal.Atty.Gen. 237, 240 (1955).)

The office will not, however, examine the likelihood of either party prevailing in court. As stated at 12 Ops.Cal.Atty.Gen. 340, 341 (1949):

> "[I]n acting upon as application for leave to sue in the name of the people of the State, it is not the province of the Attorney General to pass upon the issues in controversy, but rather to determine whether there exists a state of facts or question of law that should be determined by a court in an action in quo warranto; that the action of the Attorney General is a preliminary investigation, and the granting of the leave is not an indication that the position taken by the relator is correct, but rather that the question should be judicially determined and that quo warranto is the only proper remedy."

That said, it should be noted that the office will require that the party seeking leave to sue make a showing of a substantial likelihood of success. Although no final judgment will be made by the office on the merits, a strong prima facie showing must be made

before the office will permit the disruptive effect on governmental operations which accompanies most quo warranto actions. Courts have required that ambiguities concerning potential disqualification from office should be resolved in favor of continued eligibility. (*Helena Rubenstein Internat. v. Younger* (1977) 71 Cal.App.3d 406, 418.) Thus, in determining whether it is in the public interest to permit a quo warranto action to go forward, the Attorney General's Office addresses three fundamental questions:

1. Is quo warranto the proper remedy to resolve the issues which are presented?

2. Has the proposed relator raised a substantial question of law or fact?

3. Would the public interest be served by judicial resolution of the question?

All three questions must be resolved in the affirmative in order for this office to grant leave to sue.

B. Discretion of the Attorney General in Granting or Denying Leave to Sue

The statutes grant the Attorney General's Office broad discretion in its determination of proposed quo warranto actions. Code of Civil Procedure section 803 provides that the Attorney General "may" bring the action on his or her own information or on complaint of a private party, and it "must" be brought when the Attorney General "has reason to believe" that the appropriate conditions exist or when directed to do so by the Governor. The use of the word "must" in the latter portion of the provision does not create a mandatory duty due to the qualifying language that the Attorney General must have "reason to believe" that the appropriate conditions exist. (8 Witkin, Cal. Procedure

(3d ed. 1985) Extraordinary Writs, § 7 at p. 646; *Internat. Assn. of Fire Fighters v. City of Oakland*, *supra*, 174 Cal.App.3d at 697.) Hence, the Attorney General "has discretion to refuse to sue where the issue is debatable." (*Internat. Assn. of Fire Fighters*, *supra*, at p. 697.)

Although a writ of mandamus may theoretically be issued to compel the issuance of leave to sue where the Attorney General has abused his or her discretion, such a writ is available only where it may be shown that the refusal to issue leave to sue was "extreme and clearly indefensible." (*Lamb v. Webb*, *supra*, 151 Cal at 454; *City of Campbell v. Mosk* (1961) 197 Cal.App.2d 640, 645.) There is no instance in California law where a court has compelled the Attorney General to grant leave to sue in quo warranto.

In *City of Campbell*, the proposed relator contended that the Attorney General had abused his discretion in denying leave to sue since a substantial issue of law had been presented. The court firmly rejected this proposition, reaffirming the importance of the Attorney General's discretionary review:

> "To hold that the mere presentation of an issue forecloses any exercise of discretion would mean, in effect, that, contrary to the holding in the Lamb case, the Attorney General could exercise no discretion. The crystallization of an issue thus does not preclude an exercise of his discretion; it causes it . . . [¶] The exercise of the discretion of the Attorney General in the grant of such approval to sue calls for care and delicacy. Certainly the private party's right to it cannot be absolute; the public interest prevails. The presence of an issue here does not abort the application of such discretion; the issue generates the discretion. Only in the event of an extreme abuse of the discretion should the courts annul the Attorney General's decision." (197 Cal.App.2d at 650-651.)

In *International Association of Fire Fighters*, the court in dicta suggests that where a proposed relator has an individual right distinct in kind from the right of the

general public enforceable by an action in the nature of quo warranto, a court should review the discretion of the Attorney General according to an "arbitrary, capricious, or unreasonable" standard rather than the "extreme and clearly indefensible" standard enunciated in the *Lamb v. Webb* and *City of Campbell* cases. (174 Cal.App.3d at 697-698.) It is the opinion of this office that the dicta set forth in *International Association of Fire Fighters* concerning the standard by which courts review the discretion of the Attorney General is not a correct statement of California law. The Supreme Court's ruling on the matter, first issued in 1907 in the *Lamb* case, continues to be the controlling doctrine in this state. The *International Association* court based its reasoning upon the theory that where a private interest is involved, the privilege to be heard should not be lodged in a public official. The court found this theory consistent with the rule in other states. It must be remembered, however, that California law differs from other states in that regardless of whether a private interest is at stake, the cause of action is always carried forward in the name of and on behalf of the public. (*People v. Milk Producers Assn.* (1923) 60 Cal.App. 439, 442; *People v. San Quentin Prison Officials* (1963) 217 Cal.App.2d 182, 183.) While a different standard may be appropriate in some states depending upon whether the cause of action concerns private, as well as the public's, interest, there is no basis for such a distinction in California law.

C. The Decision of the Attorney General

The decision to either grant or deny leave to sue is released following its approval by the Attorney General. Until 1963, all such decisions were published in the opinions of

Attorney General of California. Currently, these decisions are either published as formal opinions or issued as letters, depending on their precedential value.

Copies will be sent to each party. If leave to sue has been granted, the Attorney General's Office will also issue a document entitled "Leave to Sue" that the proposed relator must file with the complaint, unless a provisional leave to sue has previously been granted under section 10 of the regulations. The relator then causes the summons to be served and proceeds with the lawsuit.

Before any complaint may be filed, and unless this requirement is waived or otherwise modified by the Attorney General, the proposed relator must file with the Attorney General's Office a $500 undertaking payable to the State of California. (*People v. Sutter St. Ry. Co.* (1897) 117 Cal. 604, 612; Code Civ. Proc., § 810; C.C.R., tit. 11, §§ 6, 28.) This undertaking is to protect the state from all costs, damages, or expenses which might be recovered against the plaintiff in the action. The Attorney General's Office requires the undertaking to be a corporate surety with the bond cosigned by the relator as principal.

V

PROSECUTION OF THE QUO WARRANTO ACTION

The action remains under the control of the Attorney General's Office. The Attorney General retains the discretion to approve all court filings in advance and to require that the complaint (and subsequent pleadings) be modified in certain particulars or that the action be dismissed, and may refuse to permit an appeal from an adverse

ruling. Copies of all documents filed must be provided to the Attorney General. (*People v. City of Huntington Beach*, *supra*, 128 Cal.App.2d at 455; C.C.R., tit. 11, §§ 7, 8, 9, 11.)

Quo warranto proceedings are considered civil actions and are governed by the applicable provisions of the Code of Civil Procedure. (*People v. City of Richmond* (1956) 141 Cal.App.2d 107, 117.) With respect to the burden of proof, however, the common law rule reverses the plaintiff's customary burden and requires the defendant to establish the lawfulness of holding the office or franchise. (*People v. City of San Jose* (1950) 100 Cal.App.2d 57, 59; *People v. Hayden* (1935) 9 Cal.App.2d 312, 313.) Although this rule has never been formally changed, it has been suggested that under the statutory proceeding the state must prove that rights claimed under a disputed franchise have actually been exercised. Where the exercise of those rights is not at issue and only the right to exercise them is challenged, however, the common law rule applies and the defendant has burden of establishing his or her right to the franchise. (See 53 Cal.Jur.3d (1978) Quo Warranto, § 29.)

Judgment against a defendant for usurping, intruding into, or unlawfully holding an office or franchise serves to oust the defendant from the office or franchise. (Code Civ. Proc., § 809.) The defendant must pay costs, and the court in its discretion may impose a fine of up to $5,000, which must be paid into the State Treasury. (*Id.*) Damages may be awarded to a successful relator who claims entitlement to the office unlawfully held by the defendant. (Code Civ. Proc., § 807.) The court may also order that such a relator be restored to the office. (Code Civ. Proc., § 805; *People v. Banvard* (1865) 27 Cal. 470, 475.)