

1-1963

California Certiorari: A Misused Writ

Gerald Schneider

Follow this and additional works at: https://repository.uchastings.edu/hastings_law_journal



Part of the [Law Commons](#)

Recommended Citation

Gerald Schneider, *California Certiorari: A Misused Writ*, 15 HASTINGS L.J. 205 (1963).

Available at: https://repository.uchastings.edu/hastings_law_journal/vol15/iss2/9

This Note is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in Hastings Law Journal by an authorized editor of UC Hastings Scholarship Repository.

CALIFORNIA CERTIORARI: A MISUSED WRIT

Section 1068 of the California Code of Civil Procedure clearly limits certiorari to cases where "an inferior tribunal, board, or officer, exercising judicial functions, has *exceeded the jurisdiction* of such tribunal, board, or officer."¹ Another Code of Civil Procedure section re-enforces the jurisdiction function of certiorari by providing that "The review upon this writ cannot be extended further than to determine whether the inferior tribunal, board, or officer has regularly pursued the authority of such tribunal, board, or officer."² This note will demonstrate how the scope of certiorari has been extended beyond the narrow jurisdictional limits set by these statutes when the writ is used to review the decisions of a local board or agency.³

Exclusion of Certiorari at State Board Level

The California Supreme Court held in *Standard Oil Co. v. State Bd. of Equalization*⁴ that certiorari could not be employed to review the decisions of state-wide boards or agencies. In that case the certiorari petitioner contended that the board was acting in a judicial capacity, a requisite to the issuance of certiorari, when it imposed a retail sales tax. In response the court held that a state administrative agency could not be invested with judicial powers because the California constitution limits judicial power to specific courts *except for some local purposes*. Since the board had state-wide jurisdiction the writ of certiorari was denied.⁵

Implied in the *Standard Oil Co.* decision was the court's sanction for use of certiorari to review decisions of local boards, and the writ has continued to be employed for that purpose.⁶ However, in 1950 the constitutional authority of the legislature to create inferior courts was repealed.⁷ But in *Savage v. Sox*,⁸ a 1953 case, the district court of appeals concluded that local boards have

¹ CAL. CODE CIV. PROC. § 1068 (emphasis added).

² It was decided early that the word "authority" in § 1074 is the equivalent of the word "jurisdiction" in § 1068: *Quinchard v. Board of Trustees of Alameda*, 113 Cal. 664, 668, 45 Pac. 856, 857 (1896); *Farmers and Merchants' Bank v. State Bd. of Equalization*, 97 Cal. 318, 326, 32 Pac. 312, 314 (1893); *Central Pac. R.R. Co. v. State Bd. of Equalization*, 43 Cal. 365, 367 (1872).

³ Examples of local boards and agencies are boards of supervisors, civil service boards, and retirement boards.

⁴ 6 Cal. 2d 557, 59 P.2d 119 (1936).

⁵ An important exception developed to this rule that certiorari will not issue to review the decisions of state administrative agencies because they lack judicial power. In the case of *Covert v. State Bd. of Equalization*, 29 Cal. 2d 125, 173 P.2d 545 (1946), it was held that the California constitution specifically granted the board judicial power in the alcoholic beverage licensing area. Therefore, certiorari was the proper remedy. *Boren v. State Personnel Bd.*, 37 Cal. 2d 634, 234 P.2d 981 (1951), reiterated this exception.

⁶ *E.g. Livingston Rock & Gravel Co. v. County of Los Angeles*, 43 Cal. 2d 121, 272 P.2d 4 (1954); *Walker v. City of San Gabriel*, 20 Cal. 2d 879, 129 P.2d 349 (1942); *Greif v. Dullea*, 66 Cal. App. 2d 986, 153 P.2d 581 (1944); *Ware v. Retirement Bd.*, 65 Cal. App. 2d 781, 151 P.2d 549 (1944).

⁷ Cal. Stat. 1949, ch. 153 § 2, pp. 3291-93.

⁸ 118 Cal. App. 2d 479, 258 P.2d 80 (1953).

quasi-judicial powers by virtue of another article of the constitution.⁹ The net result is that a court, in determining whether a writ of certiorari should issue, will consider a local board the equivalent of an inferior court because it is invested with quasi-judicial power. And yet, as will be demonstrated, the requirements for obtaining the writ to review the decisions of lower courts are not the same as those when the decisions of local boards are under review.

Review of Inferior Court Decisions by Certiorari

California cases, where certiorari is requested as a means of reviewing an inferior court decision, adhere strictly to the jurisdiction language of section 1068 by denying the writ when the petitioner for certiorari fails to show that the lower court was acting in excess of its jurisdiction.¹⁰ In *Howard v. Superior Court*¹¹ the California Supreme Court, which denied certiorari, held that the writ could not be used as a writ of error¹² nor could the showing by the petitioner that the lower court committed an "abuse of discretion" be substituted for the "excess of jurisdiction" requirement.¹³ But it is clear that "abuse of discretion" has been a ground for the issuance of certiorari where the decision of a local board is under review despite the jurisdictional confinement of certiorari by section 1068.¹⁴

Review of Local Board Decisions

The confusion surrounding the use of certiorari to review decisions of local boards and agencies seems to have had its inception in *Garvin v. Chambers*.¹⁵ In that case an Oakland policeman's dismissal on grounds of insubordination was upheld by the Oakland Civil Service Board. The officer applied for a writ of certiorari to the superior court and was successful in obtaining an annulment of the board's ruling. The board then took an appeal to the California Supreme Court, contending the writ should not have issued because the function of certiorari is limited to the question whether the board had jurisdiction to conduct a hearing concerning the discharged policeman. It further argued that even if there had been a complete absence of evidence to support a finding

⁹This constitutional section contains home rule charter provisions. For a thorough discussion of the effect of the *Standard Oil Co.* case and *Savage v. Sox*, see Kleps, *Certiorarified Mandamus Reviewed: The Courts and California Administrative Decisions—1949-1959*, 12 STAN. L. REV. 554, 561 (1960).

¹⁰*Simmons v. Superior Court*, 52 Cal. 2d 373, 341 P.2d 13 (1959); *Howard v. Superior Court*, 25 Cal. 2d 784, 154 P.2d 849 (1944); *Estrin v. Superior Court*, 14 Cal. 2d 670, 96 P.2d 340 (1939); *Estate of Ryker*, 95 Cal. App. 2d 507, 213 P.2d 420 (1950); *Camm v. Justice Court*, 35 Cal. App. 293, 170 Pac. 409 (1917). See also *Estate of Kay*, 30 Cal. 2d 215, 226, 181 P.2d 1, 7 (1947), where the court said "It need hardly be added that on certiorari we do not review matters within the discretion of the lower court." *Spanach v. Superior Court*, 4 Cal. 2d 447, 50 P.2d 444 (1935), is an identical holding.

¹¹25 Cal. 2d 784, 154 P.2d 849 (1944).

¹²*Id.* at 787, 154 P.2d at 850.

¹³*Id.* at 788, 154 P.2d at 851.

¹⁴See note 6 *supra*.

¹⁵195 Cal. 212, 232 Pac. 696 (1924).

that the officer had been guilty of insubordination, this would only amount to an erroneous decision occurring within the board's jurisdiction. In response to the board's contention, the petitioner asserted that there had indeed been a complete absence of evidence to support the board's findings of insubordination, and that this was sufficient for the granting of certiorari to permit review of a decision rendered by an inferior quasi-judicial board or tribunal.

The court reiterated the rule that certiorari goes only to the jurisdiction of an inferior board and does not lie to review the evidence presented before it.¹⁶ The court, however, went on to state an exception to the preceding rule:

[W]hen the board or tribunal in question has power to act only upon the establishment of a certain set of facts which necessarily form the foundation of jurisdiction and, therefore, may be denominated *jurisdictional facts* and there is no evidence whatever to show the existence of such facts, a finding by such board or tribunal that those facts do exist cannot foreclose inquiry by a court of competent jurisdiction, upon *certiorari*, as to whether or not the order sought to be reviewed is without any evidence to support it or is absolutely contrary to the uncontradicted and unconflicting evidence upon which it purports to rest.¹⁷

In sustaining the issuance of certiorari by the superior court the supreme court stated that the necessary "jurisdictional facts" were not established at the civil service hearing when the officer answered to charges of insubordination, and therefore the evidence given at the board hearing could be reviewed on certiorari. However, at the onset of its opinion the supreme court admitted that (1) there had been a sufficient complaint made against the officer to the Civil Service Board; (2) that the city charter of Oakland entitled the accused to appear personally before the board at a public hearing; and (3) that the officer gave evidence on his own behalf and the opposing side offered evidence to support the contention that the officer had committed insubordination. In view of these concessions it is difficult to understand how the majority of the supreme court reached the conclusion that the board failed to establish the necessary "jurisdictional facts." One dissenting opinion aptly pointed out that the "determination of the question of guilt or innocence of the petitioner was arrived at by the board in the exercise of its jurisdiction, and however erroneous it may be it is not void for want of power to render the decision." Another dissenting justice stated that:

Upon the admitted facts of this case the civil service board had jurisdiction, both of the subject matter and of the parties. It was expressly vested in this proceeding with the jurisdiction to hear and determine the appeal and to annul or affirm the

¹⁶In *Halpern v. Superior Court*, 190 Cal. 384, 386, 212 Pac. 916, 917 (1923) the court said, "The province of *certiorari* is to review the *record* of an inferior court, board, or tribunal, and to determine from the record whether such court, board, or tribunal has exceeded its jurisdiction. The reviewing court is bound by the record, which must be taken as true." Cases in accord are: *Schubert v. Bates*, 30 Cal. 2d 785, 793, 185 P.2d 793, 797 (1947); *Borchard v. Board of Supervisors*, 144 Cal. 10, 14, 77 Pac. 708, 709 (1904); *Los Angeles v. Young*, 118 Cal. 295, 298, 50 Pac. 534, 535 (1897); *White v. Superior Court*, 110 Cal. 60, 64, 42 Pac. 480, 481 (1895); *Hoffmann v. Superior Court*, 79 Cal. 475, 476, 21 Pac. 862 (1889). Also, Mr. Witkin states that certiorari is not a means of reviewing the evidence submitted by the parties. 1 WITKIN, CALIFORNIA PROCEDURE *Jurisdiction* § 116 (1954).

¹⁷195 Cal. 212, 221, 232 Pac. 696, 700 (1924) (emphasis added)

order appealed from. If it did either of these upon insufficient evidence, its action in so doing was but error in the exercise of jurisdiction.¹⁸

While the conclusion is inescapable that *Garvin* was erroneously decided, the supreme court at least purported to confine the scope of certiorari to review of the jurisdiction issue. Had the decision been confined in subsequent cases to the "jurisdictional fact"¹⁹ statement made by the court in *Garvin* no substantial digression from the restrictions imposed by sections 1068 and 1074 need have resulted. However, in *Walker v. City of San Gabriel*,²⁰ *Garvin* was cited for the proposition that "Either certiorari or mandamus is an appropriate remedy to test the *proper exercise of discretion* vested in a local board."²¹ In *Walker* the court held that the revocation of a license without competent evidence constitutes an "abuse of discretion" and found that the respondent city council had revoked the petitioner's license to conduct an automobile wrecking business solely upon hearsay evidence. Although mandamus was the writ which actually issued, the court concluded that the Los Angeles Superior Court should have granted either mandamus or certiorari because the city council had committed an "abuse of discretion."

Subsequent cases²² have cited the dictum in *Walker* as authority for the

¹⁸ *Id.* at 241, 232 Pac. at 708. Mr. Witkin has pointed out that the cases in California hold that where a court has power "to hear and determine the cause the court may rule erroneously on matters of pleading, evidence or other procedure; may determine the issues of substantive law incorrectly; and may give judgment for a party not entitled thereto, or may grant relief not warranted by the pleadings, evidence or the law. Any or all of these errors of procedure or substantive law may normally be reviewed by the established methods (chiefly motion for new trial, motion to vacate judgment, and appeal). But they are errors *within jurisdiction*, and not grounds for *collateral attack* on the judgment, nor for direct attack by the jurisdictional writs of certiorari or prohibition." 1 WITKIN, CALIFORNIA PROCEDURE *Jurisdiction* § 116 (1954).

¹⁹ *Stumpf v. Board of Supervisors*, 131 Cal. 364, 63 Pac. 663 (1901), offers a true example of a "jurisdictional fact." In that case the board failed to establish whether or not the signatures on a petition for an election were actually signatures of true residents and freeholders. Since a valid petition was necessary to give the board jurisdiction in order to consider the offered petition the failure by the board to establish whether the petition was valid meant that it had not established a necessary "jurisdictional fact," and therefore certiorari was issued.

²⁰ 20 Cal. 2d 879, 129 P.2d 349 (1942).

²¹ *Id.* at 881, 129 P.2d at 350 (emphasis added). As support for its statement that either certiorari or mandamus could be used "to test the proper exercise of discretion vested in a local board" the supreme court also cited the following cases: *Garvin v. Chambers*, 195 Cal. 212, 232 Pac. 696 (1924); *Mann v. Tracy*, 185 Cal. 272, 196 Pac. 484 (1921); *Dierssen v. Civil Service Comm'n*, 43 Cal. App. 2d 53, 110 P.2d 513 (1941), and *Naughton v. Retirement Bd. of San Francisco*, 43 Cal. App. 2d 254, 110 P.2d 714 (1941). These cases neither held nor implied that certiorari could be used by a reviewing court as a means of determining whether or not a local board had abused its discretion, nor could a reading of these cases as a unit give them the meaning claimed by the supreme court. For example, in *Naughton v. Retirement Bd. of San Francisco*, *supra*, the petitioner obtained a writ of mandamus from the superior court and the board, on appeal, claimed that only certiorari should have issued. The court denied the board's contention on this point and specifically said that mandamus was the writ to issue when a local board had abused its discretion.

²² *Livingston Rock & Gravel Co. v. County of Los Angeles*, 43 Cal. 2d 121, 272 P.2d 4