California Taxpayers' Suits: Suing State Officers under Section 526a of the Code of Civil Procedure

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Introduction

Recent revelations of wrongdoing by political figures in high office have heightened concern over the accountability of elected officials and their subordinates to the voting public. Similar instances of widespread concern for improved standards of ethical and moral behavior within the political system have recurred throughout American history. Many of the fundamental concepts of representative government embedded in the constitution have been refined in the wake of adverse reaction to abuses of political power. For example, consider the reform of the spoils system, the creation of the political convention, the development of the political primary, the reforms of the Progressive Era, the extension of voting rights, the passage of the Freedom of Information Act,¹ and the formulation of the Watergate-inspired Election Campaign Act Amendments of 1974.²

Nevertheless, the political process has failed in certain respects to assure the accountability of public officials to those they serve. The electoral system has not afforded the individual a truly effective means of influencing official conduct. In the polling booth, the influence which an individual exerts on his representatives remains conditional upon membership in a voting majority. Government bureaucracies may be even less accountable to the public interest because such entities are further removed from the electoral process and thus often less affected by movements for political reform. However, while political institutions have failed to assure their true accountability, courts have developed by common law and have acquired by statute procedures by which the individual may exert day-to-day influence on the activities of public officials.

This note will analyze the development in California of one of the principal means by which a citizen can influence officers of state

government through the judicial process—taxpayers' suits. Such suits provide the individual citizen with the means to enjoin wasteful or illegal expenditures by public officers. The extent to which these suits may be brought against state officers in California, however, has only recently been clarified by the California Supreme Court in Stanson v. Mott. By contrast, taxpayers in California have been permitted to obtain injunctions against municipal and county officers under case authority since 1858 and more recently under section 526a of the Code of Civil Procedure. A great body of case law has developed under section 526a which should be useful to the courts in refining the scope of taxpayers' suits on the state level. The similarity between suits brought under section 526a and those under the authority of Stanson makes the precedents behind the code section appropriate considerations for suits against state officers.

This note will focus upon section 526a to determine its impact on state taxpayer suits. The first section will briefly examine the weaknesses of judicial alternatives to taxpayers' suits in California. Attention will then turn to the historical development of taxpayers' suits in the United States. A further section will trace and analyze the California common law precedents for suits against state officers in relation to the statutory authority provided by section 526a. Finally, the note will cover the numerous judicial interpretations of section 526a to determine what impact they may have on the manner in which California taxpayers' suits against state officials will develop in the future.

Judicial Review of State Officers' Acts: Traditional Procedures and Their Shortcomings

The taxpayer's suit is not a recent procedural invention. Several related methods of influencing official conduct by resort to judicial process, however, have received greater use in California. It is necessary to consider these alternatives to taxpayers' suits to demonstrate that they do not always provide adequate means for citizens to challenge alleged official misconduct.

4. 17 Cal. 3d 204, 222-33, 551 P.2d 1, 12-13, 130 Cal. Rptr. 697, 708-09 (1976). For a discussion of this case, see notes 84-88 & accompanying text infra.
5. See Foster v. Coleman, 10 Cal. 278 (1858). The issue of taxpayer standing to sue was not discussed in the case.
6. Taxpayers' suits were permitted in England as early as 1826. See Bromley v. Smith, 57 Eng. Rep. 482 (Ch. 1826). They became more common with the passage of the Municipal Corporations Act in 1835 under which municipal officials were deemed to have a duty to manage funds as a public trust. See Note, Taxpayers' Suits: A Survey and Summary, 69 YALE L.J. 895, 898 (1960) [hereinafter cited as Taxpayers' Suits].
The Writs

The common law prerogative writs remain the traditional means by which an individual may secure judicial review of officials' actions. Nevertheless, they are of limited use. For instance, most states permit the review of actions of an administrative agency by the writ of certiorari. California, however, limits certiorari to suits against agencies which have derived their power expressly from the state constitution. To remedy this procedural deficiency, California litigants have substituted the action in mandamus to achieve the same relief provided by the writ of certiorari in other states. By mandamus, an individual citizen can compel a public official to perform a ministerial act required by law, to exercise discretion, or to refrain from abusing his discretion. However, mandamus is of limited use because it cannot be employed to control the manner in which discretion is exercised. The use of mandamus is further limited to a petitioner who is "beneficially interested" in controlling an official's conduct. Lastly,
mandamus offers no remedy against established injury because it can be used only to restrain or compel action, not to correct injury which has already occurred.\textsuperscript{17}

**Tort Actions**

Public employees and officers can have their actions challenged in tort actions commenced by an individual to recover for injuries personally suffered.\textsuperscript{18} While the administration of government is not directly regulated by the existence of a tort cause of action available against a public official, the possibility of such an action does have an indirect effect on public officers by impressing upon them the dangers of reproachable conduct. Nevertheless, tort remedies are insufficient to review official acts. Torts committed by officials are not actionable if the harmful conduct is within the legal discretion of the officer;\textsuperscript{19} if he has acted in good faith without malice under the apparent authority of an unconstitutional, invalid, or inapplicable law;\textsuperscript{20} or if he has instituted judicial or administrative proceedings within the scope of his authority, even if he acted maliciously and without probable cause.\textsuperscript{21} Consequently, tort liability is an extremely limited means by which the individual can exert influence on government.

**Declaratory Judgments**

The declaratory judgment provides yet another device by which the individual citizen can challenge the validity of any agency regulation on both substantive and procedural grounds.\textsuperscript{22} However, this means of judicial review is only available to "interested persons."\textsuperscript{23} There exists a long line of legislative precedent in California which makes it clear that an "interested person" is one having not merely a consequential

\textit{Id.} at 352, 254 P.2d at 10. Such language brings the reader no closer to an understanding of what the mandate statute requires. Similar interpretations of an "interested person" fail to give clarity to the meaning of this requirement. See note 23 & accompanying text\textit{infra}. However, where the question is one of public interest and the petitioner seeks to procure the enforcement of a public duty by a writ of mandate, he need not show any special interest in the result. See McDonald v. Stockton Metropolitan Transit Dist., 36 Cal. App. 3d 436, 440, 111 Cal. Rptr. 637, 641 (1973); American Friends Service Comm. v. Procunier, 33 Cal. App. 3d 252, 256, 109 Cal. Rptr. 22, 23-25 (1973).

20. \textit{Id.} § 820.6.
22. \textit{Id.} § 11440.
23. \textit{Id.}
interest in the litigation, but a direct one. Therefore, for example, a trade association whose members are subject to a particular agency regulation but which is not subject to the regulation is not an "interested person" within the meaning of the declaratory judgment statute because the harm is not suffered directly by the association. This restriction upon the individual citizen's standing to sue reduces the likelihood that courts in declaratory judgment suits will provide effective review of official conduct.

Owing to the weaknesses of prerogative writs, tort actions, and declaratory judgments as tools for enforcement of public accountability, the individual citizen must have more effective means to challenge official action. The citizen must have access to a grievance procedure which has the ability to redress past wrongs and to enjoin future misconduct, and which does not require compliance with technical rules of standing.

A Review of Taxpayers' Suits: An Alternative for Controlling Official Misconduct

A promising device by which a citizen can check official misconduct is the taxpayer's suit. In order to supply a means by which the average citizen can obtain injunctive relief against public officers, virtually all states permit these suits by statute or common law. A taxpayer's suit gives citizens standing to sue despite the technical requirement of standing which must be complied with in other suits at law or equity. By this requirement, a plaintiff must allege that the challenged action has caused him sufficient injury to insure that he has a personal stake in the outcome of the litigation and will pursue his claim vigorously. It should be stressed that in a taxpayer's suit,

26. For a list of the supporting authority in each state see Taxpayers' Suits, supra note 6 at 895-96.
27. It should be stressed that the term "taxpayer's suit" is a misnomer. While the term is generally used, the payment of taxes is not the justification on which taxpayers' suits rest. The basis for the suit is the illegal expenditure of funds by a public official. See Regents of Univ. of Cal. v. Superior Ct., 3 Cal. 3d 529, 542, 476 P.2d 457, 466, 91 Cal. Rptr. 57, 66 (1970). Consequently, "citizen's suit" might be a more appropriate label. Nevertheless, this note will conform to the traditional terminology.
28. The rule of standing generally remains obscure in California. In very few decisions has the term actually been used. California courts seem to have adhered to the traditional notions about standing expressed in federal cases such as Flast v. Cohen, 392 U.S. 83 (1968). For example, in one California case the court said, "One who
the standing barrier is not overcome simply by softening the require-
ment. The standing requirement is totally abandoned when a tax-
payer sues a public official. Consequently, the taxpayer's suit is an 
extraordinary procedural device.

While permitting taxpayers' suits against municipal and county 
officials, California courts have been reluctant to follow the national 
trend toward permitting taxpayers' suits against state officials. The 
reasons for the California position receive mention in a later discussion. 
At this juncture, however, it is helpful to review the taxpayer's suit in 
California and other jurisdictions in terms of its origin and justifica-
tions. Although much of this material has been discussed elsewhere, 
a review will serve to give the reader a proper perspective on the role 
which taxpayers' suits play in the judicial supervision of official conduct.

Taxpayers' Suits Outside California: Their Origins and Justifications

Taxpayers' suits against local officials to restrain illegal expendi-
tures in the United States were first permitted in the mid-19th cen-
tury. The early decisions justified their conclusions without lengthy 
discussion or attention to logic. Courts often premised their opinions 
upon related developments in other areas of the law. For instance, 
courts often drew analogies to the rationale behind stockholders' deriva-

invokes the judicial process does not have 'standing' if he, or those whom he properly 
represents, does not have a real interest in the ultimate adjudication because the actor 
has neither suffered nor is about to suffer any injury of sufficient magnitude reasonably 
to assure that all of the relevant facts and issues will be adequately presented.” California Water & Tel. Co. v. County of Los Angeles, 253 Cal. App. 2d 16, 22-23, 61 Cal. Rptr. 618, 623 (1967). Such an expression of the rule of standing is far from 
clear because the court merely substituted the obscure word “interest” for that of “stand-
ing.” Other decisions do not serve to clarify either of these terms. One court said 
that a “direct interest” and not merely a “consequential interest” is required. Associated 
courts have referred to standing as merely the “right of relief.” See, e.g., Friendly Vil-
Rptr. 123, 125 (1973). Added uncertainty has arisen because of the exception to the 
strict standing rule when a plaintiff asserts a public right. See Residents of Beverly 
Glen, Inc. v. City of Los Angeles, 34 Cal. App. 3d 117, 122-27, 109 Cal. Rptr. 724, 
727-31 (1973). In such cases the court said, “[A] focus on the word 'interested' alone 
is too narrow.” Id. at 125, 109 Cal. Rptr. at 730. These interpretations bring us no 
closer to a clarification of standing to sue because they merely define standing in terms 
of other uncertain language.

29. See notes 50-54 & accompanying text infra.
20. See, e.g., Taxpayers' Suits, supra note 6.
31. Id. at 898. See also Adriance v. Mayor of New York, 1 Barb. 19 (N.Y. 
Sup. Ct. 1847).
32. See Taxpayers' Suits, supra note 6 at 898-99; Foster v. Coleman, 10 
Cal. 278 (1858); Colton v. Hanchett, 13 Ill. 616 (1852); Sharpless v. Mayor of 
tive suits to support their recognition of taxpayers' standing. The power of corporate officers is to be exercised solely pursuant to the corporation's chartered purpose and for the benefit of the stockholders. The comparison of the local taxpayer to the stockholder, however, is not accurate. The interests of taxpayers and stockholders vary greatly. The stockholder has personal pecuniary or proprietary interests in the corporation to protect. The taxpayer, on the other hand, sues on behalf of the government to insure that the laws are properly executed and to vindicate some public right. The taxpayer does not "own" a portion of the government as the stockholder owns a share in a corporation. The stockholder's interest is voluntary while the taxpayer's interest arises from residence and payment of taxes in some political subdivision. In fact, taxpayers have been permitted to sue where expenditures sought to be enjoined have not involved funds raised by taxation; thus their reasons for suing have not necessarily stemmed from their own monetary contributions as have the stockholder's. In short, the analogy to stockholders' derivative actions provides little insight into the true purpose of taxpayers' suits.

In addition, public officials have been compared to trustees. Just as trustees can act only for purposes contemplated by the trust instrument, a public official with power over public funds and property can take action only when consistent with the law. Because the trustee is liable when he oversteps his bounds, even in the absence of bad faith, at least one court has concluded that public officials should likewise be liable. The trustee analogy, however, also fails to disclose the extremely broad scope of relief afforded by the taxpayer's suit. If a public official is deemed a trustee of government funds and property, the trust would most aptly be considered a "charitable trust" which does not require the certainty of beneficiaries found in normal trusts and has a purpose which is beneficial to the entire community. Yet

33. See, e.g., Christopher v. Mayor of New York, 13 Barb. 567 (N.Y. Sup. Ct. 1852); Land, Log & Lumber Co. v. McIntyre, 100 Wis. 245, 75 N.W. 964 (1898).
34. See Burns v. Essling, 163 Minn. 57, 61, 203 N.W. 605, 606 (1925).
35. Id.
36. See Taxpayers' Suits, supra note 6, at 903.
it is the attorney general, not the trust beneficiaries, who holds the power to supervise these trusts. Consequently, if a citizen is likened to the beneficiary of a charitable trust, he would not have a cause of action.

The rationales which courts employ to justify taxpayers' suits have additional defects beyond the inaccuracies noted above. For instance, they have masked many of the dangers incident to citizen suits. These dangers can be easily forgotten when emphasis is placed upon justifications such as the above analogies. The potential for harassment of public officials and interference with public administration naturally arises when an individual plaintiff does not need to show the personal interest required under the normal rules of standing. California courts have gone so far as to declare that the taxpayer's motives for seeking an injunction are irrelevant. In addition, taxpayers' suits pose the threat of a multitude of actions which could easily lead to court congestion. In order to answer these criticisms, the true purpose for the taxpayer's suit must be relied upon for its justification. As one commentator has stated:

The ultimate basis for granting standing... [is] outside the normal language of the courts. Taxpayers' litigation seems designed to enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the standing requirement. Such litigation allows the courts, within the framework of traditional notions of "standing," to add to the controls over public officials inherent in the elective process the judicial scrutiny of the statutory and constitutional validity of their acts.

During the century which followed the first taxpayer's suit, citizens were gradually granted standing to challenge actions of state officials in a majority of jurisdictions which considered the problem. As of 1960, the right to sue had been upheld in at least thirty-four states. In only two states was there a clear rejection of state taxpayer standing, while the issue appeared unresolved in fourteen states. The wide acceptance of these suits reflects the realization that there are no significant reasons

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41. CAL. CIV. CODE § 863 (West 1954).
42. See, e.g., Mock v. City of Santa Rosa, 126 Cal. 330, 345, 58 P. 826, 830 (1899).
43. See Taxpayers' Suits, supra note 6, at 909-10.
44. Id. at 904.
45. Id. at 900. However, courts have been somewhat reluctant to permit taxpayers' suits against state officials. Professor Davis noted that over twenty jurisdictions require that the taxpayer show some personal interest in his suit. See Davis, supra note 11, §§ 22.10 (Supp. 1970). This defeats the fundamental purpose of these suits by reimposing the initial standing requirement.
46. See Taxpayers' Suits, supra note 6, at 895.
for distinguishing local taxpayer actions from their state counterparts.\textsuperscript{47} In other words, the real basis for recognizing a taxpayer's standing, the necessity for prompt action to prevent irreparable harm to the public, applies equally well where state funds are misappropriated. Local taxpayers can maintain suits not because they have unique interests different from those of state taxpayers, but because they have a stake in the expenditure of public funds. The only real difference is the proportion of their contributions to total government expenditure.

The United States Supreme Court noted this difference in relative contribution in \textit{Massachusetts v. Mellon}\textsuperscript{48} where it held that a taxpayer lacked standing to sue federal officials in order to enjoin federal expenditures. However, the Court did not rely on this difference to deny standing. While it is true that a taxpayer contributes proportionately less to federal spending than he does to total state or local expenditures, the Court in \textit{Mellon} simply relied on the traditional requirements for standing to sue in order to deny relief.\textsuperscript{49} Taxpayers' suits directed toward any level of government should not be made to depend upon the relative size of a taxpayer's contribution to government. Instead of relying on the tax contribution, courts should stress the underlying purpose of taxpayers' suits: to provide relief where there might otherwise be none. As will be seen, the barrier in California to permitting taxpayers' suits on the state level has not been the relative tax contribution argument. Instead, statutory interpretation has proven to be the principal obstacle.

To summarize, while American courts employ arguments such as the analogy to stockholder derivative suits to rationalize taxpayer standing on both the local and state levels, the justification for taxpayers' suits lies in the recognition that without them it might be impossible to take prompt action to prevent uncorrectable harm to the public. The dangers associated with such suits are many; yet without them, a public official may remain unaccountable to the citizenry because of the inadequacy of the other means by which a citizen can obtain judicial review of official misconduct.

\textbf{Taxpayers' Suits Within California: Their Origins and Justifications}

As discussed previously, California has been slow to exempt taxpayers from traditional standing requirements in suits against state
officers. In 1858, the California Supreme Court permitted an individual taxpayer to seek injunctive relief against the acts of local government officials. Since that date, the local taxpayer has been found to be within that category of claimants recognized to have a sufficient interest in their claims to be able to sue without statutory authorization. In 1906, the California Legislature codified the supreme court's 1858 position in section 526a of the Code of Civil Procedure, thus recognizing a statutory right to relief. The section provides:

An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax.

After the adoption of section 526a, while a majority of other states were extending taxpayers' suits to actions against state officers, the courts and legislature in California failed to similarly expand their scope. The attorney general, as late as 1953, concluded that state taxpayers' suits were impliedly prohibited by the failure of the legislature to include state officers among the list of potentially liable persons in section 526a. The issue of whether a taxpayer could enjoin acts of state officers had not been directly decided in California before the attorney general's opinion. However, taxpayers had brought actions against state officials which proceeded through the courts without the issue being raised.

The Early Decisions

In 1962 the issue of whether a taxpayer could maintain an action against state officials to enjoin an allegedly improper expenditure was

50. See Foster v. Coleman, 10 Cal. 278 (1858). The issue of taxpayer standing was not discussed in the case.


52. See CAL. CODE CIV. PROC. § 526a (West Supp. 1976). Section 526a further provides that: "This section does not affect any right of action in favor of a county, city, town, or city and county, or any public officer; provided, that no injunction shall be granted restraining the offering for sale, sale, or issuance of any municipal bonds for public improvements or public utilities.

An action brought pursuant to this section to enjoin a public improvement project shall take special precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law." Id.


confronted by a California court in Ahlgren v. Carr. The plaintiffs, as taxpayers and citizens of California, sought to enjoin John E. Carr, State Director of Finance, from approving contracts between the state and certain publishers for the purchase of textbooks and to enjoin Alan Cranston, State Controller, from distributing funds for the purchase of the books. The plaintiffs alleged that the actions of these officers would result in the illegal expenditure of state funds. The legislature had appropriated funds to purchase school books but had provided that the money not be used to finance contracts in which the price of books exceeded a specified amount. Contracts were negotiated and submitted to the director of finance for approval. The taxpayers’ action was then commenced on the grounds that the price in the contracts exceeded the legislature’s limitation. The trial court concluded that the taxpayer had no standing to enjoin state officials from spending state funds illegally. The court of appeal reversed, however, citing the great weight of authority throughout the country. The court quoted a commentator to present its own understanding of the purpose behind taxpayer suits:

The taxpayers’ suit [is] a means of vindicating individual rights but ... [also] a governmental device to safeguard the legal restrictions on state and local governments, which, if not subjected to the careful scrutiny of individual taxpayers, might as well become dead letters. The importance of the latter factor is indicated by the enactment of statutes allowing such suits in those jurisdictions in which judicial interpretation of ordinary legal principles had denied the taxpayer’s status to sue. The overwhelming acceptance of such suits is in keeping with the distrust of executive and administrative self-restraint in the use of the spending power and with the readiness to allow the courts to assume the role of arbiter in the governmental scheme.56

The Ahlgren decision rejected the argument that an action against officers of the state in their official capacity is a suit against the state itself to which it has not consented.57 The court concluded that an action against state officers to enjoin their illegal actions or to obtain relief from an invalid action or abuse of authority is ordinarily not a suit against the state and therefore not prohibited under the doctrine of sovereign immunity.58

While the decision in Ahlgren appeared to break new ground, the court of appeal might have sustained the action on grounds consistent with the intent of the legislature, which apparently was to exclude state officers from the statutory scheme of section 526a of the Code of Civil

56. Id. at 253, 25 Cal. Rptr. 889-90, quoting Note, Taxpayers’ Suits as a Means of Controlling the Expenditure of Public Funds, 50 Harv. L. Rev. 1276, 1283-84 (1937).
58. Id.
Procedure.  The court did not cite the section and thus failed to reconcile its decision with existing statutory authority. The statute, however, not only permits suits against officers of "a county, town, city or city and county" but also against "any agent, or other person, acting in its behalf." The factual situation of Ahlgren could be construed to support a contention that the director of finance and the state controller were acting to the benefit or on "behalf" of local school districts which the California Constitution requires to be furnished with textbooks by the state. Section 526a, of course, does not expressly extend liability to officers of local school districts. However, prior to Ahlgren, the California Supreme Court in Gogerty v. Coachella Valley Junior College District recognized, without reference to section 526a, that a taxpayer could bring suit against a junior college district board of trustees. If a local taxpayer may successfully enjoin acts by junior college district officers, he should be able to sue officers of local school districts. If the court in Ahlgren had viewed the state officials as acting on behalf of these districts, the court would not have had to recognize state taxpayer standing in all suits against state officers contrary to the apparent legislative intent embodied in section 526a.

Eight years after Ahlgren v. Carr, the issue of a taxpayer's standing to sue state officers was again raised in the court of appeal in California State Employees' Association v. Williams, a suit against the administrator of the Medi-Cal program and the state controller. The plaintiffs, two taxpayers and the California State Employees' Association, alleged that statutes and a contract calling for private companies to administer the Medi-Cal program violated the civil service amendment to the California Constitution. The court merely cited the Ahlgren decision with approval in recognizing taxpayers' standing to enjoin illegal state expenditures. Nevertheless, the issue of whether a taxpayer could sue a state officer was not critical to the decision, because the association was itself a "beneficially interested" person which could restrain an officer within the meaning of the mandate statute.

63. Such a suit against a state official was permitted by a case in New York. Olmsted v. Meah, 219 N.Y. 270, 114 N.E. 393 (1916). The court held that a taxpayer's action may be maintained against state officers under a statute authorizing taxpayers' actions against persons acting for or on behalf of any local government.
64. 7 Cal. App. 3d 390, 86 Cal. Rptr. 305 (1970).
65. Cal. Const. art. XXIV.
66. 7 Cal. App. 3d at 395, 86 Cal. Rptr. at 308.
The Issue Reaches the California Supreme Court

Not until 1971, in the case of Blair v. Pitchess, did the California Supreme Court make reference to taxpayers' standing to sue state officials. Blair was not a suit against state officers, but was a taxpayer's suit against the Los Angeles County Sheriff to enjoin the spending of funds by him to enforce an unconstitutional statute. The supreme court merely noted the decisions in Ahlgren and Williams without placing its weight behind the decisions. Although this case fell squarely under section 526a of the Code of Civil Procedure because Pitchess was a county officer, the court stated:

[W]e have not limited suits under section 526a to challenges of policies or ordinances adopted by the county, city or town. If county, town or city officials implement a state statute or even the provisions of the state Constitution, an injunction under section 526a will issue to restrain such enforcement if the provision is unconstitutional. . . . Indeed, it has been held that taxpayers may sue state officials to enjoin such officials from illegally expending state funds.

The above quotations from Blair v. Pitchess leads to speculation that the court viewed state taxpayers' suits as authorized by section 526a, given the introductory sentence ("[W]e have not limited suits under section 526a to challenges of policies or ordinances") and the discussion of state taxpayers' standing which followed. The court did stress that California courts consistently have construed section 526a liberally to achieve the remedial purpose of the section. This primary purpose, the court said, was to "enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the standing requirement." Surely such reasoning underlies the justification for state taxpayers' suits as well as local taxpayers' actions. Liberally construed, section 526a could be understood to encompass taxpayers' suits to enjoin acts by state officials. As noted before, state officers may be sued as agents of a local government when they have acted on its behalf.

A Statutory Basis for State Taxpayers' Suits

After Blair v. Pitchess, a possibility remained that the California Supreme Court would limit taxpayers' standing against state officials to the statutory language of section 526a. Although the Ahlgren v. Carr

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68. 5 Cal. 3d 258, 486 P.2d 1242, 96 Cal. Rptr. 42 (1971).
69. Id. at 268, 486 P.2d at 1249, 96 Cal. Rptr. at 49.
70. Id.
71. Id. at 267-68, 486 P.2d at 1248-49, 96 Cal. Rptr. at 48-49, quoting Taxpayers' Suits, supra note 6, at 904.
72. See text accompanying notes 60-61 supra.
decision was written in broad terms and suggested that courts recognize state taxpayers' suits when statewide considerations are present, there was reason for caution. No subsequent supreme court opinion had expressly approved Ahlgren. Further, the decision was susceptible to a narrow interpretation given the facts of the case. Lastly, the California Attorney General had previously interpreted section 526a to contain an implied prohibition of taxpayers' suits against state officers. Consequently, the line of cases from Ahlgren to Blair do not resolve the question of whether a taxpayer may enjoin illegal and wasteful acts by state officers.

Added reason for caution in broadly interpreting Ahlgren and succeeding decisions came in 1971 in the well-known school financing case, Serrano v. Priest. Justice Sullivan, who also wrote the Blair v. Pitchess opinion, suggested in Serrano the possibility that the supreme court would narrowly construe the Ahlgren decision in the future. Serrano v. Priest was a taxpayers' suit against both local and state officials to obtain declaratory and injunctive relief. Plaintiff taxpayers and school children alleged that the public school system in California was maintained by a financing scheme that relied heavily on the local property tax, which caused substantial disparity among individual school districts in the amount of revenue available per pupil. The plaintiffs therefore alleged that they had to pay a higher tax rate than the taxpayers in other districts to obtain the same or fewer educational opportunities for their children. Such a system, they claimed, was violative of the equal protection clauses of the fourteenth amendment of the United States Constitution and the California Constitution. The supreme court held the financing scheme unconstitutional and, therefore, concluded that the taxpayers had clearly stated a cause of action. More specifically, the opinion, citing Blair v. Pitchess and section 526a, declared that county officers may be enjoined from spending time implementing the financing scheme. However, the decision did not resolve the issue of plaintiffs' standing against the defendant state officers. The court relegated the question to a footnote: "Although plaintiff parents bring this action against state, as well as county officials, it has been held that state officers too may be sued under section 526a."

The court merely cited the Ahlgren, Williams and Blair decisions as authority for this statement. Yet neither Ahlgren nor Williams referred to section 526a, while the Blair v. Pitchess decision

74. 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).
75. Id. at 590-91, 487 P.2d at 1244-45, 96 Cal. Rptr. at 604-05.
76. Id. at 618, 487 P.2d at 1265-66, 96 Cal. Rptr. at 625-26.
77. Id. at 618 n.38, 487 P.2d at 1266, 96 Cal. Rptr. at 626.
merely alluded in dicta that section 526a authorizes taxpayers' suits against state officers. Consequently, this footnote gave reason to presume that the supreme court in the future would view a taxpayer's standing to enjoin state officials in terms of section 526a and would limit such suits to instances in which state officers had acted on behalf of local governments.

Consider that in Serrano the defendants were enjoined from spending local, not state, funds. Section 526a could have been applied directly to the facts because local funds were alleged to have been illegally spent by officials of a county and by state officers who could be said to have been "acting on its behalf." Any directives given by a state official regarding the expenditure of these local funds therefore could have been attempts to maintain or advance the quality of education offered students by local schools, which could have been construed, in turn, to have been in the interests of the school districts. In short, the court could have concluded that by advancing local interests, the state officers acted on behalf of the county within the meaning of section 526a. Such an interpretation of the facts in Serrano v. Priest would have permitted the court to recognize the taxpayers' standing in this particular case without any expansion of taxpayers' suits along the general lines of Ahlgren and Williams. Instead of discussing these decisions and rejecting or accepting taxpayers' standing, the court could have said that a review of those decisions was unnecessary given their limited factual situations. However, the court took a third avenue and placed the California law regarding these suits in question. Within the one sentence footnote, the court appears to have viewed the Ahlgren decision and its own comment in Blair as being based on section 526a jurisdiction rather than on a broad common law exemption to the standing requirement. As noted before, Ahlgren, which never referred to section 526a, could have been decided within the scope of that section. The question remaining after Serrano was whether the California Supreme Court construed the seemingly all-encompassing Ahlgren decision as permitting taxpayers' suits against state officers only when they were acting on behalf of local governments. Ahlgren and Williams, on their face, as well as cases from many other American jurisdictions, would support the expansion of taxpayers' standing to all suits against state officers. However, the Serrano footnote appears to have been a calculated attempt to link the permissible range of taxpayers' suits to the limited scope of section 526a of the Code of Civil Procedure.

80. See notes 68-72 & accompanying text supra.
81. Id.
82. See text accompanying notes 55-58 supra.
83. See notes 45-46 & accompanying text supra.
The Law of Taxpayers’ Suits Is Clarified

In June 1976, the law regarding taxpayers’ suits on the state level was clarified by the California Supreme Court in Stanson v. Mott. In 1974, California voters approved a bond to provide funds for the purchase of recreational lands. On the day before the election, Stanson filed a taxpayer’s suit alleging that the defendant William Mott, Jr., director of the California Department of Parks and Recreation, had illegally expended more than $5,000 to promote passage of the bond. While Stanson did not seek to enjoin future illegal expenditures, he sought to hold Mott personally liable to repay the funds to the state. Mott demurred, arguing that the expenditures were proper and that in any event, he could not be held personally liable for them. The trial court sustained the demurrer and entered judgment for Mott. Stanson appealed, and the supreme court in a unanimous decision reversed.

Justice Tobriner, writing for the court, indicated that it was possible for a taxpayer to enjoin Mott from illegally spending state funds. In doing so, Tobriner referred to the Ahlgren decision and section 526a. However, because this was not a suit for injunctive relief, the discussion of Ahlgren and the section was only dicta. Justice Tobriner wrote:

The complaint alleges, inter alia, that defendant Mott . . . sanctioned the distribution, at public expense, of promotional materials written by a private organization formed to promote the passage of the bond act . . . . [If Stanson] establishes that similar expenses are threatened in the future, he will also be entitled to injunctive relief.

The factual situation of Stanson indicates that the supreme court adopted the broad view of state taxpayers’ suits that was advocated in Ahlgren. The facts and the above quoted passage imply that a taxpayer may enjoin a state officer whenever state funds have been spent illegally. Mott was a state officer, who spent state funds with the alleged purpose of promoting a statewide bond issue. Clearly, he cannot be said to have been acting on behalf of a county or city government. Consequently, the narrow scope of section 526a, which allows a state officer to be enjoined only as an agent of a local government, was insufficient to permit Stanson to enjoin Mott.

Although the Stanson decision justified the conclusion that the supreme court will broadly permit taxpayers’ suits on the state level, the court again tied state taxpayers’ suits to section 526a as it did in Serrano v. Priest and Blair v. Pitchess. Because a suit to enjoin

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84. 17 Cal. 3d 206, 551 P.2d 1, 130 Cal. Rptr. 697 (1976).
85. Id. at 222-23, 551 P.2d at 12-13, 130 Cal. Rptr. at 708-09.
86. Id.
87. 5 Cal. 3d 584, 618 n.38, 487 P.2d 1241, 1266, 96 Cal. Rptr. 601, 626 (1971).
88. 5 Cal. 3d 258, 268, 486 P.2d 1242, 1249, 96 Cal. Rptr. 42, 49 (1971).
Mott would not be possible by the express terms of section 526a, however, one might conclude that the court now reads the term "state" into the list of public entities whose officers may be sued under the section. Alternatively, the reference to section 526a may imply that the court will refer to it as the basis for an analogy in order to justify suits on the state level.

The Implications of Applying Section 526a to State Taxpayers' Suits

The parallels between suits on the state level and local suits under section 526a, which have already been discussed, suggest that they should develop in a similar manner. Given that no separate body of law delineating state taxpayers' suits has had an opportunity to develop, California courts will no doubt rely upon the nearly seventy years of precedent behind section 526a to refine state taxpayers' suits. A review of these cases will point out the liberal application courts should permit of the rule of state taxpayer standing, the potential dangers associated with state taxpayers' suits, the fact that merely wasteful expenditures may be enjoined, and the extension of taxpayer standing to suits to recover money illegally expended.

The Liberal Construction of Section 526a and State Taxpayers' Suits

California courts have construed section 526a liberally to achieve its underlying purpose: a judicial remedy for official misconduct where there would otherwise be none. In several cases courts have modified the express language of the section. As previously noted, Gogerty v. Coachella Valley Junior College District in effect placed local junior college district boards of trustees within the list, although it did not refer to section 526a explicitly, the supreme court in Irwin v. City of Manhattan Beach went so far as to extend the application of section 526a to actions brought by nonresident taxpayers, a contradiction, which the court acknowledged, to the statutory requirement that the taxpayer plaintiff be a "citizen resident." These modifications of section 526a demonstrate that courts could similarly construe section 526a to include the term "state" within the list of local government units whose property and funds are subjects of taxpayers' suits.

89. See notes 45-47 accompanying text supra.
90. See Taxpayers' Suits, supra note 6, at 904.
91. See text accompanying note 81 supra.
92. 57 Cal. 2d 727, 730, 371 P.2d 582, 584, 21 Cal. Rptr. 806, 808 (1962).
94. Id. at 18-20, 415 P.2d at 772-73, 51 Cal. Rptr. at 884-85.
The Degree of Harm Necessary Before a State Official Can Be Enjoined

Judging from the body of case law that has already developed around section 526a, it would appear that in future suits against state officers the degree of harm to state property and funds will not be critical to the issue of standing. In Wirin v. Parker, the supreme court upheld an injunction against a local official declaring that "[i]t is immaterial that the amount of the illegal expenditures is small or that the illegal procedures actually permit a saving of tax funds." The unlawfully spent funds do not even have to come from tax revenue. They may be derived from the operation of a public utility, for example. If money belonging to a governmental agency is illegally expended by its officers, the inevitable result will be detriment to the taxpayer whose burden of taxation will directly or indirectly increase. Even the mere expenditure of the time of a public employee in performing illegal and unauthorized acts constitutes an unlawful use of funds which can be enjoined under section 526a. Consequently, any state administrative action or decision can be questioned and the validity of any legislative act that calls for some type of administrative action can be tested. Policy decisions may be questioned even before they are carried into action, since all decisionmaking involves the time of a public employee. A public contract can also be terminated as a result of an injunction to prevent the payment of money if the contract is illegal, although the injunction might result in the abandonment of the project contemplated by the contract as well as in subsequent business losses to the contractor.

By judicially determining that the work time of public employees is within "the estate, funds, and other property" of a governmental unit, the court has provided the equivalent to the writ of mandate insofar as both the writ and the taxpayer's injunction may be used to prevent an officer from performing virtually any illegal act. However, a taxpayer's suit provides the equivalent remedy without the "beneficial interest" requirement of mandate. Consequently, a taxpayer's suit

96. 48 Cal. 2d 890, 313 P.2d 844 (1957).
97. Id. at 894, 313 P.2d at 846.
102. A petitioner for a writ of mandate must show that he is "beneficially" interested in his suit. CAL. CODE CIV. PROC. § 1086 (West 1955). In one case, however, it was held that a petitioner did not need to show a special interest because it was sufficient that he had an interest as a citizen in having laws executed when seeking
may provide a remedy when a writ of mandate is unobtainable. For example, the California Code of Civil Procedure permits a writ of mandate to be issued to inquire into the validity of administrative decisions made as a result of a proceeding in which by law a hearing is required. However, to obtain the writ in such a situation, the petitioner must have a personal interest in the proceeding. Taxpayers' suits would permit any citizen to review such a decision without showing such an interest because a hearing requires the expenditure of a hearing officer's time. If an erroneous decision was made, a wasteful or illegal expenditure of time was also made. In a similar manner, the taxpayer's suit avoids the statutory requirement of a personal interest to obtain declaratory relief when testing the validity of an agency's regulation because rulemaking, like decisionmaking, involves the expenditure of time of a public official.

The Potential for Abuse of Taxpayer Standing

One of the primary objections to giving taxpayers standing to enjoin expenditures by public officials has been the potential for abuse. The courts could be flooded with suits intended to harass public officials and to deter their implementation of policies to which the taxpayer is opposed. Such expanded litigation could easily result given the prevailing liberal interpretation of the applicability of section 526a. For example, the California court of appeal in City of Ceres v. City of Modesto pointed out that even though a court should not take cognizance of political disputes where a taxpayer is not in agreement with the government's policy, it said that a court will not close its eyes to expenditures enjoinable under section 526a. Ceres involved an action brought by a Modesto taxpayer and the City of Ceres for injunctive relief against the City of Modesto to prevent the proposed extension of sewer lines into an unincorporated area adjoining the City of Modesto. The court held that such an action by officials was reviewable under section 526a. While Modesto's plan was permissible under the California Constitution, the injunction was granted on the grounds that if the plan were carried out it would represent a waste of city funds, since Modesto could never annex this particular area and the City of


104. CAL. GOV'T CODE § 11440 (West 1966).

105. See Taxpayers' Suits, supra note 6, at 909.


107. Id. at 555, 79 Cal. Rptr. at 173.

108. CAL. CONST. art. XI, § 19.
Ceres, which could annex the land, could construct similar lines for half the cost.

In addition to Ceres, at least one other opinion suggests that a court will not question ulterior motives of a taxpayer-plaintiff and will not disqualify him on the basis of some personal or political interest in his suit. With the extension of taxpayers' suits to actions against state officials, the courts will become forums for political views so long as judges grant standing solely on the basis of the illegality of an expenditure. Political goals will be an impetus to bringing these suits as a means of altering government policies.

Enjoining Wasteful Expenditures by State Officials

The danger of such vexatious litigation which may result from an expansion of the scope of section 526a to include state officials appears more evident upon further consideration of the language of the statute. Not only are illegal expenditures or uses of property enjoinable under section 526a, but wasteful activities, not unlawful in themselves, may also be prevented. Consequently, a taxpayer who wishes to annoy an official or to challenge political decisions may file suit without alleging an illegal act.

Waste is, obviously, a nebulous concept lacking the specificity associated with an illegal act which has at least a statutory description or a common law meaning. The court of appeal in City of Ceres v. City of Modesto recognized the problems associated with such an imprecise term and attempted to define waste narrowly to avoid constant harassment of officials that "could seriously hamper our representative form of government at the local level." The court said that "waste" as used in section 526a means "something more than an alleged mistake by public officials in matters involving the exercise of judgment or wide discretion."

Harnett v. County of Sacramento involved another example of an enjoinable wasteful expenditure. In Harnett, the supreme court upheld an injunction against an election concerning a redistricting ordinance on grounds that the ordinance would not have accomplished the desired redistricting even if it were approved by a majority of the voters. If taxpayers could prevent actions of state officials under the precedents behind section 526a, elections of this type could be enjoinable on the state level.

109. See Mock v. City of Santa Rosa, 126 Cal. 330, 345, 58 P. 826, 830 (1899).
111. Id. at 555, 79 Cal. Rptr. at 173.
112. Id.
The "more than a mistake" standard for enjoining wasteful acts that was expressed in *City of Ceres v. City of Modesto*\(^\text{114}\) suggests that abuse of discretion is the test for the reviewability of a wasteful action. Consequently, another requirement for a writ of mandate can be avoided by pressing a taxpayer's suit. The writ of mandate is only available to compel a public official to perform a ministerial public duty or to exercise his discretion when he refuses to act.\(^\text{115}\) Discretionary acts themselves, except for decisions in agency adjudications,\(^\text{116}\) are beyond the reach of the writ. However, if a taxpayer may challenge a wasteful act "in matters involving the exercise of judgment or wide discretion,"\(^\text{117}\) he is able to question the exercise of discretion itself when a decision or action involves waste.

In summary, courts will no doubt permit state taxpayers' suits to enjoin wasteful as well as illegal expenditures given the supreme court's repeated references to section 526a. Such an extension is also probable in light of the liberal construction given to taxpayer standing to sue under that section. However, the precedent behind section 526a poses dangers which may plague the courts when state taxpayers' suits are brought before them. The motives for bringing suit may not be questioned under present case law, thus presenting the possibility for vexatious litigation. However, the precedent behind section 526a has even greater consequence for suits on the state level as the following section will point out.

### Taxpayers' Suits To Hold State Officials Personally Liable for Their Public Wrongs

The most far-reaching implication of permitting taxpayers' suits to enjoin expenditures by state officers is that such an extension sets the stage for courts to recognize the right of a taxpayer to hold a state officer personally liable for revenues wastefully or illegally spent. The California Supreme Court in *Stanson v. Mott* has recently made this extension.\(^\text{118}\) This section of the note will discuss pre-*Stanson* precedent for personal liability as well as the *Stanson* decision itself. In addition, related legal developments from other jurisdictions will receive mention where applicable.

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115. *See Davis*, *supra* note 11, at 398.


118. 17 Cal. 3d 206, 210, 551 P.2d 1, 4, 130 Cal. Rptr. 697, 700 (1976).
The California Precedent

Only six years after the enactment of section 526a, the California Supreme Court, in Osburn v. Stone,119 extended the scope of taxpayers' suits to permit legal as well as equitable relief against public officers. In that case, the plaintiff alleged that the defendants, while acting as mayor and city councilmen of Santa Cruz, made illegal expenditures. The plaintiff sought to compel the defendants to pay the city the sum illegally spent. The supreme court determined that section 526a, while authorizing injunctive relief, did not forbid a taxpayer from seeking to recover on behalf of his municipality funds illegally expended.120 The court rationalized the extension as follows:

[I]t seems quite plain that the necessity to a municipality, whose affairs are in the hands of hostile trustees or councilmen, to recover for illegal expenditures, through the medium of such an action, is quite as great and as imperative as it is in the case of private corporations, and as a stockholder of the latter would have on behalf of his corporation, upon the refusal of its directors to act, the right to maintain such an action, so we think should a taxpayer in the case of a municipality be accorded the same right and power.121

The court proceeded to reject the trial court's conclusion that such suits would mean that local government would have difficulty inducing "good and responsible men" to serve in office. The court recognized that there is some truth in the trial court's assertion, but felt that the powers of municipal officers are well defined, that the officers are given legal advice by law or are empowered to obtain it, and that there is no reason for them to make illegal expenditures.122

As recently as 1972, the California Supreme Court affirmed the ability of a taxpayer to hold a public official personally liable for illegal expenditures. In the case of Harmon v. City & County of San Francisco,123 a taxpayer sought to invalidate the method by which the city obtained appraisals of property that it sold or agreed to sell. The plaintiff also sought damages for the city equal to the difference between the value and sale price of the land conveyed. The court recognized that a plaintiff-taxpayer seeking to avoid the waste of municipal assets has a sufficient interest in his claim to establish his standing to sue, since any wasteful or illegal expenditure may indirectly increase his tax burden in meeting government's expenses.124 The court went on to state that:

120. 170 Cal. at 482, 150 P. at 368.
121. Id. at 482-83, 150 P. at 368.
122. Id. at 484, 150 P. at 369.
123. 7 Cal. 3d 150, 496 P.2d 1248, 101 Cal. Rptr. 880 (1972).
124. Id. at 159-60, 496 P.2d at 1254, 101 Cal. Rptr. at 886.
In recognition of this interest, the Code of Civil Procedure provides that any taxpayer of one year's standing may bring an "action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to" the assets of his municipality. . . . If plaintiff in the instant case sought merely to obtain injunctive relief, this provision would suffice to establish her standing. Because plaintiff also seeks to obtain damages in behalf of the city, however, her interest in the outcome does not diminish. Accordingly, plaintiff's interest as a taxpayer in the outcome of the instant case establishes her standing to seek both equitable and legal relief against the city's allegedly wrongful disposition of its assets.126

Because state taxpayers are now considered to have standing to enjoin actions by state officials, the identical argument can be made in support of suits for damages.

The extension of taxpayers' suits to actions for damages against state officers was recently made in Stanson v. Mott,128 which was previously cited for its clarification of the ability of a taxpayer to obtain injunctive relief against state officers.127 While the issue of injunctive relief was discussed only in dicta, the question of a state officer's personal liability for damages was central to the decision. Much of the supreme court's opinion was devoted to the question whether Mott's expenditures of state funds during the campaign over the bond issue were proper. However, the final discussion focused on the situations in which a taxpayer might hold a state officer personally liable.

The plaintiff in Stanson relied upon the authority of Mines v. Del Valle128 to support his position that a state officer could be held strictly liable for improper expenditures in a taxpayer's suit.129 In Mines, also a taxpayer's suit, the supreme court determined that expenditures to promote the passage of a bond issue by the Los Angeles Board of Public Service Commissioners were improper.130 The court held that the commissioners were strictly liable for the funds spent, rejecting the defendants' argument that they should escape liability because they had spent the funds in the good faith belief that their actions were authorized by law.131 While accepting Mines for the proposition that a taxpayer could hold an officer, state or local, personally liable, the court in Stanson rejected the strict liability standard of that case as no longer sound.132

125. Id. at 160, 496 P.2d at 1254, 101 Cal. Rptr. at 886.
126. 17 Cal. 3d 206, 551 P.2d 1, 130 Cal. Rptr. 697 (1976).
127. See text accompanying notes 84-86 supra.
128. 201 Cal. 273, 257 P. 530 (1927).
129. 17 Cal. 3d at 223, 551 P.2d at 13, 130 Cal. Rptr. at 709.
130. 201 Cal. 273, 288, 257 P. 530, 537 (1927).
131. Id. at 288-89, 257 P. at 537-38.
132. 17 Cal. 3d at 223, 551 P.2d at 13, 130 Cal. Rptr. at 709.
Until *Stanson v. Mott* was decided in June 1976, taxpayers' standing to hold public officials liable for funds illegally spent had been an extremely powerful tool by which individual officers were held to a high degree of accountability because of the strict liability standard. In the prior cases of *Osburn v. Stone* 133 and *Mines v. Del Valle*, 134 the supreme court had relied upon the assumption that "[t]here is no reason for . . . ever making any illegal expenditure of the public's monies." 135 The court decided in *Mines* that public officers were vested with certain discretion in the execution of their duties and they could not be held responsible for honest, albeit mistaken, exercises of their discretionary powers. However, an officer was not justified in exceeding the authority expressly or impliedly given to him by law, no matter how honest his intentions. 136 Thus, in the case of *Mahoney v. City & County of San Francisco* 137 which employed the *Mines* rule, there was no question of the officers' good faith, but since they had expended and audited money under a contract which was illegal, the officers were liable to repay the expenditures. Since any illegal payment exceeds an officer's power, all such acts were deemed to subject an official to a duty to restore the same to the public treasury. Hence, in a taxpayer's suit there was strict liability which served as a compelling reminder to government officers of the illegal constraints and the limited scope of their authority.

Nonetheless, the assumptions that the limits of authorized public expenditures are always clearly ascertainable and that there is no excuse for an officer to innocently exceed these limitations were rejected in *Stanson v. Mott* 138 as "unrealistic" and as incompatible with legislation enacted subsequent to the early decisions. 139 The court declared:

> In our view, the *Mines* approach imposes an overly harsh sanction on well-motivated public officials, and will often work to the detriment of the public interest by deterring such officials from undertaking such activities as the dissemination of useful information to the public. 140

While no statutes were directly in point, the court cited the California Tort Claims Act of 1963 141 under which a public employee must bear the ultimate financial burden for his actions in cases of "fraud,

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133. 170 Cal. 480, 150 P. 367 (1915).
134. 201 Cal. at 288, 257 P. at 237.
135. 170 Cal. at 484, 150 P. at 369.
136. 201 Cal. at 289, 257 P. at 538.
137. 201 Cal. 248, 257 P. 49 (1927).
138. 17 Cal. 3d 206, 551 P.2d 1, 130 Cal. Rptr. 697 (1976).
139. *Id.* at 224, 551 P.2d at 13-14, 130 Cal. Rptr. at 709-10.
140. *Id.* at 226, 551 P.2d at 15, 130 Cal. Rptr. at 711.
corruption, or malice.'142 Clearly, an official who spends funds under similar circumstances is liable. However, the court in Stanson deemed that officers should be held to a higher standard of conduct than merely the avoidance of "fraud, corruption, and actual malice."143 Justice Tobriner wrote:

We conclude instead that such public officials must use "due care," i.e., reasonable diligence, in authorizing the expenditure of public funds, and may be subject to personal liability for improper expenditures made in the absence of such due care.144

The court gave further guidance regarding the circumstances in which an official might be held liable by listing several considerations relevant to such a determination. These included whether the expenditure's impropriety was obvious or not, whether the official was alerted to the possible invalidity of the expenditure, [and] whether the official relied upon legal advice or on the presumed validity of an existing legislative enactment or judicial decision in making the expenditure.145

The Stanson standard appears to be a much more realistic criterion for personal responsibility than strict liability. Mistakes made honestly and in good faith should not subject an official to personal liability. The public official should be likened to the lawyer, doctor, or other professional who is not liable for errors of judgement.146 By employing a "due care" standard, courts will eventually develop a body of case law analogous to that concerning professional malpractice. Consequently, "public malpractice" would seem to be an appropriate label for the judicial authority by which public officials may be held personally liable. While the attorney general has always had the ability to enforce state claims against officers for illegal expenditures, he may fail to carry out his duty for political or other reasons, given the discretionary power incident to his office. In light of this potential failure to prosecute, the individual citizen should have the ability to obtain relief against those state officers who represent his interests, just as he is able to press a claim against professionals hired to act on his behalf. Such taxpayer-citizen standing offers a means of holding public officers accountable to those they serve. Where there is an army of potential taxpayer litigants, public officials may be more inclined to familiarize themselves with the legal parameters within which they are authorized to act.

143. 17 Cal. at 226, 551 P.2d at 15, 130 Cal. Rptr. at 711.
144. Id. at 226-27, 551 P.2d at 15, 130 Cal. Rptr. at 711.
145. Id. at 227, 551 P.2d at 15-16, 130 Cal. Rptr. at 711-12 (citations omitted).
146. See, e.g., Huffman v. Lindquist, 37 Cal. 2d 465, 475, 234 P.2d 34, 40 (1951).
A Review of Taxpayers' Standing To Hold Public Officers Personally Liable in the United States

The enlargement of the scope of taxpayer actions to include suits for legal or restitutional relief is not unique to California. A review of cases in other states will be helpful to illustrate the larger context in which the Stanson v. Mott decision stands. Consequently, the law in other jurisdictions will be discussed to ascertain the significance of California law in the overall development of taxpayers' suits.

Cases in at least sixteen other states recognize that a taxpayer may sue an official for damages or for the restitution of misspent funds on behalf of the government, while this author could find authority in only four states rejecting such relief. Most of the cases permitting taxpayer actions at law or for restitution were brought against members of city councils, boards of county supervisors, and school boards, as well as mayors, city treasurers, and city controllers. One of the earliest of these cases, Russell v. Tate, rejected the contention that the court's power was limited to equitable restraint of official acts, which the court labeled a "reproach to justice." In that case, an illegal appropriation was made, a warrant was drawn, and the money was disbursed by the treasurer—all within a few hours. The court noted that an attorney could not have comprehended the situation and filed a complaint in time to prevent the action. Consequently, the court concluded that more than injunctive relief was necessary to achieve a just result. To restrict taxpayers' actions to injunctive relief could thus defeat their


149. 52 Ark. 541, 13 S.W. 130 (1890).

150. Id. at 546, 13 S.W. at 132.

151. Id.

152. Id.

\textit{Ritcher v. Mayor}\footnote{154. 160 Ga. 178, 127 S.E. 739 (1925).} presents a similar justification for permitting taxpayers to sue officials for damages. In that case, the city council of Savannah rescinded an illegal appropriation after a suit to enjoin it had been commenced. As a result the case was dismissed on grounds that the issue had become moot. However, several months later the council reappropriated the funds, executed warrants, and had the funds transferred thus preventing the plaintiff from reinstating his suit in time to prevent the expenditure. The court recognized the subterfuge and overruled demurrers to the complaint. Personal liability was assessed to prevent the council members from avoiding the purpose of injunctive actions.

As the \textit{Russell} and \textit{Richter} cases indicate, courts have based the award of damages in taxpayers’ suits on equitable principles. Courts have also justified these decisions, as they have done in taxpayers’ suits for injunctive relief, by analogizing them to shareholder derivative suits. The Indiana Court of Appeals in 1903 pointed out that just as stockholders derivatively may hold corporate officers liable, taxpayers should likewise be able to call public officials to account for illegally spent funds.\footnote{155. See Kimble v. Board of Comm’rs, 32 Ind. App. 377, 386-88, 66 N.E. 1023, 1026 (1903). \textit{See also} Dale v. School Dist. No. 9, 66 S.D. 346, 348, 283 N.W. 158, 160 (1938).} However, support for rewarding damages in taxpayers’ suits is not restricted to the common law. Taxpayers have also obtained damages on behalf of the government based on statutory provisions that grant standing.\footnote{156. See Porter v. Tiffany, 11 Ore. App. 542, 544, 502 P.2d 1385, 1386-87 (1972); \textit{ORE. REV. STAT.} § 294.100(2) (1975).}

The cases which have opposed the extension of taxpayers’ suits have done so on grounds that no statutory authority exists for such suits;\footnote{157. \textit{See} Clark v. George, 118 Kan. 667, 669, 236 P. 643, 644 (1925).} that legislative immunity prevents city councilmen from being liable;\footnote{158. \textit{See} Klauder v. Cox, 295 Pa. 323, 329-31, 145 A. 290, 291-92 (1929).} that the actions resulting in loss of funds were made in good faith;\footnote{159. \textit{See id.} at 332, 145 A. at 292. The court did recognize that bad faith actions of legislators would subject them to liability.} or that the court is concerned about interference with governmental operation;\footnote{160. \textit{See id.} at 329-30, 145 A. at 292; Eaton v. Thayer, 124 Me. 311, 316, 128 A. 475, 477 (1925).} that the duty to press such actions is vested in a...
public official such as the attorney general.\textsuperscript{161} An old federal district court case, \textit{Mitchell v. Stephens},\textsuperscript{162} presented a further rationale to reject a California taxpayer's standing to recover money from state officers on behalf of the state. The court distinguished suits for damages against local officials and stockholder suits. These suits require that the local government and the corporation be named as defendants. Similar suits against state officers cannot be permitted, the court reasoned, because the state would have to be named a party but cannot be so named because the doctrine of sovereign immunity forbids suing the state without its consent.\textsuperscript{163} Despite this decision and reasoning, the argument has not been followed since the \textit{Muskopf v. Corning Hospital District}\textsuperscript{164} decision of the California Supreme Court, which declared that governmental immunity was an anachronism.\textsuperscript{165} While the legislature attempted to counteract the effect of the decision, the statutes it enacted refer to the liability of the state when its officers would be liable for injury to private individuals.\textsuperscript{166} The legislature did nothing to forbid a taxpayer from suing an official in the name of the state when there had been injury to the state.

In summary, the national development of taxpayers' suits has included the extension of taxpayer standing to legal as well as equitable actions. While only a minority of states permit such suits for damages, few have directly rejected the extension. Consequently, by permitting legal actions by taxpayers, the California decisions in \textit{Stanson v. Mott} and the earlier cases are not unique. Until the \textit{Stanson} decision, however, almost all of the California cases which extended taxpayer standing to damage suits involved actions against local rather than state officers. Oregon appears to be the only other state in which a taxpayer was permitted to seek legal relief on the state level.\textsuperscript{167} However, in Oregon such actions are provided by statute. Thus, it seems that \textit{Stanson} is one of few precedents for the common law extension of taxpayer standing to suits for legal relief against state officers.

\textbf{Procedural Constraints on a Taxpayer's Ability To Hold State Officers Liable}

Although it has been clearly established in California that a taxpayer may request equitable or legal relief against the misconduct of state officers, there is one constraint on this ability which California

\textsuperscript{161} \textit{See} Eaton v. Thayer, 124 Me. 311, 319, 128 A. 475, 476 (1925).
\textsuperscript{162} 285 F. 756 (S.D. Cal. 1922).
\textsuperscript{163} \textit{Id.} at 760.
\textsuperscript{164} 55 Cal. 2d 211, 359 P.2d 457, 11 Cal. Rptr. 89 (1961).
\textsuperscript{165} \textit{Id.} at 213, 359 P.2d at 458, 11 Cal. Rptr. at 90.
\textsuperscript{166} \textit{Id.} at 213, 359 P.2d at 458, 11 Cal. Rptr. at 90.
\textsuperscript{167} \textit{Id.} at 213, 359 P.2d at 458, 11 Cal. Rptr. at 90.
courts should establish: a requirement that the attorney general or other state official first refuse to prosecute a suit for a citizen to acquire the right to press a taxpayer's action. This reasonable constraint would provide the courts with a practical solution to the problem of vexatious litigation which liberal rules for taxpayers' suits may provoke.

As has previously been noted, the danger of vexatious litigation posed by the extension of taxpayers' suits to the state level could plague the courts. Because courts do not scrutinize the motives for taxpayers' suits, and because merely wasteful expenditures, not illegal in themselves may result in personal liability for state officers, suits brought solely to harass officers may easily clog the courts. If the number of these suits should expand, the normal flow of governmental affairs may suffer because public officers will be forced to spend ever-increasing amounts of time defending their actions in court. Section 526a contains only a few requirements that would restrict either the number of or the motives behind taxpayers' suits.

Section 526a, however, restricts the subject matter of injunctive suits in at least one way: "[N]o injunction shall be granted restraining the offering for sale, or issuance of any municipal bonds for public improvements or public utilities." However, this constraint is so narrow that it is difficult to see how it could significantly limit the number of state taxpayers' suits. In addition, another restriction expressed in section 526a has been stripped of any significance by court decisions. The section describes the taxpayer who may bring suit as a "citizen resident" of the city and county on whose behalf he presses his suit. It further requires that he be "assessed for" and "liable to pay, or, within one year before the commencement of the action, [have] paid, a tax" in the city or county. Nevertheless, a nonresident taxpayer has been permitted to sue in direct contradiction to the statutory requirement that he be a "citizen resident." Furthermore, it has been held that a taxpayer suit "rests not upon the payment of taxes by the taxpayer, but upon the alleged illegal expenditure of such monies by the defending public entity." This passage from Regents of University of California v. Superior Court suggests that the courts might " judicially repeal" the requirement that a plaintiff must pay a tax, although the quoted

168. See text accompanying note 160 supra.
169. See note 109 & accompanying text supra.
170. See notes 118-22 & accompanying text supra.
172. Id.
passage concerned a different matter: venue of a taxpayer's suit. Consequently, section 526a, on its face, may not impose any constraints on the number or subject of state taxpayers' suits.

Nevertheless, there is one constraint upon local taxpayers' suits which follows from the language of section 526a. This constraint, if applied to suits against state officers, may help to deter the abuse of taxpayer standing. In *Keith v. Hammel*, a mandamus action to compel a sheriff to pay into the county treasury fees he had collected and illegally retained, the court of appeal pointed out the proviso in section 526a which states: "This section does not affect any right of action in favor of a county, city, town, or city and county, or any public officer. . . ." From this language, the court determined that a prerequisite exists to a taxpayer bringing suit. After citing this passage, the court said:

> From the many decisions of the courts of this and other states dealing with this subject, we derive the principle that in the conduct of the ordinary business of a county or city, where the care and protection of the rights of the corporation have been committed to public officers, the primary right goes with the duty belonging to those officers to control the ordinary business of the corporation without the interference of private citizens, even though they be taxpayers.

The court concluded that in order for the taxpayer to maintain an action, it is necessary for him to show that the officer whose duty it is to press such a claim against accused officers has refused to prosecute.

Compliance with this prerequisite to bringing suit must be pleaded by the plaintiff taxpayer. If he does not allege refusal to prosecute, a demurrer will be sustained for failure to state a cause of action. This requirement has been imposed to insure that suits will not be brought at the mere "caprice" of individuals. Nevertheless, if it appears that a demand on the officer to prosecute will be useless, the demand will be held unnecessary although the fact of futility must be pleaded.

Despite the fact that this requirement follows from the language of section 526a, the appellate decisions in the taxpayers' cases that have been brought against state officers have not discussed it. The conclusion may be that the prerequisite does not apply in suits on the state

176. *Id.* at 133, 154 P. at 872.
177. *Id.*
level. However, such an interpretation would be inconsistent with section 526a as a justification for state taxpayers' suits. The lack of discussion may imply that either the issue was not raised or the plaintiff complied with the requirement. Nevertheless, evidence that the requirement does not apply in suits against state officers is found in California State Employees' Association v. Williams.\(^\text{182}\) In that case, the court of appeal held that the plaintiff taxpayers' standing to sue state officers was not impaired by the "concurrent power" of the State Personnel Board to enforce civil service laws.\(^\text{183}\) The court's opinion does not indicate whether the board was asked to commence an action. However, the reference to the "concurrent power" suggests that a demand upon the appropriate public prosecutor need not be made. Consequently, there appear to be no effective constraints upon taxpayers' suits other than the time and money that is necessary to enable an individual citizen to press his claim.

**Conclusion**

The California Supreme Court has only recently established that taxpayers have standing to enjoin improper expenditures by state officers. Courts in several cases from Ahlgren v. Carr in 1962 to Stanson v. Mott in 1976 have permitted these suits. However, until Stanson v. Mott, the law on state taxpayers' suits was unsettled. There had been substantial evidence supporting the argument that a state official could be enjoined by a taxpayer only when he was acting on behalf of a local government, such as a county or city. The statutory authority for taxpayers' suits in California derives from section 526a of the Code of Civil Procedure. By its language, the section only permits taxpayers' suits against state officers who act as agents of local government. Consequently, in order to determine whether all taxpayers' suits against state officers were permitted, the statute required the kind of decision provided by Stanson v. Mott in which state officers were sued over expenditures relating solely to state government.

This note has attempted to place the Stanson decision in its procedural as well as its historical context. For instance, the alternative remedies available to a citizen by which he can influence official conduct have been explored. However, their standing requirements as well as their limited applicability makes these alternatives less effective than taxpayers' suits as a check upon official misconduct. In addition, the historical development of taxpayers' suits in California and in other states was traced to explain the rationale for extending taxpayers' standing to the state level. The same reasoning that lay behind permitting

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\(^{183}\) Id. at 395, 86 Cal. Rptr. at 308.
a taxpayer to avoid complying with the "personal interest" rule of standing was found to apply equally well in suits against state officers. In both types of cases, taxpayers' suits were held essential to insure the availability of a remedy for official misconduct which might otherwise go unchecked.

The California Supreme Court has relied upon section 526a as a justification for state taxpayers' suits. This has led to speculation as to the future effect of that section upon the refinement of state taxpayers' standing. Much of the judicial precedent behind section 526a has been analyzed in an attempt to indicate the ways in which the scope of these suits will probably develop. The most far-reaching effect of local taxpayers' suits has been the extension of taxpayer standing to suits in which state officials have been held personally liable for illegal expenditures of funds. Stanson v. Mott firmly established that legal as well as equitable relief can be obtained against state officers in a taxpayer's action.

The significance of taxpayers' suits, whether against state or municipal officers, lies in the fact that the judicial process is the only means by which the individual citizen is guaranteed an influence on official conduct. In the end, the foundation of democratic government rests in the individual. If he is unable to do no more than ratify in the voting booth political decisions that have already been made or support with his vote some general policy trend that he favors, he is left without the ability to influence the day-to-day affairs of state. These daily decisions determine how far and in what direction our society will advance. Consequently, the individual citizen must be able to take the initiative through taxpayers' suits to keep government accountable on the state as well as on the local level.

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