

for the purpose of obtaining control of the company without first offering it to all the shareholders.

In support of this decision it may be said that to the average shareholder the pre-emptive right is the only sure protection against dilution of his interest, even though the courts would probably protect him where such right does not exist if he could show breach of duty by directors. But it is often difficult to prove that directors were acting fraudulently, in violation of their fiduciary obligations, when they issued corporate stock to strangers, and it is too expensive a procedure for the small stockholder to bring a suit without certainty of recovery. Frey, *Shareholders' Pre-emptive Rights*, 38 *Yale L. Jour.* 563 (1929).

On the other hand, in favor of limiting the pre-emptive right wherever possible, there is the suggestion that under our modern complex corporate systems with many different classifications of stock the pre-emptive right raises too many insoluble problems and hinders the directors in efficient corporate financing. Berle and Means, *The Modern Corporation* (1st ed. 1932), 176-178; Fletcher, *Cyc. Corp.* (rev. ed. 1932), § 5136; Drinker, *The Preemptive Right of Shareholders to Subscribe to New Shares*, 43 *Harv. L. Rev.* 586 (1930).

But in any event, where the stockholder has been deprived of the pre-emptive right safeguard against dilution through exception, qualification, or waiver, the courts should, as in the principal case, require a high degree of duty on the part of directors, and should be on the alert to prevent fraudulent and inequitable dilution of the stockholder's interest.

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County Boards—Jurisdiction—Collateral Attack Based on Facts outside the Record—[Nebraska].—Compiled Statutes of Nebraska 1929, C. 2, Art. 11, prescribed that if a remonstrance petition be filed with the county board against the allowance of a budget for the county farm bureau, the county board shall place the proposition on the ballot at the next election. After an enumeration of the qualifications for, and number of the remonstrators necessary, the statute provided that "in considering the sufficiency of the remonstrance, the county board shall ignore the names of remonstrators who had previously signed a petition for the organization of the farm bureau." The Fillmore county board determined, upon hearing, that such a petition complied with the statute and ordered the county clerk to place the proposition on the ballot. Plaintiffs, taxpayers of the county, seeking to enjoin the clerk, alleged that many of the remonstrators were in fact disqualified, despite the finding of the county board. On demurrer the lower court granted the injunction. *Held*, that the decree be reversed and the bill dismissed; the county board acted quasi-judicially in determining the sufficiency of the petition and its judgment could not be attacked collaterally but only in a direct proceeding which was available to the plaintiffs. *Everts v. Young*, 251 N.W. 109 (Neb. 1933).

County boards, boards of county commissioners or supervisors, and like inferior tribunals, being creatures of statute, must affirmatively show on the record of their proceedings a compliance with the statutory prerequisites known as jurisdictional facts; otherwise their orders or decisions may be collaterally attacked. *Larimer v. Krau*, 57 *Ind. App.* 33, 105 N.E. 936 (1914); *Hinton v. Perry County*, 84 *Miss.* 536, 36 *So.* 565 (1904); *Adams v. First National Bank of Greenwood*, 103 *Miss.* 744, 60 *So.* 770

(1913); *Doody v. Vaughn*, 7 Neb. 28 (1879); *Letherman v. Hauser*, 77 Neb. 731, 110 N.W. 745 (1906). These jurisdictional facts may be classed as (1) quasi-jurisdictional, those which only need be established to the satisfaction of the statutory tribunal, and (2) strictly jurisdictional, those which must be actually present to give validity to the order or decision. Quasi-jurisdictional facts, when shown on the record to be established to the satisfaction of the statutory tribunal, cannot be made the basis for a collateral attack on the tribunal's order or decision. *Noble v. Union River Logging Ry.*, 147 U.S. 165, 13 Sup. Ct. 271, 37 L. Ed. 123 (1893). But with strictly jurisdictional facts, even though the record affirmatively states their existence, a collateral attack will be allowed by showing their absence. *McCarter v. Sooy Oyster Co.*, 78 N.J.L. 394, 75 Atl. 211 (1910).

Since the authorizing statute may require the existence of either type of fact, strictly jurisdictional or quasi-jurisdictional, it becomes necessary to determine from the language of the statute which is required in any particular case. In such a determination the attitude of the court will play a large part, for a specific requirement of either type of fact is seldom made by the words of the statute. Thus it was held in *State v. McClymon*, 7 Oh. Dec. Rep. 109, 1 Wkly. Cinnc. L. Bull. 116 (1876), that a specified number of signatures to a petition was a fact of strict jurisdiction, while in *Ward v. Board of Commissioners*, 199 Ind. 467, 157 N.E. 721 (1927), the court decided that the same fact was quasi-jurisdictional.

One line of authority assumes that the statutory requirements are strictly jurisdictional unless the contrary is specified. *Chase v. Trout*, 146 Cal. 350, 80 Pac. 81 (1905); *Wilcox v. Engebretsen*, 160 Cal. 288, 116 Pac. 750 (1911); *Miller v. Amsterdam*, 149 N.Y. 288, 43 N.E. 632 (1896); *State v. McClymon*, 7 Oh. Dec. Rep. 109, 1 Wkly. Cinnc. L. Bull. 116 (1876). Such an approach seems to impair the efficacy and value of these statutory tribunals. Preferable is the opposing line of authority, represented by the principal case, which regards the requirements of the statute, unless prevented by a clear expression in the statute, as quasi-jurisdictional. *Hull v. Board of Commissioners*, 195 Ind. 150, 143 N.E. 589 (1924); *Ward v. Board of Commissioners*, 199 Ind. 467, 157 N.E. 721 (1927); *Reich v. Cochran*, 105 App. Div. 542, 94 N.Y.S. 404 (1905); *County of Lewis v. Montfort*, 72 Wash. 248, 130 Pac. 115 (1913). This latter view of course would still recognize as strictly jurisdictional, matters the lack of which would subject even the decisions of courts of general jurisdiction to collateral attack, such as the facts necessary for jurisdiction over the parties and subject matter.

In the present case, the court was aided in reaching its decision by the phrase in the authorizing statute, "in considering the sufficiency of the petition," which suggests that the finding of the county board was to have some finality, the inference from that being that the requirements were quasi-jurisdictional. Since a statutory appeal was available, in which the absence of both type of jurisdictional facts might be shown, the plaintiffs were not prejudiced by the court's holding. *Larimer v. Krau*, 57 Ind. App. 33, 105 N.E. 936 (1914); *Hinton v. Perry County*, 84 Miss. 536, 36 So. 565 (1904); *Taylor v. Davey*, 55 Neb. 153, 75 N.W. 553 (1898); *Campbell Co. v. Boyd County*, 117 Neb. 186, 220 N.W. 240 (1928); *Abraham v. Homer*, 102 Okla. 12, 226 Pac. 45 (1924). Where such statutory appeal is not provided for, injunctive relief might well be allowed. *Ackerman v. Thummel*, 40 Neb. 95, 58 N.W. 738 (1894).

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