

CHAPTER 659
QUO WARRANTO

Section

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Note

This chapter, formerly entitled Extraordinary Legal Remedies, was completely revised by L 1972, c 90, §3. The sections of the chapter are renumbered as set forth below. The following table shows the current disposition of the chapter.

DISPOSITION TABLE

HRS (1968)	Herein
659-1 to 9	R
659-16 to 24	R
659-31 to 40	R
659-46	659-1
659-47	659-2
659-47.5	659-3
659-48	659-4
659-49	659-5
659-50	R
659-51	659-6
659-52	659-7
659-53	659-8
659-54	659-9
659-55	659-10

Rules of Court

Applicability of Hawaii Rules of Civil Procedure, see HRCPC rule 81(b)(4).

Case Notes

Relief previously available by mandamus may be obtained by appropriate action under the civil rules of procedure. 54 H. 274, 506 P.2d 8 (1973).

Trial court properly dismissed quo warranto petition against Maui corporation counsel as moot. 73 H. 223, 832 P.2d 253 (1992).

" **[\$659-1] Definition.** This is an order issuing in the name of the State by a circuit court and directed to a person who claims or usurps an office of the State or of any subdivision thereof, or of any corporation or quasi-corporation, public or private, or any franchise, inquiring by what authority the

person claims the office or franchise. [L 1876, c 39, §36; am L 1907, c 39, §1; RL 1925, §2716; RL 1935, §4258; RL 1945, §10279; RL 1955, §236-19; HRS §659-46; am L 1972, c 90, §3(a); ren HRS §659-1; gen ch 1985]

Case Notes

Will not lie to remove manager of plantation. 5 H. 3 (1883).

Writ to contest fire department election denied where by law members of a certain board are judges of validity of election. 8 H. 67 (1890).

Pleadings and practice, prior to adoption of Hawaii Rules of Civil Procedure. 11 H. 22, 29 (1897); 22 H. 385 (1914).

Will lie to oust corporation officers illegally elected and in office unlawfully. 11 H. 22, 28 (1897); 22 H. 604 (1915); 28 H. 476 (1925); 34 H. 897 (1939).

Writ must issue in the name of the sovereign. 11 H. 22, 29 (1897).

To try title to office. 22 H. 381, 383 (1914); 34 H. 12 (1936); 39 H. 431 (1952); 41 H. 1 (1955).

" **[\$659-2] Against corporations, by attorney general.** It may also be granted upon the application of the attorney general against individuals acting as a corporation without being legally incorporated. [L 1876, c 39, §37; RL 1925, §2717; RL 1935, §4259; RL 1945, §10280; RL 1955, §236-20; HRS §659-47; am L 1972, c 90, §3(b); ren HRS §659-2]

" **[\$659-3] Forfeiture of franchise.** The several circuit courts shall have jurisdiction of all proceedings in, or in the nature of, quo warranto, brought by or in the name of the public utilities commission, or the State, for the forfeiture of the franchise of any corporate body offending against any law relating to such corporation, for misuser, for nonuser, for doing or committing any act or acts amounting to a surrender of its charter and for exercising rights not conferred upon it. [L 1972, c 90, §3(c); HRS §659-47.5; ren HRS §659-3]

Attorney General Opinions

Quo warranto action may be brought to enforce "resign to run" law. Att. Gen. Op. 86-4.

" **[\$659-4] Petition.** The order is obtained by petition addressed to a circuit court, setting out facts sufficient to show a right to the order, and sworn to if the application is made by a private individual, or is made by the attorney general

as provided by section 659-6. [L 1876, c 39, §38; RL 1925, §2718; RL 1935, §4260; RL 1945, §10281; RL 1955, §236-21; HRS §659-48; am L 1972, c 90, §3(d); ren HRS §659-4]

Case Notes

Sufficiency of petition. 17 H. 9 (1905); 22 H. 385, 387 (1914).

Private individual is a proper party to apply for writ. 39 H. 431 (1952).

Appellant's petition sufficiently stated that appellant was a resident, taxpayer, and qualified voter of Maui County, thus establishing appellant's standing to bring petition. 74 H. 394, 846 P.2d 894 (1993).

" **[\$659-5] Answer.** The person to whom the order is directed shall file the person's answer in writing, within the time limited by the order as determined by the court in its discretion, and state the authority under which the person claims to act. [L 1876, c 39, §39; RL 1925, §2719; RL 1935, §4261; RL 1945, §10282; RL 1955, §236-22; HRS §659-49; am L 1972, c 90, §3(e); ren HRS §659-5; gen ch 1985]

Case Notes

Burden on respondent, when. 29 H. 392 (1926).

" **[\$659-6] Judgment as to offices; burden of proof.** [(a)] If a person to whom an order is directed with respect to an office of which the person performs the duties does not answer within the time allowed or the answer is insufficient or it is found that the person has usurped the office or continues in it unlawfully, the court in addition to declaring the person not qualified to fill the office and forbidding the person to perform the duties of the office any longer, may direct that a new appointment be made and may grant other appropriate relief.

[(b)] If the proceeding is commenced by verified petition of the attorney general and concerns a public office, the respondent shall have the burden of proof. [L 1876, c 39, §41; RL 1925, §2721; RL 1935, §4263; RL 1945, §10284; RL 1955, §236-24; HRS §659-51; am L 1972, c 90, §3(f); ren HRS §659-6; gen ch 1985]

" **[\$659-7] Judgment according to nature of complaint.** In all cases contemplated by sections 659-1 to 659-9, judgment shall be given according to the nature of the complaint made. [L 1876, c 39, §42; RL 1925, §2722; RL 1935, §4264; RL 1945,

§10285; RL 1955, §236-25; HRS §659-52; am L 1972, c 90, §3(g); ren HRS §659-7]

" **[\$659-8] Service.** The writ or order shall be served in the same manner as is provided by the rules of court with respect to process in a civil action. [L 1876, c 39, §43; RL 1925, §2723; RL 1935, §4265; RL 1945, §10286; RL 1955, §236-26; HRS §659-53; am L 1972, c 90, §3(h); ren HRS §659-8]

" **[\$659-9] Corporations not liable to writ, when.** Where the legislature has granted to a corporation the right to determine the validity of the elections of its members or officers, a writ shall not be issued for the purpose of inquiring into that fact. [L 1876, c 39, §44; RL 1925, §2724; RL 1935, §4266; RL 1945, §10287; RL 1955, §236-27; HRS §659-54; ren HRS §659-9]

" **[\$659-10] Other actions.** Nothing in this chapter shall preclude the obtaining of relief available by quo warranto by other appropriate action. [L 1972, c 90, §3(i); HRS §659-55; ren HRS §659-10]