the accident where it is necessary for the police to transport a person to a place where blood or breath will be conducted, a lawful arrest is required; *Commonwealth v. Quarles,* 229 Pa. Super. 363, 389, 324 A.2d 452, 466 (1974).

There is no evidence in this case that Durham was arrested on July 19, 1985. He was taken to the hospital for medical reasons. Under the Vehicle Code, 75 Pa.C.S.A. §3755, if as a result of a motor vehicle accident the driver is taken to a hospital for treatment and if *probable cause exists* (emphasis ours) to believe he is driving under the influence, emergency room personnel shall promptly take a blood sample for testing to determine the alcohol content of the person's blood. It has been held in *Quarles,* that an arrest was not required under the implied consent law then in force before a breathalyzer test was taken. Under the language of that act such test might be taken if the officer had reasonable grounds to believe the person to be tested had been driving under the influence. "Reasonable grounds to believe" and "probable cause exists" are equivalent. Se *Quarles,* supra.

So we conclude that the taking of the blood and testing it was appropriate and that since Durham was not under arrest when the test was taken, it was not improper for the officer to file the complaint more than five days after the test was taken. In *Commonwealth v. Pekley,* Slip Opinion, No. 1042 Pittsburgh 1984, filed November 29, 1985, the circumstances were similar. There an accident occurred, the medics transported the driver to the hospital for treatment after being instructed by the investigating officer to get a blood alcohol test performed at the hospital. They did, the officer on going to the hospital, learned that it was 0.233% and then placed the operator under arrest for driving under the influence. Relying on the language of the Vehicle Code, 75 Pa.C.S.A. §1547, the implied consent section the court held that the results were admissible even though defendant had not consented to the taking of his blood.

ORDER OF COURT

January 5, 1986, defendant's omnibus pretrial motion to dismiss the information is denied.

STRAIT, ET AL, v. BOARD OF COMMISSIONERS OF FULTON COUNTY, ET AL, Fulton County Branch, No. 233 of 1985-C

Equity - Class Action - Real Estate Assessments - 4th and 8th Class County Assessment Law

1. An aggrieved taxpayer may not proceed into the Common Pleas court without first going through the assessment appeals board, unless his attack is upon the validity of the taxing statute.

2. The appeals process of the assessment law covers a class action as well as individual taxpayer's claims.

3. The Court may exercise equitable jurisdiction in spite of plaintiffs' failure to exhaust the statutory appeals process if he alleges a substantial constitutional question.

DeWayne Thomas Newman, Esq., Counsel for Plaintiffs

Stanley J. Kerlin, Esq., Counsel for Defendants

WALKER, J., March 6, 1986:

Plaintiffs, seventeen property owners residing in Fulton County, filed a class action suit in equity. It is alleged that their assessments were not set at the current market value or actual value as required by the Fourth to Eighth Class County Assessment Law. Therefore, the plaintiffs seek to recover back taxes allegedly owed them due to the alleged improper assessments of their respective properties.

The defendants — the Board of Commissioners of Fulton County, the Board of Assessment Appeals of Fulton County, and Maynard Gordon — filed preliminary objections to the complaint raising the following issues: (1) lack of jurisdiction; (2) failure to state a cause of action; (3) laches; (4) lack of standing; (5) insufficient pleading; and (6) impertinent pleading.

It is clear, for the reasons discussed below, that this court does not have jurisdiction over this controversy. Since the plaintiffs' class action complaint must be dismissed, the court does not find it necessary to consider the defendants' other objections.

Plaintiffs assert that their properties must be assessed at actual value, as mandated by the Fourth to Eighth Class Assessment Law at 72 P.S. §5453.602. They argue that the county's use of a unit price assessment is invalid because it does not conform to the statute. Plaintiffs allege that this improper method of assessment has caused their properties to be overassessed.

The Assessment Law, 72 P.S. §5453.701(b), clearly provides that any person aggrieved by any assessment may appeal to the tax assessment appeals board. Subsection (b)(1) provides that

> "For the purpose of assessment appeals under this act, the term 'person' shall include in addition to that provided by law, a group of two or more persons acting on behalf of a class of persons similarly situated with regard to the assessment."

An aggrieved taxpayer may not proceed into the Court of Common Pleas without first going through the assessment appeals board, unless he or she is attacking the validity of the taxing statute itself. *Narehood v. Pearson,* 374 Pa. 299, 96 A.2d 895 (1953). *Wynnefield United Presbyterian Church v. City of Philadelphia*, 348 Pa. 252, 35 A.2d 276 (1944).

Plaintiffs do not contend that 72 P.S. §5453.602 is invalid. Indeed, the plaintiffs' position is that the prescribed method of assessment provided under that section is the only fair method. Their complaint is that the method adopted by the defendants has caused them to be overassessed.

After reviewing *Narehood* and *Wynnefield United Presbyterian Church,* cited above, it is obvious that this case cannot properly be brought before the court until the assessment board of appeals has first ruled on the matter. This appeal process is the exclusive legislative remedy and it must be strictly pursued. *Concerned Taxpayers of Beaver County v. Beaver County Board of Assessment Appeals,* 75 Pa. Comm. 443, 462 A.2d 347 (1983).

Plaintiffs contend, nevertheless, that the appeal process outlined in 72 P.S. 5453.701 is inapplicable to a class action. Their argument is twofold. First, they contend that the definition of "person" under 72 P.S. §5453.701 only encompasses individual taxpayers. Secondly, they contend that the appeal process is

LEGAL NOTICES, cont.

QUIVERS: First and final account, statement of proposed distribution and notice to the creditors of Alice M. Quivers, Executrix of the Estate of Maurice L. Quivers, Sr., late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

Robert J. Woods
Clerk of Orphans' Court
9-5, 9-12, 9-19, 9-26

inappropriate for class actions because of the multiplicity of suits that would result if each taxpayer were required to file separate administrative appeals.

The court finds plaintiffs' first argument to be without merit in light of the plain language of 72 P.S. §5453.701(b)(1) which states:

> "For the purpose of assessment appeals under this act, the term 'person' shall include in addition to that provided by law, a group of two or more persons acting on behalf of a class of persons similarly situated with regard to the assessment."

Far from being an exception to the rule, class actions are specifically covered by the statute.

Plaintiffs' second argument, that a class action must be permitted in order to avoid multiple suits, is also without merit. The court in *Narehood v. Pearson*, 374 Pa. 299, 96 A.2d 895 (1953) rejected that position. In *Narehood,* supra, that taxpayers argued that the court should exercise equitable jurisdiction over a controversy involving arbitrary assessments in order to avoid numerous individual appeals. But the court pointed out that:

> "The main fallacy of this contention is that the premise is fundamentally wrong. If there be discrimination, inequities, or confiscation, the interest of all taxpayers is not identical but separate. Each individual property has a value which may depend upon its location, or market facilities, or operational costs, or other special facts; consequently all property owners, even of the same class and in the same district or area, may not have the same identical interests, nor would the same question or questions necessarily be involved in each assessment." at 305, 306.

See also *Rochester and Pittsburgh Coal Co. v. Indiana County Board of Assessment, 438 Pa. 506, 266 A.2d 78 (1970).*

The court may exercise equitable jurisdiction in spite of plaintiffs' failure to exhaust the statutory appeals process only if their action presents a substantial constitutional question and the plaintiffs demonstrate the inadequacy of their legal remedy. *Scott v. Palmerton Area School District,* 63 Pa. Comm. 528, 439 A.2d 859 (1981). This court may hear the matter in equity if both of these conditions are satisfied. *Lal v. West Chester Area School District*, 71 Pa. Comm. 236, 455 A.2d 1240 (1983).

The heart of plaintiffs' constitutional claim is that the county's method of assessment somehow deprives them of due process. Plaintiffs' counsel admitted during oral argument, however, that the statutory appeals process does afford the taxpayers sufficient notice and opportunity to be heard. The court need not rely on plaintiffs' concession, though, since it is well established that a mere challenge to the method of assessment does not rise to the level of a "substantial constitutional question." *Lal,* supra.

The lack of a "substantial consitutional question," alone, is fatal to the plaintiffs' case. If, arguendo, the plaintiffs did present a substantial constitutional question, they have still failed to demonstrate the inadequacy of their legal remedy. Again, plaintiffs' position that the appeals process is inadequate for class actions because of a possible multiplicity of suits was specifically rejected by the Commonwealth court in *Narehood*, supra.

In the final analysis, plaintiffs have not exhausted their statutory remedy, nor have they satisfied the requisite elements for the court to bypass the appeals process and exercise equitable jurisdiction. As such, plaintiffs' complaint must be dismissed.

Plaintiffs have erred in their initial choice of forum by filing their complaint in a Common Pleas court without first petitioning the tax assessment appeals board. The court simply does not have jurisdiction over the matter. Should the court attempt to exercise jurisdiction at this time, the mistake would still have to be rectified at a later date. This would only serve to compound the costs, delay, and frustration that the plaintiffs may have already experienced in their quest for relief.

ORDER OF COURT

March 6, 1986, the plaintiffs' class action suit in equity is dismissed since the Court of Common Pleas has no jurisdiction in this matter.

IN RE: ADOPTION OF ALAN P. (Termination Proceeding), Fulton County Branch, No. 61 of 1985 - OC

Involuntary Termination of Paternal Rights - Effect of Support Payments and Medical Coverage - No Contact with Child - Due Diligence

1. The mere contribution of support does not prevent termination of parental rights.

2. A mere statement of future intent to resume a relationship is ineffective against a continued course of neglect.

3. A parent must use due diligence in attempting to locate his child and this includes checking a phonebook or contacting other relatives.

4. Feelings of discomfort at visiting a child at the other parent's home is an insufficient excuse for not visiting a child.

James M. Schall, Esq., Counsel for Petitioners

DeWayne T. Newton, Esq., Counsel for Respondent

WALKER, J., February 26, 1986:

In early 1983, Harry P. and Linda S. (formerly Linda P.) divorced. Custody of Alan, their only child, was granted to Linda. From that time until April of 1985, Harry paid Linda $33 a week for support. Additionally, Alan was provided with medical insurance under Harry's work-related insurance plan. Linda remarried in May, 1984 to Eric S., and they have lived together with Alan as a family since that time.

The undisputed evidence reveals that Harry had absolutely no physical, written, or verbal contact with Alan for a period of at least one year prior to the hearing. There was considerable testimony (from Linda, her father, Eric, and both of Eric's parents) that Harry had not visited with Alan for almost two years. The fact that Alan could not identify Harry as his father at the hearing lends credibility to their statements.

In November of 1985, Eric and Linda filed a petition for involuntary termination of Harry's parental rights, as a prerequisite for adopting Alan.

The court must now determine if Harry's action (or inaction) constitutes any of the following: (a) evidence of a settled purpose to relinquish parental claims; (b) a refusal or failure to perform parental duties for over six months; or (c) a neglect or refusal causing the child to be without essential parental care, control, or subsistence. 23 Pa. C.S.A. §2511.