Local Government Law

R. Perry Sentell Jr.
LOCAL GOVERNMENT LAW
By R. Perry Sentell, Jr.*

In the legal land of Georgia local government, the activity was accelerated as usual during the survey period. The appellate courts ground their way through slightly more than 70 material decisions, and the legislature legislated some 29 mentionable measures. Again, therefore, the effort has been to provide an overview of a lively legal area.

The scheme of presentation is the usual one—with the court decisions subjectively classified as to subject matter. Only the more noteworthy legislative matters have been covered—not surveyed are local and special enactments, population statutes, and resolutions proposing amendments to the constitution but not yet ratified.

Welcome to the world of grass roots law.

I. COURT DECISIONS

A. Municipalities

Home Rule

The history of municipal home rule in Georgia is a confused and confusing one.1 Products of that history are the two statutes presently in effect—the so-called “home rule” statutes of 1962 and 1965.2 Although it is fashionable to speculate on the authorizations contained in those statutes, there also may be a restrictive side to them, and it was this possibility which was projected by the litigation transpiring during the survey period.

Jackson v. Inman3 presented a number of contests between the City of Atlanta and its chief of police.4 At the heart of these controversies was the effort of the municipality, under its “new charter” of 1973,5 to reorganize the police department.6 The plaintiff police chief’s challenge to this effort was based upon his attach against the validity of the “new charter” itself.

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4. Some three different actions were included.
6. The reorganization had been effected by municipal ordinance as authorized by the new charter.
That charter, he contended, was a special statute covering matters over which the municipality already possessed authority by virtue of the general home rule statutes, and was thus unconstitutional. In this fashion, therefore, the plaintiff sought to emphasize the restrictive effect of the home rule statutes upon the General Assembly's power to deal with individual municipalities.

In a per curiam opinion, a majority of the supreme court rejected the plaintiff's argument. Reviewing the drastic governmental changes effected by the new charter, the court concluded not only that these changes were not authorized by the home rule statutes, but that they were reserved for treatment by the General Assembly.

The General Assembly has reserved the legislative power to enact new charters for existing cities when such charters include drastic changes in the composition and form of city government and the election and terms of office of the members of the governing authority of cities as in this new charter for Atlanta.

It was immaterial that in addition to these drastic changes, the charter also contained some matters already provided for by the home rule statutes.

Therefore, we conclude that the power to adopt an entirely new charter such as the one here involved cannot be found in either or both of the present home rule statutes. Consequently, this legislative power still resides in the General Assembly under the Constitution.

Annexation

Throughout all the law of local government, no subject is more controversial than municipal annexation. Central to any annexation episode is

7. This argument proceeded under Ga. Const. art. I, §4, ¶1 (1945), Ga. Code Ann. §2-401 (Rev. 1973): "Laws of a general nature shall have uniform operation throughout the State, and no special law shall be enacted in any case for which provision has been made by an existing general law..." 8. Justice Gunter concurred specially, and Presiding Justice Nichols filed a dissenting opinion in which Justice Undercofler concurred.
9. The court viewed the change as a movement from the commission form of government to a mayor-council form of governing authority.
10. "We conclude the special 'New Charter' Act was necessary because the existing general laws did not provide sufficient authority for the City to make the fundamental changes which have been made in the city government." 232 Ga. at 569, 207 S.E.2d at 477.
11. Id. at 569-70, 207 S.E.2d at 478. "This specific power was expressly reserved by the General Assembly in the 1965 Home Rule Act and is found in Code Ann. §69-1018(a)1."
12. 232 Ga. at 570, 207 S.E.2d at 478. Having upheld the validity of the new charter, the court then proceeded to pass upon the respective contentions under it. It held that the police chief could not be suspended, and that the municipality could proceed with its reorganization.
a consideration of the nature of the territory in issue. As a result of this consideration, the law in many jurisdictions has evolved the concept of "contiguity"—the necessity of an affinity between a municipality and the territory annexed to it. 14 This concept has been strangely subdued in the history of Georgia annexation law, and, until recently, had provoked almost no litigation. The current survey period, however, witnessed the infusion of this novel issue into Georgia municipal law.15

Under attack in *Hall County Board of Education v. City of Gainesville*16 was the validity of some 17 municipal annexation ordinances, all adopted pursuant to the "100% method of annexation,"17 enacted from 1969 to 1973. These ordinances purported to annex tracts located varying distances from the original corporate limits and connected to those limits only by state highways also annexed by the municipality. As plaintiff, the county board of education contended that these tracts were noncontiguous to the municipality and that the "100% statute" did not permit the practice of selectively removing from the plaintiff's tax digest choice business parcels of land but not intervening tracts yielding low tax revenue. The trial court agreed with the plaintiff's contentions and invalidated the ordinances.

In reversing the trial judge's decision, the Georgia Supreme Court was far from unanimous18—one of the justices disqualified himself,19 another concurred only in the judgment,20 and two of the remaining five justices dissented.21 The court's opinion, apparently embodying the reasoning of three of the seven justices,22 was written by Justice Jordan, who concluded that the contiguity requirement of the "100% statute" was met when the annexed tracts "adjoin and abut directly on a street or highway which has been made a part of the corporate limits."23 The opinion agreed that such "stem" or "spoke" annexations resulted in "irregular and odd shaped city limits,"24 but did not agree that this fact invalidated the annexations. Likewise immaterial was the gaining or losing of taxable property by the concerned areas; indeed, this was the result of any annexation. Thus:

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15. Id.
17. GA. CODE ANN. §§69-902 to -903 (Supp. 1973). This statute provides that "contiguous area" shall mean any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, the right-of-way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the State of Georgia.
23. 233 Ga. at 80, 209 S.E.2d at 640.
24. Id.
In consideration of all the facts of this case we conclude that it was the intention of the General Assembly to allow annexations by municipalities by the method used in the ordinances here under review. The trial court erred in holding said ordinances invalid and in enjoining the appellant from using this method for future annexations.25

In this splintered fashion, therefore, the supreme court disposed of a novel quandary. At least under the “100% statute,” “spoke” annexations were approved, and the ramifications of this approval can only remain issues for the future.26

Elections

A greatly heralded modern idea whose time appears to have come is that of requiring candidates for elective office to reveal their financial sources. A major product of the 1974 General Assembly was the “Campaign Financing Disclosure Act,”27 an effort to bring this modern movement to Georgia. As timely as the turn may be, however, it must still take note of historic constitutional requirements, and, from the standpoint of local governments, this was the message of Fortson v. Weeks.28

In holding a portion of the 1974 statute invalid, the supreme court focused upon the constitution’s directive that “no law shall pass which refers to more than one subject matter, or contains matter different from what is expressed in the title thereof.”29 Because the statute’s title referred only to “certain State offices,” and because municipal and county officials are not state officers, the court held void the statute’s attempted inclusion of “all county and municipal elected officials.”30 In respect to candidates for Georgia local government offices, therefore, the movement was thus stayed.31

Of a considerably different flavor was the litigation arising from a municipal election contest and culminating in Campbell v. Carroll.32 There

25. Id. at 81, 209 S.E.2d at 640. Justice Hall, in his dissenting opinion, refused to read legislative intent in this fashion and charged that this court has gone from the narrow interpretation . . . to one as broad as the ocean and as loose as the goose. The result is we have satellite areas of a municipality ten or more miles from its contiguous body connected only by public means of transportation. I read no such anomaly in Code Ann. §§69-902 and 69-903. Id. at 82, 209 S.E.2d at 641.
30. 232 Ga. at 473-74, 208 S.E.2d at 71. “Therefore, ‘all county and municipal elected officials’ not being included in the title to the Act, their inclusion in the body of the Act is unconstitutional and the Act can not be enforced as to candidates seeking such offices.”
31. The court also held, however, that deletion of municipal and county officials from the statute did not render the remainder of the statute invalid.
the supreme court held that four individual voters, who were not candidates in the election in issue, possessed no standing to contest that election.\footnote{None of the candidates who were defeated in the election filed contests.}

Under the Georgia Municipal Election Code, where the election is between or among candidates for a public office, it is only one or more of those candidates that have standing to file a petition to contest the results of the election. A mere citizen-voter who was not a candidate in the election does not have such standing.\footnote{233 Ga. at 88, 209 S.E.2d at 625. The court distinguished this type of election from referendums on municipal debt or changes in the form of government and said that in the latter, citizen-voters would possess standing for a contest.}

Consequently, the court concluded, the results of the election should have been certified by the municipal governing body.

\textit{Officers and Employees}

An effort during the survey period to demonstrate that lawmakers are not above the law resulted in the case of \textit{Humphrey v. State}.\footnote{231 Ga. 855, 204 S.E.2d 603 (1974).} There a municipal councilman, arrested by state law enforcement officers and charged with soliciting a bribe, registered a number of objections with the supreme court.\footnote{231 Ga. at 859, 204 S.E.2d at 607. Along similar lines, the supreme court, in \textit{White v. State}, 233 Ga. 593, 212 S.E.2d 777 (1975), held that a municipal policeman charged with bribery was likewise not within these statutory protections.} Among its responses to those objections, the court first held that the councilman was neither a "state official" nor a "county official" within the meaning of statutes insuring service with a copy of the proposed indictment and the right to appear before the grand jury:\footnote{\textit{GA. CODE ANN.} §40-1617 (Rev. 1975); \textit{GA. CODE ANN.} §89-9908 (Rev. 1971).} "A reading of these statutes discloses that a councilman of a municipality in Georgia is simply not one of the officials covered by the statutes."\footnote{231 Ga. at 859, 204 S.E.2d at 607. Along similar lines, the supreme court, in \textit{White v. State}, 233 Ga. 593, 212 S.E.2d 777 (1975), held that a municipal policeman charged with bribery was likewise not within these statutory protections.}

The court also concluded that the councilman's arrest without a warrant was permissible because the state agents had sufficient personal knowledge of the bribe.\footnote{\textit{GA. CODE ANN.} §27-207 (Rev. 1972). Justice Ingram dissented on this point in the case. 231 Ga. at 863, 204 S.E.2d at 610.} Finally, the court upheld the use in evidence of a recorded conversation on the grounds that the other party had consented to the recording and the conversation was in furtherance of a crime.\footnote{\textit{GA. CODE ANN.} §26-3006 (Rev. 1972).}

The recurring problem of employer-employee relations in government
was manifested by Aycock v. Police Committee, an appeal of a discharged municipal policeman. At issue was the constitutionality of departmental rules which prohibited public criticism of “the official action of a superior officer.” The court of appeals upheld the validity of these rules via the following rationale:

The rules in question here are reasonable and required in order to maintain good order, discipline and efficiency within a police department in order to accomplish its mission of public safety. To say that appellant was denied his freedom of speech by holding the rules in issue to be unconstitutional would enable a policeman to engage in the rankest form of insubordination, which would lead to the complete disruption and destruction of the relationship between the superior and subordinate with the concomitant impairment of an effective municipal police department.

The court also held that the appellant had not been denied procedural due process when, although he did not receive a hearing prior to his suspension, he was afforded a hearing upon his appeal.

Legislation

Of extreme importance in the development of municipal law is the special or local enactment of the General Assembly, and a substantial body of case law has evolved concerning it. One of the classic commands of the Georgia Constitution is that “no special law shall be enacted in any case for which provision has been made by an existing general law.” This command, it has now been established, applies not only to special statutes enacted by the General Assembly, but also to legislation adopted by municipal governing authorities. Reconfirming this point was the decision by

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42. Id. at 884, 212 S.E.2d at 458.
43. Id.
44. Said the court: “If any or all of his appeals had merit he would have been restored to his former rank and awarded the pay he lost as a result of the suspensions.” Id.
the court of appeals in Edwards v. Bullard[48] declaring unconstitutional a
municipal ordinance requiring a complete stop by vehicles entering a right-
of-way highway. [49] This ordinance, the court held, encroached upon and
was in conflict with general state traffic statutes, [50] and thus violated the
constitutional command. Finally, the court further upheld the trial judge's
action in striking the ordinance from the pleadings in the case after having
declared its unconstitutionality:

"The time with reference to which the constitutionality of an act is to
be determined is the date of its passage by the enacting body . . . and if
it is unconstitutional then it is forever void." [51]

At the local legislative level, the executive power of veto is ordinarily one
which must be expressly authorized and which, when so authorized, will
not be lightly construed by the courts. [52] Accordingly, in Haight v. City of
Blue Ridge, [53] the court of appeals held the mayor to possess no power to
veto the council's appointment of personnel. [54] This was true, the court
concluded, even though the municipal charter empowered the mayor and
council to employ or appoint personnel and conferred upon the mayor the
power to veto ordinances and resolutions. As a rationale, the court adopted
the trial judge's reasoning: "The Charter plainly states that the Mayor
shall have veto power over ordinances and resolutions but this Court does
not view this as extending to other ministerial or administrative actions
of the council." [55]

Contracts

Of the considerable litigation involving municipalities and their contrac-
tual obligations, some is unique in nature and dramatic in outcome. [56] Not
of this order, however, were the two controversies which materialized in the
supreme court during the survey period and which focused upon more
unglamorous contractual considerations.

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49. The action was one for personal injuries resulting from an automobile collision.
51. 131 Ga. App. at 36, 205 S.E.2d at 117. For discussion of this principle, see Sentell,
52. See Sentell, The Legislative Process in Georgia Local Government Law, 5 GA. L. REV.
1973).
54. The court acted upon a petition of the councilmen requesting construction of the
municipal charter.
55. 132 Ga. App. at 547, 208 S.E.2d at 359.
56. See, e.g., Sentell, Local Government and Contracts that Bind, 3 GA. L. REV. 546
1973); Sentell, Binding Contracts in Georgia Local Government Law: Recent Perspectives,
In *R. H. Coody & Associates, Inc. v. City of Dublin*, a contractor sought recovery for the increased cost of materials used in completing a municipal school building and required by a municipal ordinance and change order. The court upheld the plaintiff's right of recovery, discounting the fact that a provision of the contract requiring compliance with all municipal ordinances had been stricken by mutual mistake.

The court described the issue presented by *Bethsaida Development, Inc. v. Charter Land & Housing Corp.* as follows:

[W]hether the City . . ., plaintiff in interpleader, should refund to Bethsaida . . . $47,634.91 paid by Bethsaida to the city to induce the passage of an ordinance for the construction of water mains benefiting a subdivision development, or whether the city should retain the funds and build the water mains, the benefit of which will now flow to the Fulton National Bank of Atlanta . . . which has foreclosed on the property, and Charter Land and Housing Corporation . . . to which Fulton Bank has sold the real property in question.

The court resolved this issue by holding that any rights which the developer might claim from the agreement with the municipality were held by the municipality in constructive trust for the bank or the bank's subsequent purchaser:

[I]t would plainly be inequitable to allow Bethsaida to receive from the city a refund of money which was originally advanced to Bethsaida by the Fulton Bank to be spent solely for development purposes.

**Powers**

If a scorecard had been kept throughout the annals of litigation in local government law, it would unquestionably demonstrate the susceptibility to controversy of the subject of governmental power. No subject is more important both to the local government and to the citizen. To act, the government must point to power; to challenge, the citizen must point to lack of power. Down through the years, therefore—no matter what the immediate question for resolution—case after case has presented the basic issue of power.

The power claimed by the municipal clerk in *Baldwin v. Ariail* was that of refusing to permit the plaintiff's inspection of the records of a specified

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58. "When paragraph 4.07B is considered as a part of the contract the plaintiff corporation is entitled to recover for the 'change' which required the more expensive metallic sheathed electrical cable to be installed." *Id.* at 235, 206 S.E.2d at 26.
60. *Id.* at 641, 208 S.E.2d at 463.
61. *Id.* at 643, 208 S.E.2d at 464. The court emphasized that it did not decide whether the arrangement between the developer and the municipality constituted a contract.
municipal election. Relying upon express provisions of general statutory law, the supreme court reversed a summary judgment against the plaintiff. These statutes vested the clerk with no discretion over the matter, said the court, but rather imposed a mandatory duty. Thus, it could not be said as a matter of law that the plaintiff had not set forth a claim for relief.

A more focused facet of the power domain is the municipality’s effort to prohibit or regulate the individual’s conduct of a business. This was the facet framed by Page v. City of Hapeville, an attempt to reverse the municipality’s revocation of a whiskey pouring license. Rejecting that attempt, the court of appeals held revocation under the municipal ordinance not to depend upon actual conviction of legal violations: “It is therefore clear that under this ordinance the City of Hapeville is not required to show a court judgment of conviction as long as there is competent evidence sufficient to constitute a legal showing of violations.” The court also upheld the municipality’s police power to require customers to be seated when served. “Obviously,” said the court, “this was done to avoid the problems known to exist with saloons and barrooms.”

The issue of power presented by Frier v. City of Douglas was conceded to be a novel one, and was phrased by the plaintiff as follows: “Does the city have the right or power to furnish electricity to plaintiff against his will, or does a person have a right to live in the city without electrical current?” In dealing with this issue, the supreme court emphasized that the plaintiff’s action was for termination of electrical services and not for change of suppliers. Secondly, the court construed a municipal ordinance to require that electrical connections be made in a safe manner but not to require that electricity be furnished. Consequently, the plaintiff-homeowner was held entitled to an injunction:

Certainly in this day where citizens are fearful of further erosion of their rights, and absent some compelling public health or other valid reason, a man who wants to live without electricity in the wires of his house should have the right to do so, whether or not our Constitution says he has a freedom from electricity.

67. Id. at 371, 208 S.E.2d at 144.
68. Id. at 372, 208 S.E.2d at 145. The court likewise rejected contentions of “void for vagueness” and “invidious discrimination.”
70. Id. at 776, 213 S.E.2d at 609.
71. The court noted that had the litigation involved competing suppliers or change of suppliers, the municipality might well have claimed exclusive service rights under the 1973 Territorial Electric Service Act. Ga. Laws, 1973, p. 200.
72. “As we read the ordinance in question it is a safety measure as opposed to a monopoly enactment. . . .” 233 Ga. at 778, 213 S.E.2d at 610.
73. Id. at 779, 213 S.E.2d at 610.
Finally, power is a two-edged sword: although it is often exercised by the municipality, at times it may be exercised over the municipality. It was in this latter context that the General Assembly enacted the 1973 Georgia Territorial Electric Service Act, an effort to provide efficient retail electric service by assigning geographic areas to electric suppliers.4 In City of Calhoun v. North Georgia Electric Membership Corp.,5 municipalities and consumers challenged the validity of this statute upon an assortment of constitutional claims. In a per curiam opinion, a majority of the Georgia Supreme Court rejected those claims and sustained the statute’s validity.6

Among the court’s holdings were determinations that electric systems owned and operated by municipalities were not immune to regulation by the General Assembly; that the statute was not an unlawful attempt to fix charges of municipal utilities; that “line” classifications employed by the statute were reasonably related to its purposes; that basing assignments of service areas primarily upon location of existing lines did not produce invalid nonuniformity; that the statute did not effect an invalid restriction of competition; and that the Public Service Commission was not the recipient of unlawfully delegated legislative powers.7

Liability

The point most forcefully demonstrated by the period under examination is the frantic frequency with which liability is sought to be imposed upon Georgia municipalities.8 The volume of litigation was almost overwhelming, and the claims pressed were of an endless variety.

The first observation which might be made is that the function classification approach continues apace in the current Georgia law of municipal tort liability.9 In a series of recent decisions, the court of appeals has routinely drawn the line between “governmental” and “proprietary” or “ministerial” activities. On the governmental side was the municipality’s construction of a drainage and sewerage ditch upon the plaintiff’s property in Turk v. City of Rome.5 So classified, negligence in the construction of that ditch could not result in municipal tort liability.81 This same result

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76. Justice Jordan was disqualified, and Justice Ingram wrote a dissenting opinion.
77. “Accordingly, for the reasons set forth above, based upon the applicable law and in light of the evidence, we conclude that the appellants have failed to show that the Georgia Territorial Electric Service Act is clearly or palpably unconstitutional for any reason assigned.” 233 Ga. at 771, 213 S.E.2d at 605.
79. Id. at 4-53.
81. The claim was for destruction of property in the construction of the ditch and for flooding. The court did indicate that liability might be imposed under the theories of “nuisance” or “taking or damaging” of private property for public purposes. See discussion, infra.
was reached in *City of Macon v. Powell,* involving a collision between the plaintiff's automobile and one driven by a municipal airport security officer. Although the operation of the airport, leased to private individuals for a profit, might be "proprietary," the security officer had been performing such duties as those carried out by policemen or firemen. For his negligent performance of those duties, the municipality was immune from liability.

Determined to be on the other side of the line was the factual situation presented by *City of Atlanta v. Roberts.* There the plaintiff's automobile collided with a disabled municipal garbage truck which had been left in the street overnight. The court reasoned that although garbage collection was governmental in nature, "the municipality was under a ministerial duty to keep its streets free of obstructions, particularly those of its own making." For violation of that duty, the municipality was not immune from liability.

A second major impression derived from the litigation of the period concerns the confusion now rampant around municipal "nuisances." Historically, when the municipality's offending conduct can be denominated a "nuisance," the governmental function immunity is discarded and the municipality is exposed to the claim of the damaged party. In 1968, the Georgia Supreme Court decided *Town of Fort Oglethorpe v. Phillips,* a case involving a malfunctioning traffic signal—in which it indicated surprising receptiveness to the argument of nuisance liability. Since then, the court of appeals has been floundering in a sea of nuisance litigation; and it is rather apparent that the concept is now out of control.

Again, the current judicial exercise is that of distinguishing between those situations which rise to the level of a municipality-maintained nuisance and those which do not. For instance, the case of *Hutcheson v. City of Jesup* was characterized by the court as "another in the progeny stemming from *Town of Fort Oglethorpe.* . . ." Upheld, therefore, was the following instruction by the trial judge:

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83. The court reversed the trial judge's refusal to grant the municipality's motion for summary judgment.
85. The evidence was in conflict over whether proper safety devices had been employed by the municipality.
86. 133 Ga. App. at 587, 211 S.E.2d at 616.
87. The trial judge's denial of summary judgment for the municipality was affirmed.
89. 224 Ga. 834, 165 S.E.2d 141 (1968).
90. For discussion of the extent to which the promise of *Town of Fort Oglethorpe* has been fulfilled, *see Sentell, Municipal Liability in Georgia: The "Nuisance" Nuisance,* 12 Ga. St. B.J. 11 (1975).
92. *Id.* at 84, 207 S.E.2d at 548.
"[I]f . . . the City . . . had knowledge of the allegedly defective condition of the traffic light at this intersection, and . . . these officials did not repair this defect within a reasonable time, but continued to allow it to operate defectively, they would be guilty of a nuisance dangerous to life and health."\textsuperscript{93}

Viewed in a similar vein were the complaints by victims of an intersection collision in \textit{Coppedge v. Columbus}.\textsuperscript{94} The thrust of those complaints was that to the knowledge of the governing authority a stop sign had been partially obscured by foliage for several weeks and had resulted in numerous collisions at the intersection.\textsuperscript{95} A final instance on the nuisance side of the line was the municipality's construction of a drainage ditch in \textit{Turk v. City of Rome}:\textsuperscript{96}

Even though the construction, installation and maintenance of a sewer-drainage system, including that for surface water, is a governmental function, a municipal corporation can nevertheless be held liable with respect to these activities on the theory of nuisance. . . . \textsuperscript{97}

More interesting, perhaps, were those instances in which the court posited the point beyond which it would not go. In \textit{Hancock v. City of Dalton},\textsuperscript{98} for instance, the "sole question" for consideration was whether the municipality had maintained a nuisance by failing to enforce its ordinance requiring safety signals at railroad crossings, and breaching its agreement with the railroad to pay a portion of the costs of installing signals.\textsuperscript{99} Holding first that the ordinance imposed no duty upon the municipality to maintain signals, the court then drew the line on nuisance:

\begin{itemize}
  \item \textsuperscript{93} \textit{Id.} at 87, 207 S.E.2d at 549.
  \item \textsuperscript{94} 134 Ga. App. 5, 213 S.E.2d 144 (1975).
  \item \textsuperscript{95} Consequently, said the court, "under the authority of Town of Fort Oglethorpe . . ., by which we are bound, we hold that the trial court erred in dismissing the complaints, answers, and cross claim." \textit{Id.} at 8, 213 S.E.2d at 147.
  \item \textsuperscript{96} 133 Ga. App. 886, 212 S.E.2d 459 (1975). The case of Gleaton v. City of Atlanta, 131 Ga. App. 399, 206 S.E.2d 46 (1974), similarly involved a claim for property damage arising from the overflow of a municipal sewer in which the court discussed the problem of the statute of limitations, in part, as follows:
    \begin{quote}
      There was also testimony that the city was notified from time to time over the years and failed to abate the nuisance. The evidence shows a continuing trespass on plaintiff's land begun more than four years before suit was filed; but there was sufficient testimony as to value during the four years immediately prior to suit for consideration by the jury.
    \end{quote}
    \textit{Id.} at 402-03, 206 S.E.2d at 49.
  \item \textsuperscript{97} 133 Ga. App. at 888, 212 S.E.2d at 461. The court thus concluded that the trial judge's grant of a summary judgment for the municipality must be reversed. The court also indicated that liability here might be established upon the theory of municipal condemnation: see R. P. \textsc{S}ente\textsuperscript{ll}, \textsc{The Law of Municipal Tort Liability in Georgia} 134-45 (2d ed. 1972).
  \item \textsuperscript{98} 131 Ga. App. 178, 205 S.E.2d 470 (1974).
  \item \textsuperscript{99} The action was for the wrongful death of one killed at a train crossing inside the municipal limits.
\end{itemize}
In *Town of Fort Oglethorpe v. Phillips*, the municipality by failing to repair a traffic light which was known to be defective was found to be maintaining a nuisance. Here we have a classic case of non-action by the city, there was no traffic light in place and the question is whether an alleged hazardous condition brought about by the absence of a traffic light constituted the maintenance of a nuisance. *Town of Fort Oglethorpe* did not go this far and we find no authority to extend a nuisance principle to a situation of this sort.100

Equally forceful was the distinction formulated by a majority of the court in *City of Atlanta v. Roberts*,101 an action for a collision with a disabled municipal garbage truck which had been left in the street overnight. The court upheld a partial summary judgment for the municipality via the following rationale:102

In the *Town of Ft. Oglethorpe* case it appeared there were defects in a traffic light for more than a period of two weeks which had caused six collisions at an intersection, during which time the defendant city had knowledge of the situation. Here, we have an obstruction of a city street for a period of four hours rather than a continuous malfunctioning signal light continuously causing injury and damage to others.103

Finally, the court discovered an even more basic difference in *Sheley v. Board of Public Education*, a wrongful death action against an independent school system for the drowning of a child in the school's sanitary septic tank. A majority of the court refused to apply the *Town of Fort Oglethorpe* precept to this situation for two primary reasons.105 First, the facts were viewed to be substantially different—the operation of the school could not be equated to the operation of a traffic light, discovery of the tank cover's removal had been reported on the day of the drowning, and no other person had been injured by the tank. Secondly, the court viewed the status of the school board as "greatly different" from that of a municipality, and said that both it and the supreme court "had declined to apply the doctrine of the Town of Ft. Oglethorpe . . . in cases where tort liability was attempted to be fixed against governmental subdivisions other than municipalities."106

At this point, therefore, it is difficult to conjecture as to when the "nuisance" nuisance will run its course.

Normally to be anticipated during any survey period is further elaboration of the already substantial body of case law on the "ante litem notice"
requirement. Rather surprisingly, therefore, the only decision here to be reported on the point is *Copeland v. Young*, an action for damages arising from the municipality's alleged destruction of the plaintiff's property under authority of the municipal housing code. Summarily reconfirming a well established point, the court upheld a dismissal of the action by simply noting the plaintiff's concession that he had failed to afford the municipality the necessary notice.

*Pittman v. City of Jesup* presented an action by the seller against the municipal purchaser for failure to construct a road and sewer line upon the property conveyed. The supreme court examined the deed in issue and noted its provision that upon the municipality's abandonment of the property for the stated purposes, it would revert to the grantor. Relying upon that provision, the court affirmed a summary judgment for the municipality, quoting the following statutory prohibition: "Where municipal corporations are not required by statute to perform an act, they may not be held liable for exercising their discretion in failing to perform the same."

A fitting benediction for the period was the Georgia Supreme Court's reassessment of the rule of governmental immunity in this state. Granting certiorari in two decisions by the court of appeals, the supreme court traced the origin and ratification of the 1974 amendment to the state constitution authorizing the General Assembly to create a "State Court of Claims." Pointing up that amendment's express retention of sovereign immunity, the court issued the following pronouncement for the future:

Because of the adoption of this constitutional amendment, and it is now effective as a part of our Constitution, we hold that the immunity rule as it has heretofore existed in this state cannot be abrogated or modified by

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109. "It is conceded by appellant that no ante litem notice was given to the city, as required under the provisions of Code Ann. §69-308, and for this reason, we conclude that as to the city the judgment was correct." Id. at 55, 209 S.E.2d at 720.


111. The action was for either specific performance or damages for breach of the agreement.

112. GA. CODE ANN. §69-302 (1933). The court also quoted GA. CODE ANN. §69-202 (Rev. 1967), that "[o]ne council may not by an ordinance bind itself or its successors so as to prevent free legislation in matters of municipal government," and GA. CODE ANN. §69-203 (1933), providing that equity will not interfere with municipal management of property if discretion is exercised in good faith.


this court. The immunity rule now has constitutional status, and solutions
to the inequitable problems that it has posed and continues to pose must
now be effected by the General Assembly.\(^{116}\)

Zoning

Well established is the point that municipal zoning constitutes a spawn-
ing ground for controversy over governmental discretion. Both the nature
of the subject and the frequency with which it is treated by municipalities
are conducive to this result.\(^{116}\) Again during the period under scrutiny these
points were reconfirmed.

In order to complain of a municipality's zoning decisions, one must
possess a sufficient interest in the subject of those decisions. What
amounts to an interest which is sufficient was the issue highlighted by the
court of appeals in Donnelly v. Kuntz.\(^{117}\) There the court rather summarily
reiterated a property owner's appeal from the municipality's grant of a vari-
cance to adjoining property, with the following observation:

> It is argued that appellant's adjoining property would have less resale
value as a result of the granting of the variance. It is not alleged nor does
the record disclose that the appellant would suffer any special damages
so as to constitute a substantial interest which would entitle him to appeal
the decision of the board.\(^{118}\)

Enjoying slightly more success, but in a different context, was the appel-
ellant in Finch v. City of Atlanta.\(^{118}\) There the plaintiff sought to enjoin the
municipality's prosecutions of his zoning violations, and the trial court had
dismissed his petition.\(^{118}\) Reversing that dismissal, the supreme court con-
cluded that the evidence failed to show affirmatively whether the plain-
tiff's business had been interrupted by the municipality's prosecutions.
Because of this, reasoned the court, neither an interlocutory injunction nor
a dismissal was appropriate in the proceeding, and "the plaintiff here is
titled to have his complaint heard at a final hearing."\(^{118}\)

Finally, House v. James\(^{119}\) confronted the supreme court with a conflict
between municipal zoning enactments and restrictive covenants.\(^{120}\) Upon

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Nichols dissented.

\(^{116}\) For discussion and an effort at analysis, see Sentell, Discretion in Georgia Local


\(^{118}\) Id. at 223, 207 S.E.2d at 616-17.


\(^{120}\) The violation consisted of maintaining a multi-family dwelling in a single family
area, and the plaintiff's complaint was of alleged discriminatory enforcement.

\(^{121}\) 232 Ga. at 416, 207 S.E.2d at 48.


\(^{123}\) The action was to enjoin the use of a house as a law office contrary to recorded
restrictive covenants in 1925, but approved by the local planning and zoning commission.
the basis of general statutory provision, the court held that "restrictive
covenants which have run more than twenty years within a municipality
or county in which zoning laws have been in effect for more than twenty
years are rendered unenforceable . . . ." In arriving at this determina-
tion, the court rejected the contentions that the statute could not apply to
covenants created prior to its adoption, and that such applicability would
violate constitutional prohibitions against impairing the obligation of con-
tracts.

B. Counties

Elections

Two decisions by the supreme court focused not primarily upon the
election of county commissioners but upon whether commissioners had
vacated their office following election. In Martin v. Moore, the court
noted evidence of the commissioner's absence from the county for substan-
tial periods of time, as well as time spent tending to the duties of his
office. The court then held this evidence at least sufficient to establish a
jury question as to whether the commissioner had removed himself from
the county and vacated his office. Somewhat similar was the controversy
manifested by Chandler v. Strong, a quo warranto proceeding against a
commissioner who had moved his residence from one district in the county
to another. Although a local statute provided that "in order to represent a
district a person must be a resident of said district," it also specified that
"all five members, however, shall be elected by the voters of the entire
county." Upholding the trial judge's dismissal of the complaint, the
court said that the commissioner "was elected from such area by the entire
county to represent the county as a whole." Accordingly, where commis-
ioners

are elected from districts by the entire electorate of the county, in the
absence of a specific provision of the local Act creating such board, their
office is not vacated by removing their residence from the area from which
they are elected and into another area of the county.

lands to certain uses shall not run for more than twenty years in municipalities which have
adopted zoning laws, nor in those areas in counties for which zoning laws have been adopted."
125. 232 Ga. at 445, 207 S.E.2d at 203.
126. This was the position of Justices Undercofler and Nichols in dissent.
128. The absence had occurred while the commissioner was taking part in an out-of-state
training program for his employer.
129. The jury had already concluded that the office had been vacated.
132. 233 Ga. at 144, 210 S.E.2d at 692.
133. Id. One other decision which might be noted was Carroll v. Cates, 134 Ga. App. 10,
213 S.E.2d 120 (1975), in which the court of appeals held that "in actions brought to contest
A persistent problem at any level of government is that of self-interest: the danger that the governmental officer or agent will misuse his public position for the benefit of his private interests and to the detriment of those of the public. That a Georgia county does not escape this problem was the point manifested by Olley Valley Estates, Inc. v. Fussell, an action challenging the validity of a county re-zoning measure. After holding that the evidence demanded a rehearing by the superior court so that all interested parties could present their contentions, the supreme court then proceeded to decide certain "questions of law" central to the controversy. One of these the court designated as "the standard under which a zoning commissioner may be determined to be disqualified from voting on a particular matter." In revealing this standard, the court first determined that zoning is a "quasi-legislative" function rather than a "quasi-judicial" one. Even so, a county commissioner may still be disqualified from voting under the following self-interest standard:

The question the superior court must answer is whether, under all the evidence, Commissioner Smith had a direct or indirect financial interest in the outcome of the zoning vote—an interest which was not shared by the public generally, and which was more than remote or speculative.

In 1968, the General Assembly sought to deal with one phase of the self-interest problem by declaring to be criminal conduct the act of any officer or employee selling any "personal property" to his political subdivision. In DeFoor v. State, one of the questions litigated was whether this statute covered the conduct of a county commissioner who was charged with

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136. The action was one for an injunction.
137. 232 Ga. at 780, 208 S.E.2d at 803.
138. Id.
139. "In any event, labeling a zoning or re-zoning function 'quasi-legislative' will not terminate the inquiry into a commissioner's disqualification if he has a financial interest in the subject on which he is voting." Id. at 782, 208 S.E.2d at 804.
140. Id. at 784, 208 S.E.2d at 805. Other points decided by the court were that the appellees were not precluded from raising the disqualification de novo in the superior court, and that the trial court had not erred in refusing to dismiss the action against the commissioners individually.
selling “services” to his county.\textsuperscript{143} Holding that it did not,\textsuperscript{144} the supreme court relied upon the points that the statute modified the term “property” by the word “personal,” and that criminal statutes must be strictly construed.\textsuperscript{145}

A second worrisome problem particularly pertinent to governmental officers and employees emanates from their removal and discharge. That a Georgia county is also susceptible to this problem was the point made by at least two supreme court decisions during the survey period. \textit{Kirton v. Biggers}\textsuperscript{146} presented an effort by county commissioners to remove the plaintiff tax assessor from office, with the plaintiff challenging the constitutionality of the proceedings. The supreme court sustained the validity of the removal statute in issue by construing its provision for removal “for cause shown”\textsuperscript{147} to necessarily imply the requirement of notice and hearing.\textsuperscript{148} Because no notice and hearing had here been provided by the commissioners, the court declared the attempted removal of the tax assessor to be void.\textsuperscript{149}

In a similar vein, the discharged employee in \textit{Brownlee v. Williams}\textsuperscript{150} registered a number of objections to the proceedings of the county civil service board.\textsuperscript{151} The court held not violative of either due process or equal protection the civil service statute’s provision for a hearing following, rather than prior to, the discharge.\textsuperscript{152} Also cleared of the charge of unconstitutionality was the point that the appointing authority had been represented by one county attorney and the civil service board had been represented by another.\textsuperscript{153} Finally, however, the court did find it objectionable that the initial burden of proof at the hearing had been placed upon the

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\textsuperscript{143} Another point decided was that indictments charging the commissioner with theft by taking by appropriating county money to his possession were not contradictory in alleging that he drew and cashed checks.

\textsuperscript{144} This decision reversed that of the court of appeals in \textit{DeFoor v. State}, 131 Ga. App. 767, 206 S.E.2d 713 (1974).

\textsuperscript{145} Justice Hall dissented on this point.

The court of appeals rendered two summary decisions during the survey period in respect to alleged malpractice by county officers. In \textit{Roberts v. State}, 131 Ga. App. 316, 205 S.E.2d 494 (1974)—an action against a county police officer for attempting to influence the county solicitor—the court concluded that the evidence did not support the charge when the solicitor was not in office at that time and would not testify that when he later assumed office the defendant attempted to influence him. In \textit{Holloman v. State}, 133 Ga. App. 275, 211 S.E.2d 312 (1974), an action against county commissioners for illegally making a cost-plus contract, the court concluded that the two-year period of limitations precluded prosecution.

\textsuperscript{146} 232 Ga. 223, 206 S.E.2d 33 (1974).

\textsuperscript{147} \textit{GA. CODE ANN.} §92-6904 (Rev. 1974).

\textsuperscript{148} The court conceded the invalidity of a removal statute which did not provide for notice and hearing.

\textsuperscript{149} The court refused to enjoin future attempts at removal.

\textsuperscript{150} 233 Ga. 548, 212 S.E.2d 359 (1975).

\textsuperscript{151} The employee, a county right-of-way agent, had been discharged on grounds of alleged conflicts of interest.

\textsuperscript{152} The statute provided for notice prior to the discharge and hearing afterwards.

\textsuperscript{153} The court held that the record did not show a resulting invalid bias or prejudice.
employee rather than the appointing authority.\textsuperscript{154} For this reason, the hearing was declared a nullity.

A final frustration respecting county officers and employees is that of conflict among them. This frustration was well represented by two recent cases in which the supreme court attempted to arbitrate conflicting claims between county commissioners and a county sheriff. In \textit{Wolfe v. Huff} (No. 1)\textsuperscript{155} the sheriff sought to enjoin the commissioners from creating a new county police force, and the trial judge had issued a temporary injunction on three fronts.\textsuperscript{156} Reviewing this injunction, the supreme court agreed that "the commissioners could not divest the sheriff of his power and duty to enforce the laws and preserve the peace."\textsuperscript{157} Neither could the commissioners prevent the new police force "from cooperating with the sheriff in the enforcement of the laws and the preservation of the peace" in the county.\textsuperscript{158} The court drew the line, however, in regard to the use of county law enforcement equipment. Because the commissioners possess fiscal authority and responsibility for such equipment, the court reasoned, "they must also have authority to control its use."\textsuperscript{159} Consequently, the judge had erred in enjoining the commissioners from denying use of the equipment to the sheriff.\textsuperscript{160}

Further proceedings in the county resulted in the trial judge's issuance of a final judgment, and the correctness of that judgment culminated in \textit{Wolfe v. Huff} (No. 2).\textsuperscript{161} There the supreme court upheld the finding that the commissioners had invalidly removed from the sheriff's proposed budget all funds for law enforcement purposes. Accordingly, the court sustained the judge's requirement that the commissioners adopt a budget "providing the funding and equipment necessary to assist the sheriff in performing the official duties of his office."\textsuperscript{162}

\textit{Legislation}

At the county level too the local or special statute is of critical importance, and constitutional requirements concerning it are much litigated. In \textit{Lance v. Stepp},\textsuperscript{163} for instance, the supreme court invalidated a statute which purported to increase the number of county commissioners from three to five and to provide for the initial appointment of the additional

\textsuperscript{154} The court held the statute to contemplate the appointing authority's initial burden to prove its charges against the employee.
\textsuperscript{155} 232 Ga. 44, 205 S.E.2d 254 (1974).
\textsuperscript{156} He did not enjoin the creation of the new police force.
\textsuperscript{157} 232 Ga. at 45, 205 S.E.2d at 255.
\textsuperscript{158} \textit{Id.} at 46, 205 S.E.2d at 256.
\textsuperscript{159} \textit{Id.} at 46, 205 S.E.2d at 255.
\textsuperscript{160} The court pointed out that the county's budget for the sheriff's office included equipment.
\textsuperscript{162} \textit{Id.} at 164, 210 S.E.2d at 701.
\textsuperscript{163} 232 Ga. 675, 208 S.E.2d 559 (1974).
The court said that "[i]n our opinion, when new positions on a county board of commissioners are created they must be filled by election." In Stepp v. Lance, a second appearance of the same controversy, the court further held invalid a provision of the local statute which empowered the chairman of the board of commissioners to approve all county expenditures. "Clearly," said the court, "this was not referred to in the advertised notice of intention to introduce local legislation.

Another important ramification of the local or special statute is its relationship to general legislation, and this was the matter interestingly dealt with by Medical Association of Georgia v. Joint Board of Tax Assessors. The immediate question presented was whether the board could appeal from an arbitration award entered after assessment, and the answer depended upon the presence or absence of statutory authorization. In 1958, the local statute creating the board was amended to adopt by reference a general statute which, at that time, made no provision for an appeal. In 1969, however, the general statute was amended to allow for an appeal.

After discussing the general rule in respect to "reference statutes," the court of appeals concluded as follows:

We therefore hold that the 1958 Act adopted the Code section in question only as it was constituted at that time and did not include future amendments. Hence, there was no authorization for the instant appeal to the superior court.

Only a few days earlier, the supreme court had employed a similar approach.

164. This appointment was to be made by superior court judges, and there was to be an election at the next general election.


When any local law shall add any member or members to any municipal or county governing authority, the members of which are elected by the people, such local law must provide that the member or members so added must be elected by the qualified voters of the political subdivision affected under such rules as the General Assembly may in said law provide.

The court said that under this provision appointment would be authorized only when there is a vacancy in an existing office.


168. 233 Ga. at 359, 211 S.E.2d at 312.


172. 132 Ga. App. at 190, 207 S.E.2d at 674. The court construed the 1958 statute's reference to the general statute "as amended" to mean as amended as of 1958.
analysis in resolving an analogous issue. Boynton v. Lenox Square, Inc.\textsuperscript{173} presented another controversy over tax assessments and focused on the issue of whether arbitration was the appropriate procedure. The court noted that under authority of a population amendment to the constitution,\textsuperscript{174} a local statute had created the joint board of assessors and, in 1958, adopted by reference a general statute on arbitration.\textsuperscript{173} The general statute had then been repealed in 1972, arbitration had been abolished for county boards of assessors, and a new contest procedure had been established.\textsuperscript{176} In this context, the supreme court held that the procedures for the joint board were not affected by the 1972 abolition of arbitration for county boards. Again, the repeal of the general statute was not determinative of the issue:

We hold that the 1958 special statute in this case, which adopted Code §92-6912, was not repealed either expressly or by implication by the enactment of the 1972 statute which repealed Code §92-6912.\textsuperscript{177}

Thus, arbitration remained the appropriate procedure.

Finally, two decisions dealt with the legislative process at the county level.\textsuperscript{178} In Stepp v. Lance,\textsuperscript{179} the court of appeals held that unless expressly provided by statute, a majority of the three-member board of commissioners would constitute a quorum, and the chairman of the commission possessed no power of veto. "It follows," concluded the court,

that a resolution properly presented to the commissioners as a whole and voted into being by two of them, the chairman voting against, is a resolution properly passed by a majority of the board.\textsuperscript{180}

The supreme court adopted similar reasoning in Vaughan v. Duke\textsuperscript{181} to invalidate a county rezoning ordinance. There the applicable statute expressly provided that two members of the board would constitute a quorum, and the court interpreted this direction to mean qualified members.\textsuperscript{182}

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174. Ga. Laws, 1952, p. 591. The court also upheld the validity of the method in which this amendment had been presented to and ratified by the voters.
180. Id. at 194-95, 205 S.E.2d at 492.
182. The required public hearing had been attended by one qualified commissioner and by one commissioner who was disqualified, although the latter did not participate nor vote.
\end{flushright}
Based upon this interpretation, the court could then conclude that "the public hearing on the rezoning application here was invalid because it was held by only one qualified member of the board." 183

Roads

Two decisions remarkably devoid of excitement were rendered by the supreme court on the subject of public roads. In Doby v. Brown, 184 the court affirmed a jury's discovery of a road by noting that the land had been so used by the public for as long as 60 years, that the county had previously issued an order that it remain a public road, and that the county had maintained the road until three or four years preceding the litigation. 185 Thus, the court held implied dedication and acceptance to be present. 186 Tiringly reminiscent was Jackson v. McIntosh 187 in which the court again upheld a jury's declaration of a road. There the evidence was held to show oral dedication and county grading and maintenance for a period of twenty continuous years. Accordingly, implied dedication again held sway, and a landowner's contentions of a county trespass were rejected. 188

Taxation

The considerable volume of litigation over county taxation continued unabated during the past year. 189 Although most of the activity centered around property taxes, the county occupation levy was the point of focus in Richmond County Business Association v. Richmond County. 190 There county ordinances imposing occupation taxes on businesses located in unincorporated areas were challenged on two fronts. First, the supreme court rejected the challenge to the ratification of the local amendment to the constitution which authorized those ordinances. By reasoning that an "unincorporated area" of a county is not a "political subdivision," the court concluded that the ratification election could not be restricted only to that area. 191 Secondly, the court rebutted the contention that by restricting the expenditure of funds collected to the unincorporated area, the ordinance violated the constitution's command that taxes not be allocated "for any particular purpose." 192

We hold that the allocation of county revenue for expenditure in a

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183. 232 Ga. at 546, 207 S.E.2d at 510.
185. The action was one to mandamus the county to repair and maintain the road.
186. Designated as "controlling" was GA. CODE ANN. §85-410 (Rev. 1970).
188. The plaintiffs had sought both damages and an injunction.
189. See also Sentell, Local Government Law, 26 MERCER L. REV. 143, 161 (1974).
191. Id. at 463, 207 S.E.2d at 452.
particular area of the county is not allocation for "any particular purpose" within the meaning of this constitutional language.\textsuperscript{193}

In the realm of property taxation, no question is more basic than the nature of the interest subject to taxation. Thus, in \textit{Camp v. Delta Air Lines, Inc.},\textsuperscript{194} the court invalidated a county’s effort to tax an airline’s leasehold interest in space which the airline had rented in a municipal airport. The court conceded that a lease for more than five years presumptively created an estate for years in the lessee,\textsuperscript{195} but declared this presumption to be rebutted by lease provisions restricting the airline’s use of the property.\textsuperscript{196} For example, the municipality reserved certain service and maintenance duties on the property, and the airline’s rights to assign, sublet, and improve were restricted. These limitations, the court held, characterized the airline’s interest in the property as a mere usufruct, rather than an estate for years, which was not taxable by the county.\textsuperscript{197}

County taxpayer dissatisfaction with valuation and assessment was manifested by a number of contests during the period. In \textit{Alexander v. Blackmon},\textsuperscript{198} for instance, the supreme court affirmed a trial judge in voiding the county tax digest and recommending that the State Revenue Commissioner employ a 25 percent assessment increase factor on all classes of property in the new digest. Because the judge’s action was only a recommendation, the court held, it did not usurp the Commissioner’s statutory authority to examine and approve the digest.\textsuperscript{199}

In order to file such challenges, a number of procedural requirements must be fulfilled by the taxpayer. One of these is the statutory command that notice of appeal must be given within 10 days of the assessors’ notice of new valuations.\textsuperscript{200} In \textit{Peagler v. Georgetown Associates}\textsuperscript{201} the court held

\textsuperscript{193} 232 Ga. at 463, 207 S.E.2d at 452. The court said that enumerated “purposes” in the constitution have no relation at all to areas in which county revenues may be expended.

\textsuperscript{194} 232 Ga. 37, 205 S.E.2d 194 (1974).

\textsuperscript{195} The lease in issue had been one for a term of 30 years.

\textsuperscript{196} “In each instance, the agreement involved must be carefully searched for the intention of the parties.” 232 Ga. at 39, 205 S.E.2d at 196.

\textsuperscript{197} Briefly stated, the reason a usufruct is not considered to be a taxable estate is because the fee estate in the property remains with the lessor and is undisturbed by the agreement for the lessee to use the property. Id. at 39, 205 S.E.2d at 196.

\textsuperscript{198} An equally basic point in the law of local government finance is that public funds must be expended only for “public purposes.” In \textit{Petty v. Hospital Authority of Douglas County}, 233 Ga. 109, 210 S.E.2d 317 (1974), the supreme court held that the needs to attract doctors and to insure maximum use of hospital facilities were sufficiently valid public purposes to justify expenditures for a medical office building complex. The court also held the Hospital Authorities Law to specifically include office buildings as one of the purposes for which revenue anticipation certificates might be issued. \textit{Ga. Code Ann. §88-1802} (Rev. 1971).

\textsuperscript{199} 233 Ga. 35, 210 S.E.2d 736 (1974).

\textsuperscript{200} The judge was held in error, however, in requiring the plaintiffs to pay interest from the date interest was charged other taxpayers on the first digest.

\textsuperscript{201} \textit{Ga. Code Ann. §92-6912(5)(c)} (Rev. 1974).
that because this notice had not been provided, the taxpayers were not entitled to a hearing on the assessments.\footnote{202}

Another issue emerging in such litigation is the class of taxpayers affected by the decisions. In *Anderson v. Blackmon*,\footnote{203} for instance, the court held that all taxpayers who had not paid their taxes for the year in question were entitled to relief when the county tax digest for that year was held invalid.\footnote{204} Reversed, therefore, was the trial judge’s order limiting relief to plaintiffs in the case.\footnote{205} Elaborating the *Anderson* rationale in *Herring v. Ferrell*,\footnote{206} the court extended the class so as to afford relief to those taxpayers who had paid their taxes subsequent to the trial judge’s order invalidating the tax digest.\footnote{207}

A final and popular issue of extreme importance in the law of county property taxation is that of exemption. Both the Georgia Constitution\footnote{208} and general statutory law\footnote{209} provide for the exemption of “places of religious worship.” In *Leggett v. Macon Baptist Association*\footnote{210} the supreme court evaluated existing case law authority to derive the following “general rule”:

[In applying the exemption authorized by basic Georgia law to the facts in the individual case, we must look to the use of the property, not merely its ownership, and we must also look to the primary use of the property to determine whether it is exempt from taxation.\footnote{211}]

Pursuing this “rule,” the court then uncovered “the generally accepted public notion of thinking of worship in terms of congregational worship services intended to express adoration and homage for the Deity.”\footnote{212} It was true the court conceded, that “some religious exercises and services” were held on the property in issue, but “it is nonetheless a fact that the primary use of the property is for coordination, training and promotional work in furtherance of the administrative duties of the Association.”\footnote{213} Armed with

\footnote{202} Regardless of the prior communications with the firm apparently employed by the Board of Tax Assessors to assist them in making valuations the appellees were not excused from complying with the provisions of the law relative to filing a notice of appeal from the official notice given by the Board of Tax Assessors. \cite{Id.} at 849, 209 S.E.2d at 186.

\footnote{203} 232 Ga. 4, 205 S.E.2d 250 (1974).

\footnote{204} The court held, however, that this class did not cover any taxpayers who had paid their taxes either voluntarily or under protest.

\footnote{205} In dissent, Justice Gunter argued that the result was unfair to taxpayers who had paid their taxes under the void digest.


\footnote{207} Still unaffected by the decision were all tax payments made prior to the trial judge’s order. Justices Hall and Gunter dissented.

\footnote{208} GA. CONST. art. VII, § 1, ¶ 4 (1945), GA. CODE ANN. § 2-5404 (Rev. 1973).

\footnote{209} GA. CODE ANN. § 92-201 (Rev. 1974).

\footnote{210} 232 Ga. 27, 205 S.E.2d 197 (1974).

\footnote{211} Id. at 28, 205 S.E.2d at 198.

\footnote{212} Id. at 31, 205 S.E.2d at 200.

\footnote{213} Id.
this characterization, the court concluded that the property did not come within the exemption.\textsuperscript{214}

Of a different nature was the exemption claimed in \textit{Wasden v. Rusco Industries, Inc.}\textsuperscript{215}—the claim of an industry which located within a county upon the assurance of a five-year tax exemption.\textsuperscript{216} In considering this claim, the court conceded that such exemptions had been authorized by the constitution of 1877\textsuperscript{217} and implemented by a 1925 statute.\textsuperscript{218} The court pointed, however, to two provisions in the constitution of 1945, which it viewed as abolishing the exemptions for industry.\textsuperscript{219} "Accordingly no exemptions could be granted after the adoption of the 1945 Constitution,"\textsuperscript{220} and the county had been without authority to grant the exemption in controversy.

\textbf{Liability}

The almost absolute immunity of a Georgia county from tort liability was the main thrust of the supreme court's treatment of \textit{Williams v. Georgia Power Co.}\textsuperscript{221} Rejected in that case were a number of contentions raised in a wrongful death action for a drowning in a lake owned by the power company and to which the county had obtained a road easement.\textsuperscript{222} These contentions were that the county's statutory immunity was unconstitutional,\textsuperscript{223} that the General Assembly had waived immunity in respect to highway accidents,\textsuperscript{224} and that the county was responsible for the maintenance of a nuisance.\textsuperscript{225} Also held unmeritorious was the argument that the case fell within the liability imposed by statute for defective bridges:\textsuperscript{226} "This section makes the county liable for defective bridges and does not

\textsuperscript{214} In summary, this conclusion is based primarily upon the finding that the property is not open as a public place of worship where a congregation gathers to practice the rites and ceremonies of its doctrinal theology, and to receive the sacraments of the church.

\textit{Id.} at 32, 205 S.E.2d at 201.

\textsuperscript{215} 233 Ga. 439, 211 S.E.2d 733 (1975).

\textsuperscript{216} The trial court had upheld the industry's claim of the exemption.

\textsuperscript{217} GA. CONST. art. VII, §2, ¶2 (1877).

\textsuperscript{218} GA. CODE §92-206 (1933).

\textsuperscript{219} GA. CONST. art. VII, §1, ¶4, 5 (1945), GA. CODE ANN. §§2-5404, 2-5405 (Rev. 1973).

\textsuperscript{220} 233 Ga. at 441, 211 S.E.2d at 736. The court read the only exception to the abolition to be exemptions which had been granted to specific industries prior to 1945.

\textsuperscript{221} 233 Ga. 517, 212 S.E.2d 348 (1975).

\textsuperscript{222} Under the easement the county had paved a road to the lake which was used for launching boats, and it appeared that the automobile in which plaintiffs' decedent was riding may have gone into the lake from this road.

\textsuperscript{223} This immunity is provided by GA. CODE ANN. §23-1502 (Rev. 1971): "A county is not liable to suit for any cause of action unless made so by statute."

\textsuperscript{224} This argument was based on GA. CODE ANN. §95-1710 (Rev. 1972), purporting to impose certain liability upon the State Highway Department.

\textsuperscript{225} The court distinguished the cases relied upon.

\textsuperscript{226} GA. CODE ANN. §95-1001 (Rev. 1972).
apply to a situation where no bridge exists."  227

Similar tinges of absoluteness, though in a slightly different context, unmistakably emerged in the court of appeals' disposition of Foster v. Cobb County Board of Education.  228 An action against the board for injuries to a student allegedly struck by a physical education instructor was dismissed upon the basis of a distinction between county school boards and county school districts. The court said that although school districts are bodies corporate with the capacity to sue and be sued, this was not true of school boards:

A school board of education, on the other hand, is not a body corporate and does not have the capacity to sue or be sued, . . . except where a school board is created by a separate Act of the legislature and is sui generis. . . .  229

The absolute nature of the county's immunity from tort liability does not extend to the county's taking or damaging of private property for public purposes, for which the constitution demands that just and adequate compensation be paid.  230 In Baranan v. Fulton County, 231 however, the supreme court was confronted with the argument that this constitutional exception to the rule of immunity could not authorize an injunction against the county's changing its drainage system to increase the flow of surface water onto private property.  232 The court conceded confusion in a number of its prior decisions, 233 but thought it well established that "[a]n injunction may be granted to prevent an impending nuisance, continuing in nature, the consequences of which are reasonable certain."  234 When a right of action arises under the constitution, the court concluded, "the form of action is unimportant," and injunctive relief was possible.  235

Aside from the basic precept of immunity, other and more general con-

227. 233 Ga. at 518, 212 S.E.2d at 351.
229. Id. at 769, 213 S.E.2d at 39. The court noted that the plaintiffs had not sued the members of the board in their individual capacities.
232. The plaintiff alleged a continuing trespass.
233. The court thought that a general distinction could be drawn between those cases in which it has been held that extensive public improvements will not be enjoined because consequential damages have not been paid to property owners; . . . and those cases in which a public improvement has the effect of creating a continuing nuisance on private property, which may be enjoined. . . .
234. 232 Ga. at 855, 209 S.E.2d at 190-91.
235. Id. at 855, 209 S.E.2d at 191.
236. Id. The trial court's denial of the injunction was reversed.

The exception to the rule of immunity does not operate, of course, when the plaintiff's property has suffered no legally recognized damage. Perhaps this was the point of the court of appeals' decision in Clark v. Clayton County, 133 Ga. App. 171, 210 S.E.2d 335 (1974), in which the court determined that the placing of a median in the highway did not interfere with ingress and egress to the plaintiffs' motel.
cepts arise when tort claims are pressed against a Georgia county. In terms of a statute of limitations, for instance, statutory law requires that "[a]ll claims against counties must be presented within 12 months after they accrue or become payable, or the same are barred, unless held by minors or other persons laboring under disabilities, who are allowed 12 months after the removal of such disability." 236 In Evans County v. McDonald, 237 the court of appeals applied that statute against a claimant who sought to make the county a party defendant in her action for injuries caused by a falling limb in an alleged state-aid road. 238 The court simply said that "no notice of said action was given as to the claim against Evans County, within twelve months as required . . . , and said action is therefore barred." 239

The general rule that releasing one joint tortfeasor also releases all others is likewise applicable in the county context. In Grizzard v. Davis, 240 the court employed that rule in order to affirm the dismissal of a tort action against county commissioners in their individual capacities. 241 "The release of Troup County covers these defendants," it was reasoned, "and the court did not err in dismissing them as defendants." 242

Authorities

In Richmond County Property Owners Association v. Augusta-Richmond County Coliseum Authority 243 the supreme court rejected a number of challenges to the validity of the authority. The court held that the local constitutional amendment authorizing the authority did not limit power of the General Assembly; that the General Assembly had not invalidly delegated legislative authority; that the point that two members of the authority were disqualified from selecting a site was immaterial; 244 and that erection of a civic hall and coliseum "is unquestionably for a public purpose." 245

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238. The plaintiff had also sued the municipality in which the road was located. The injuries had been incurred on May 15, 1971, and the motion to include the county had not been offered until April 16, 1974.
239. 133 Ga. App. at 955-56, 213 S.E.2d at 83.
241. The action was for personal injuries allegedly suffered in the county courthouse annex, and it had been brought against the county commissioners in both their individual and representative capacities.
242. 131 Ga. App. at 581, 206 S.E.2d at 856. The court did criticize the trial judge for amending the judgment of dismissal without notice to plaintiff's counsel, but upheld the dismissal because of the release.
244. Even if true, said the court, the record affirmatively showed that the vote result would not have been different.
245. 233 Ga. at 97, 210 S.E.2d at 174.
Zoning

At least two of the supreme court's decisions during the survey period dealt with the explosive problem of possible vested interests in county zoning. *DeKalb County v. Chapel Hill, Inc.*\(^{246}\) presented a contest in which the county zoning authorities had originally approved the plaintiff's "community unit development plan," but later denied an application to rezone a portion of the property involved so that it could be used in accordance with the plan.\(^{247}\) The court held that under constitutional, statutory, and ordinance provisions in effect at the time, the county was empowered to approve such development plans as exceptions to the zoning ordinance. In reliance upon this approval, the plaintiff had expended substantial sums in developing its property, and thus vested rights were acquired by it which can not be destroyed by the enactment of a later ordinance which required that rezoning be obtained for community unit development plans, and thereafter denying the necessary rezoning.\(^{248}\)

The trial court's grant of a writ of mandamus was affirmed.

Similarly, in *Spalding County v. East Enterprises, Inc.*,\(^{249}\) the court reviewed stipulations that property was zoned for mobile home parks when purchased by the plaintiff; that it was purchased specifically for this purpose; that in reliance upon oral assurances by county officials, the plaintiff had expended substantial sums for obtaining necessary permits; that the county later changed its zoning measures so as to eliminate the mobile home park classification; and that, upon the basis of the zoning change, the county refused the plaintiff a building permit.\(^{250}\) The court held this evidence sufficient to support the trial judge's conclusion that the plaintiff had acquired a vested interest in the mobile home park classification.\(^{251}\)

Much of the case law revolving around zoning necessarily deals with the county legislative process.\(^{252}\) In *Bowen v. Pendley*,\(^{253}\) for instance, the supreme court was confronted with a situation in which the governing authority had approved a rezoning petition, but 14 days later, prior to its

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247. The controversy was over the construction of apartments and town houses as a part of the development plan.
248. 232 Ga. at 244, 205 S.E.2d at 868.
250. The change in the zoning measure had taken place approximately a year and one-half after the plaintiff's purchase of the property.
251. In the absence of a valid reliance, no vested interest can arise, as indicated by *Davidson v. Guhl*, 232 Ga. 291, 206 S.E.2d 456 (1974). There the court held that an alleged oral approval of use by a county planning administrator would be unauthorized, and thus an expenditure of funds in reliance upon that alleged approval would not estop the county from enjoining property utilization which violated county zoning measures.
252. See the section on Legislation, *supra*.
approval of the minutes of the previous meeting, had attempted to rescind its approval. Refusing to view the approval of minutes as a "legislative act," the court held that once the governing authority had approved the rezoning petition, it was without power to rescind that approval "in the absence of a new petition being filed and all procedures followed as provided by law to again change the zoning of such tract of land."  

Similarly procedural in nature were some of the contentions raised against the validity of the county zoning ordinance in Matthews v. Fayette County. Rejecting those contentions, the court said that in the absence of an express requirement, the minutes of a meeting of a county governing authority need not reflect "which member initiated the motion; which member seconded it; which member moved that it be adopted and which members or the number of members who voted for the ordinance." Rather, the "recital in the minutes that the ordinance was passed raises a presumption in favor of the regularity of enactment. . . ."

II. LEGISLATION

A. Home Rule

When a municipal governing authority increases the compensation of its elective members under the Municipal Home Rule Act of 1965, as amended in 1975, this action is subject to stated conditions. First, the action is not to be taken between the date candidates may first qualify as candidates and the date elected members take office. Second, the increase is not to take effect until the term of office of those officials elected at the next regular municipal election.

B. Boundaries

The 1975 General Assembly imposed an additional requirement upon the procedures for changing county lines. Copies of the survey, plat, and
county resolutions of approval must be filed with the Secretary of State, who is to certify the survey and plat to the superior courts of the affected counties where they are to be recorded.

C. Elections

The local government election was a subject of legislative consideration on a number of fronts. As previously discussed, the Campaign Financing Disclosure Act of 1974 was declared inapplicable to county and municipal officials because its title made no reference to them. In 1975, the title of that statute was changed to the "Campaign and Financial Disclosure Act," and was expressly broadened to include county and municipal elected officials.

As to the process of election itself, both the state election code and the municipal election code were amended to prohibit candidates from qualifying for nomination to any office with more than one political party.

When a municipal general primary or election is held on the date of the general primary or November general election, the general election requirements for closing the registration list, for candidate qualification, and for holding necessary runoffs are now made applicable to the municipal primary or election. Also made mandatory for all municipal primaries and elections is the use of absentee ballots, and procedures are established for such ballots in respect to applications, form, processing, and cancellation.

D. Officers And Employees

In 1969, the "new" criminal code of Georgia prohibited officers and employees from selling personal property to their own political subdivisions. In 1972, this prohibition was modified by excepting sales "of less than $50.00 per calendar quarter or sales made pursuant to sealed competitive bids." The 1975 General Assembly further modified this prohibition by raising from $50 to $200 the amount of excepted sales.

Likewise applicable to both counties and municipalities was the 1975 prohibition upon requiring applicants for employment to be residents of that governmental entity, and upon favoring resident applicants or em-
ployees for hiring or promotion.\textsuperscript{274}

Pertaining only to counties was the statutory increase from $10,000 to $25,000 in the amount of surety bonds for sheriffs;\textsuperscript{275} and equally exclusive for municipalities was the amendment of the Joint Municipal Employees' Retirement System to include "the chief legal officer or any associate legal officer" of a municipality and "any municipal officer elected or appointed to preside over the court of a municipal corporation."\textsuperscript{276}

\textbf{E. Taxation}

With legislation as with litigation, taxation was a subject area of great activity. Noteworthy was the 1975 General Assembly's willingness to enact new tax authorizations for Georgia's local governments. Thus, both municipalities and counties were empowered—upon voter approval—to impose a one-percent sales tax, to be accompanied by a reduction in property taxes and by the county's maintaining separate millage rates for residents of incorporated and unincorporated areas.\textsuperscript{277} This enactment also would appear to revive the local option income tax for municipalities and counties which was approved by the legislature in 1974.\textsuperscript{278}

Other revenue sources opened to municipalities and counties in 1975 were authorizations for the imposition of a three-percent excise tax upon charges for hotel and motel accommodations\textsuperscript{279} and of ad valorem taxes upon the shares of banks and savings and loan associations.\textsuperscript{280}

The ad valorem tax was also the target of considerable additional statutory treatment. Historically, the standard for property taxation has been the "fair market value" of the property.\textsuperscript{281} In 1975, this standard was further elaborated to instruct tax assessors to consider the property's zoning, use, and covenants or restrictions.\textsuperscript{282} Similarly elaborated were directions to counties and municipalities in respect to the notice of property taxes which is sent to the taxpayer: that notice must include both the returned value of the property and the forty percent assessed value.\textsuperscript{283} For unpaid taxes, the interest rate on executions issued by counties and municipalities was increased from seven to nine percent per annum.\textsuperscript{284} In case a county

\begin{itemize}
\item \textsuperscript{274} Ga. Laws, 1975, p. 1576.
\item \textsuperscript{275} Ga. Laws, 1975, p. 921.
\item \textsuperscript{276} Ga. Laws, 1975, p. 1005.
\item \textsuperscript{277} Ga. Laws, 1975, p. 984.
\item \textsuperscript{278} Ga. Laws, 1974, p. 506. This statute had expressly provided that it would not become effective until the approval of legislation authorizing local governments to impose a sales and use tax.
\item \textsuperscript{279} Ga. Laws, 1975, p. 1002. No tax can be levied upon accommodations furnished for a period of more than 10 consecutive days.
\item \textsuperscript{280} Ga. Laws, 1975, p. 147. This statute expressly forbids a municipality or county from imposing a business license tax upon banks and savings and loan associations.
\item \textsuperscript{281} Ga. Code Ann. §92-5702 (Rev. 1974).
\item \textsuperscript{282} Ga. Laws, 1975, p. 96.
\item \textsuperscript{283} Ga. Laws, 1975, p. 1083.
\item \textsuperscript{284} Ga. Laws, 1975, p. 811.
\end{itemize}
or municipality erroneously or illegally collect taxes or license fees from a taxpayer, a claim procedure was established, and the local government was authorized to make a refund.\footnote{285}

Operating at the county level are the statutes which afford 60 days for the full payment of taxes before interest begins\footnote{286} and which authorize an interest rate on unpaid taxes of nine percent per annum.\footnote{287} Finally, members of county boards of equalization are to be selected in a prescribed fashion by the county grand jury, and are directed to set a date for a hearing within 15 days of receiving an appeal.\footnote{288}

\textbf{F. Indebtedness}

In November, 1974, an amendment to the Georgia Constitution was ratified which increased the debt limitation of municipalities and counties from seven percent to “ten per centum of the assessed value of all the taxable property therein. . . .”\footnote{289}

\textbf{G. Contracts}

At least two of the statutes enacted during the survey period dealt with contracts by municipalities and counties. One of these increased from $1,000 to $5,000 the contract amount which triggers the obligation on the part of the contractor to provide the local government with a performance bond.\footnote{290} The other statute relates to contracts for the installation, improvement, and repair of water or sewer facilities; it authorizes local governments to insert a clause in the specifications of such contracts “providing for the retention of amounts constituting a percentage of the gross value of the completed work as may be provided for in the contract.”\footnote{291}

\textbf{H. Regulation}

The “Erosion and Sedimentation Act of 1975”\footnote{292} requires the governing authority of each county and municipality to adopt “a comprehensive ordinance establishing the procedures governing land-disturbing activities which are conducted within their respective boundaries.”\footnote{293} This statute provides minimum requirements for such an ordinance and empowers the governing authority to delegate responsibilities under the statute to planning and zoning commissions.

\begin{footnotesize}
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\item \footnote{285}{Ga. Laws, 1975, p. 774. In case the taxpayer’s claim is denied or not processed by the local government within one year, the statute expressly provides the right to sue for refund in the superior court of the county in which the claim arises.}
\item \footnote{286}{Ga. Laws, 1975, p. 835.}
\item \footnote{287}{Ga. Laws, 1975, p. 1252.}
\item \footnote{288}{Ga. Laws, 1975, p. 1090.}
\item \footnote{289}{GA. CONST. art. VII, §7, ¶1 (1945), GA. CODE ANN. §2-6001 (Supp. 1974).}
\item \footnote{290}{Ga. Laws, 1975, p. 810.}
\item \footnote{291}{Ga. Laws, 1975, p. 1045.}
\item \footnote{292}{Ga. Laws, 1975, p. 994.}
\item \footnote{293}{Ga. Laws, 1975, p. 999.}
\end{itemize}
\end{footnotesize}
I. Housing

As an additional facet of civil defense, the General Assembly empowered municipalities and counties to acquire sites for housing units for disaster victims and to make the necessary arrangements to equip the sites acquired for the units to be provided.294

J. History

The 1975 General Assembly's appreciation of history prompted its authorization of grants to municipalities which own and maintain public facilities found to be of historical value to the state.295 If these facilities need repairs estimated to cost more than $5 million and requiring more than one year to complete, the municipality is authorized to receive an annual grant equal to one-fourth of the local funds expended on the repairs.

K. Authorities

One of the most noteworthy creations of the 1975 Legislature was the "Municipal Electric Authority of Georgia,"296 expressly declared to be an instrumentality of the state,297 which was empowered to acquire, construct, operate, and maintain transmission facilities in order to provide electric power to political subdivisions owning and operating electric distribution systems.298 The lengthy statute of creation vests the authority with numerous powers, including the power of eminent domain, the power to execute contracts, and the power to issue revenue bonds. The stated purpose of the authority is to provide an adequate, dependable, and economical source of bulk electric power.299

L. Liability

Previously discussed was the Georgia Supreme Court's reaction to the constitutional amendment, ratified in November, 1974, which authorizes the General Assembly to establish a "State Court of Claims."300 In any event, that amendment provides that the function of the court will be "to try and [sic] dispose of cases involving claims for injury or damage, except the taking of private property for public purposes, against the State of

298. Ga. Laws, 1975, p. 107. These were the political subdivisions owning and operating electric distribution systems on the date the statute became law.
299. Id.
Georgia, its agencies or political subdivisions, as the General Assembly may provide by law.\textsuperscript{301} However, the amendment expressly disclaims the waiver of governmental immunity and indeed reserves that immunity "except to the extent of any waiver of immunity provided in this Constitution and such waiver or qualification of immunity as is now or may hereafter be provided by act of the General Assembly."\textsuperscript{302}