Local Government Law

R. Perry Sentell Jr.

Follow this and additional works at: https://digitalcommons.law.mercer.edu/jour_mlr

Part of the State and Local Government Law Commons

Recommended Citation

This Survey Article is brought to you for free and open access by the Journals at Mercer Law School Digital Commons. It has been accepted for inclusion in Mercer Law Review by an authorized editor of Mercer Law School Digital Commons. For more information, please contact repository@law.mercer.edu.
Local Government Law

by R. Perry Sentell, Jr.*

In a year dusted by destiny, local government law seized undisputed leadership in a new legal world order. Deploying dazzling analytical force in a gulf of litigational dissipation, and deftly defusing primitive land mines of mediocrity, the subject drew a line of liberating enlightenment in the sands of juristic history. With illustrative cases positioned as defensive missiles, and selected statutes marshalled with bomb sight precision, this survey advances to quench the flaming wells of desperation torched by other disciplines. It is the mother of all surveys.

I. MUNICIPALITIES

A. Powers

As the fuel of choice for the governmental engine, municipal power is the recipient of respectful legal attention. When challenges choke engine ignition, the municipal source of energy supply must conform to the law's specifications. Typically, the municipality derives that source from statutory deposits unearthed to justify both spark and acceleration.1

On two occasions during the survey period, those deposits lay in the Georgia Territorial Electric Service Act.2 In both instances, the munici-

---

* Talmadge Professor of Law, University of Georgia (A.B., 1956; LL.B., 1958); Harvard University (LL.M., 1961). Member, State Bar of Georgia.

Deep appreciation is expressed to the Carl Vinson Institute of Government of the University of Georgia for summer research support that contributed most significantly to the preparation of this survey.


pality extracted them to the court of appeals satisfaction. North Georgia Electric Membership Corp. v. City of Calhoun featured a challenge to the municipality’s supply of electricity beyond its assigned service area but to its own water facility. Affirming the Public Service Commission’s denial of the challenge, the court relied first upon the statutory exception for a supplier’s “service to any of its own premises devoted to public service.” Second, the court characterized the service as other than the “retail service” covered by the municipality’s agreement with the challenger (a competing supplier).

Colquitt Electric Membership Corp. v. City of Moultrie challenged municipal electricity to the new county jail. That jail, plaintiff argued, was but a part of the previously existing correctional institute already serviced by plaintiff. Again affirming (and deferring to) the Public Service Commission, the court rejected the challenge. Evidence justified the Commission’s conclusion that, although physically connected, the two facilities fulfilled different purposes and were operated by different legal entities. Accordingly, the institute and the new jail “are two electric premises, separately metered,” and the county was free to elect municipal service for the jail.

4. The municipality owned and operated the facility, a raw water intake facility to which the challenger had previously supplied electricity. Id. at 382, 393 S.E.2d at 511.
5. The court reasoned that the PSC, the agency charged with enforcement and administration of the statute, “is entitled to great deference in its interpretation of the Act.” Id. at 384, 393 S.E.2d at 513.
6. O.C.G.A. § 46-3-8(e)(5) (1982). The court viewed the exception as giving the municipality “the clear and unambiguous right to serve its own facility, provided the premises at issue are ‘devoted to public service’ whether or not the premises are located in an area otherwise ‘assigned’ to another electric supplier.” 195 Ga. App. at 383, 393 S.E.2d at 512.
7. That agreement provided that the municipality should not extend its lines east of I-75 (where the facility was located), but it related only to “retail service,” which the court construed to mean sales directly to the ultimate consumer. That agreement did not give the challenger “the exclusive right to provide electric service to the premises at issue here.” 195 Ga. App. at 384, 393 S.E.2d at 513.
9. Id. at 794, 399 S.E.2d at 498. A covered walkway connected the jail and the institute, and the challenger would without question continue supplying electricity to the institute. Otherwise, the jail was located in an “unassigned area” which either the municipality or plaintiff could service. Id. at 795, 399 S.E.2d at 498.
10. Id. at 797, 399 S.E.2d at 499.
11. The institute would house convicted prisoners; the jail would primarily house pre-trial detainees. Id. at 795, 399 S.E.2d at 498-99.
12. The State Department of Corrections supervised and managed the institute; the county sheriff supervised and managed the jail. Id.
13. Id. at 797, 399 S.E.2d at 499.
14. Id.
The remaining power controversy, *Freeman v. City of Atlanta*, involved municipal confiscation of plaintiff's money as drug transaction proceeds. Although the condemnation proceedings were not commenced within thirty days as required by state statute, the court noted municipal transfer of the funds to the federal drug enforcement agency. That agency operated under federal statute, the court held, and its forfeiture proceeding pre-empted state statutory requirements.

B. Officers and Employees

Once launched, the governmental capsule's entry into an orbit of effective and efficient administration requires a sophisticated guidance system under the control of skilled technicians. Those technicians—the government's officers and employees—were the subjects of considerable litigation this year. The officer's first accomplishment consists of attaining office: the focus of *Johnson v. Collins*. In response to a complaint of misconduct in the municipal election, the supreme court referred an unsuccessful council candidate to the statute authorizing the contest. Even assuming the allegations were correct, plaintiff failed to show that the misconduct "was sufficient to change or place in doubt the result of the election."

Emphasizing a preliminary employment concern, statutory law mandates a peace officer's completion of a basic training course. *City of Pembroke v. Hagin* involved one municipality's method of providing that training. Specifically, the municipality required a contract that the police officer would pay a part of his training cost if he then vacated the

16. Municipal police officers arrested plaintiff for failure to prove automobile insurance and then discovered the money, which the police drug dog identified as drug money. *Id.* at 641, 394 S.E.2d at 784.
18. The court held that both the state and federal governments possessed condemnation authority. 195 Ga. App. at 641, 394 S.E.2d at 785.
20. 195 Ga. App. at 642, 394 S.E.2d at 785. "However, since the federal government brought the forfeiture proceeding, and not the State, OCGA sec. 16-13-49(e) has no application in this case." *Id.* The court affirmed summary judgment for the municipality. 195 Ga. App. at 642, 394 S.E.2d at 785.
22. *Id.* at 153, 391 S.E.2d at 114 (citing O.C.G.A. § 21-3-422(1) (1987)).
23. *Id.*
24. O.C.G.A. § 35-8-9(a) (1987). The statute mandates the training course within twelve months of appointment and conditions the officer's arrest power upon completion. *Id.* § 35-8-9(a), (c).
position within twelve months. Reviewing a trial judge’s condemnation of the agreement on the basis of “public policy,” the court of appeals expressed reluctance to interfere with freedom of contract. Rather, the court assessed the challenged agreement as “reasonably related to the City’s interest in protecting its investment in training a new officer.”

Clearing the hurdle of public policy, the court was direct in its advice to the complainant: simply stay on the job for twelve months.

Regretfully, municipal employment entails the risk of injury and the accompanying issue of disability benefits. In City of Adel v. Wise, an injured fire department employee refused to accept alternative work as a police radio dispatcher. On the issue of justification, the supreme court reversed both the State Board of Workers’ Compensation and the court of appeals. Under the applicable statute, the court reasoned, the Board must apply a two-pronged test: the employee’s physical capacity for the proffered employment, and justification for the refusal. The justification must relate to physical capacity, the court held, and “it was

26. Id. at 643, 391 S.E.2d at 466. The case presented a municipal effort to recover from an officer who voluntarily terminated his employment prior to the expiration of twelve months.
27. The trial court held the contract to contravene public policy by shifting municipal cost onto the individual officer. Id.
28. Id. at 644, 391 S.E.2d at 467.
29. “We find no intent by the legislature in the applicable code sections to impose the financial burden of training a peace officer solely upon the law enforcement unit employing him.” Id.
30. “In order to avoid the requirement of paying the amount specified in the agreement, the officer could simply have remained in his employment for twelve months.” Id. The court awarded judgment to the municipality. Id.
32. Statutes authorize termination of benefits upon the employee’s refusal of suitable employment, unless “in the opinion of the board such refusal was justified.” O.C.G.A. § 34-9-240 (1988).
33. 261 Ga. at 56, 401 S.E.2d at 525. The court of appeals observed that the transfer would reduce the employee’s income by $163 per week, because he would have been required to give up a part-time job at a bank that he could otherwise have held. Wise v. City of Adel, 195 Ga. App. 559, 559, 394 S.E.2d 540, 541 (1990).
35. 261 Ga. at 54-55, 401 S.E.2d at 524.

We hold that the discretion afforded the board . . . to determine that an employee’s refusal of proffered work is justified must relate to the physical capacity of the employee to perform the job; the employee’s ability or skill to perform the job; or factors such as geographic relocation or travel conditions which would disrupt the employee’s life.

Id. at 56, 401 S.E.2d at 525.
error for the board to consider the potential loss of a part-time job in
determining whether the employment was suitable."

Compensation benefits also dominated Adams v. Collins, an action
against a municipality for the wrongful death of its police officer. Because
the death occurred during the officer's temporary assignment to an-
other municipality, the court of appeals plumbed provisions of the as-
signment contract. Finding the defendant municipality's agreement
explicitly to provide workers' compensation coverage, the court held the
officer's actual employment status immaterial. The agreement itself was
sufficient to trigger the "exclusive remedy" provision of the workers' com-
promise statute and to shield the municipality from wrongful death
responsibility.

C. Regulation

Municipal regulation of activity claims linchpin significance in the
governmental power quagmire. However, unauthorized efforts in the
name of regulation can be fatal. This point found illustration in City of
College Park v. Atlantic Southeastern Airlines, Inc. Involving an air-
line's claim for refunds, the case turned upon whether the municipal ex-
action constituted a tax (refundable within three years) or a regulatory
fee (refundable within one year). The court of appeals rejected the mu-

36. Id. Justice Hunt concurred only in the judgment. Justice Benham, joined by Presid-
ing Justice Smith, dissented on grounds that the court was inappropriately restricting the
discretion which the administrative board was authorized and directed to employ. Id. at 58,
401 S.E.2d at 526 (Smith & Benham, JJ., dissenting).
38. Id. at 36, 392 S.E.2d at 549. For treatment of workers' compensation issues, see gen-
erally R. Perry Sentell, Jr., Workers' Compensation in Georgia Municipal Law, 15 Ga. L.
REV. 57 (1980), reprinted in P. SENTELL, ADDITIONAL STUDIES, supra note 1, at 487.
39. The officer was killed in a narcotics undercover operation. 195 Ga. App. at 36, 392
S.E.2d at 550.
40. Id. Defendant municipality contracted to continue to pay the officer and provide his
benefits while he was on loan. Defendant also reserved the right to recall the officer at any
time. Id.
41. Id. at 36-37, 392 S.E.2d at 550. It was also immaterial, the court reasoned, that the
employee's activities at the time of his death may have benefitted only the municipality to
which he was on loan. Id.
42. O.C.G.A. § 34-9-11 (1988 & Supp. 1991). Workers' compensation was "the exclusive
remedy for appellant in this situation regardless of whether the City was [the officer's] 'em-
ployer' at the time of his death." 195 Ga. App. at 37, 392 S.E.2d at 550.
43. The court affirmed the trial judge's summary judgment for the municipality. Id.
44. See generally R. Perry Sentell, Jr., Discretion in Georgia Local Government Law, 8
46. Id. at 638, 391 S.E.2d at 461 (citing O.C.G.A. § 48-5-380 (1982)).
unicipality's "regulation" defense and termed the charge "a tax, variable in amount, based upon the volume of business revenues or number of employees, whichever is greater." Because federal law condemned gross receipts assessments on airlines, the court held the municipality subject to a refund claim within three years of payment.

Regulatory power does not insure successful enforcement. In *Upton v. City of Atlanta*, for example, there was no problem with a municipal ordinance requiring towing services to accept insured "checks." The issue went to enforcement of the ordinance against a towing service that refused to accept a draft drawn on a credit agency. The supreme court responded with two statutory definitions: first, a "check" is a draft drawn on a "bank," second, a "bank" does not include a "credit union." Accordingly, the draft in issue did not constitute a check, and defendant's refusal did not contravene the ordinance.

Valid regulation also requires deference to constitutional freedoms: specifically, the freedom of expression. This freedom undergirded the challenge in *Hirsh v. City of Atlanta* to regulation of antiabortion demonstrations on municipal streets. Declaring protestors' blockades a "public nuisance," the municipality obtained an injunction creating "free zones" within fifty feet of an abortion facility and restricting each zone to twenty demonstrators. Additionally, the injunction established five-foot

---

47. *Id.* The court observed that the municipal code expressly imposed a "flat fee" license fee as a precondition to do business and subsequently levied the challenged exaction in addition to the license fee. *Id.* at 639, 391 S.E.2d at 462.


49. 194 Ga. App. at 639, 391 S.E.2d at 462. The court rejected a municipal attack on plaintiff's claim notice for not stating the grounds for the refund. Said the court: "There is no requirement that the 'summary of grounds' must be the exact grounds upon which refund is ultimately authorized; such a requirement would require the taxpayer to become a seer." *Id.*


52. 280 Ga. at 251, 392 S.E.2d at 245 (citing O.C.G.A. § 11-3-104(2)(b) (1982)).


54. *Id.* The court unanimously reversed defendant's conviction. *Id.*


56. *Id.* at 25, 401 S.E.2d at 533. These occurred in the summer of 1988, primarily during the National Democratic Convention. *Id.* at 23, 401 S.E.2d at 531.

57. *Id.* The court affirmed existence of municipal charter power to define a nuisance and provide for abatement. *Id.* at 28, 401 S.E.2d at 535.

58. *I.e.*, within fifty feet of the facility's property line. *Id.* at 26, 401 S.E.2d at 534.

59. *Id.*, 401 S.E.2d at 533. The court agreed that this restricted the protestors' prior behavior, but judged it to leave "ample alternative channels of communication" open. *Id.*
“bubble zones” within which protestors could not (without consent) approach other individuals. Upon challenge, a majority of the supreme court pronounced the injunction a “content-neutral” regulation aimed at dangers possessed of “significant governmental interests.” The court, reviewing evidence indicating a threat to municipal order, deemed the injunction’s restrictions reasonable as to time, place, and manner. The court perceived those restrictions as necessary, therefore, “to preserve the continued exercise of liberty, including [the demonstrators’] rights of free speech and assembly.”

The survey period’s remaining regulatory contests arose from license controversies unfolding in the context of mandamus actions. In Sego v. City of Peachtree City, a closely divided court upheld municipal denial of an alcoholic beverage license. Operating on the “clearly erroneous” standard of review, the court was unwilling to reverse the trial judge’s approach to the material municipal ordinance. That approach derived “ascertainable standards” from the entire ordinance rather than a single section, yielding the conclusion that the applicant had failed to estab-

60. Id., 401 S.E.2d at 534. These zones were limited to areas within fifty feet of the facility’s property line and fifty feet of a parking lot used by the facility’s staff and patients. Id.
61. Id. This, the court said, prevented facility patients, physicians, and staff from being “swarmed” by the demonstrators. Id.
62. Id. at 25, 401 S.E.2d at 533. The court determined that a “content-neutral” regulation “applies irrespective of the subject matter to be communicated and does not single out a particular content of speech for better or worse treatment.” Id.
63. Id. The court acknowledged “significant governmental interest” as controlling traffic on streets and sidewalks, dispersement of law enforcement personnel city-wide, orderly operation of pretrial detention facility, and operation of lawful businesses. Id.
64. Id. at 28, 401 S.E.2d at 535.
65. Id. The court thus sustained the validity of the ordinance. In a dissenting opinion joined by Presiding Justice Smith, Justice Fletcher deemed the injunction overbroad. Id. at 29, 401 S.E.2d at 535 (Smith & Fletcher, JJ., dissenting).
66. See generally P. Sentell, MISCasting MANDAMUS IN GEORGIA LOCAL GOVERNMENT LAW (1989).
69. 260 Ga. at 389, 392 S.E.2d at 878.
70. “The trial court looked to the ordinance as a whole to find the ascertainable standards and looking to the ordinance as a whole decided that there was no clear legal right to the license and denied the writ of mandamus.” Id. The municipal council was apparently concerned over the applicant’s having received two DUI’s within a period of four years. For treatment of the subject generally, see R. Perry Sentell, Jr., “Ascertainable Standards” versus “Unbridled Discretion in Local Government Regulation,” GA. COUNTY GOV. DEC. 1989, 19; 1 GMA Info. Series 1 (Jan. 1990).
lish a "clear legal right" to the license.\textsuperscript{71}

In contrast, a unanimous court reversed the trial judge in \textit{Inner Visions, Ltd. v. City of Smyrna},\textsuperscript{72} thereby disapproving municipal denial of a license for sale of nonalcoholic drinks and live entertainment. Emphasizing that applicant’s property was zoned for general commercial purposes, the court could not abide the municipal objection of noncompliance with the building code.\textsuperscript{73} Applicant was entitled to consideration under the then-existing zoning ordinance, the court asserted, and "[i]f the condition of the building did not comply with the city’s building code, [applicant] would have been entitled to the issuance of a license contingent upon compliance."\textsuperscript{74}

\textbf{D. Contracts}

No municipality is an island; both existence and viability require services and goods obtained from others. The agreements for effectuating these requirements are the subjects of considerable litigation.

Initially, the municipality must possess authority to enter into the agreement. In \textit{Cole v. City of Atlanta},\textsuperscript{75} professional golfers charged breach of an oral contract procuring their services on municipal golf courses.\textsuperscript{76} In response, the court of appeals adumbrated a contracting party’s "duty" to determine a municipality’s compliance "with the laws limiting and prescribing its powers."\textsuperscript{77} Accordingly, the court reasoned, plaintiffs must "clearly show that the contract was authorized."\textsuperscript{78} Plain-
tiffs having failed to meet that obligation, it was clear "that the alleged contract, even if proven, would be unauthorized."

A second consideration is whether the municipality's contracting capacity comes into play. Illustratively, *Precise v. City of Rossville* featured the claim of a police officer alleging municipal breach of an employment contract. Denominating hiring and firing of police officers as a "governmental function," the court of appeals held the suit "barred by the doctrine of sovereign immunity." Forcefully reversing, the supreme court denied that governmental immunity had ever served as a defense to municipal contract liability. The supreme court asserted "that municipal immunity is not a valid defense to an action for breach of contract. Anything to the contrary is specifically overruled."

On occasion, the parties may, in the terms of the agreement itself, provide an alternative to litigation. In *City of College Park v. Batson-Cook Co.*, the parties instanced that practice in a guaranteed maximum cost contract for constructing a municipal convention center. The contract contained a clause requiring arbitration of all claims and disputes between contractor and municipality. When disagreement subsequently arose over the contractor's claim for excess costs, however, the parties

79. Id. "The record in the instant case does not reveal any evidence, other than bare statements of opinion by city officials, that the contract alleged was authorized pursuant to acts of the City." Id. The court held that the unauthorized nature of the contract "also forecloses appellants from asserting estoppel against the City." Id. On the issue of estoppel in this context generally, see R. Perry Sintell, Jr., *The Doctrine of Estoppel in Georgia Local Government Law* (1985).

80. 195 Ga. App. at 68, 392 S.E.2d at 285. The court also declared unavailing plaintiffs' claim in *quantum meruit*, reasoning that they introduced evidence only of their costs but nothing showing value received by the municipality. Id.


82. At the invitation of the mayor, the officer first resigned, then attempted to revoke the resignation, and charged as breach of contract the municipality's rejection of the revocation and termination of his employment. Id. at 871, 397 S.E.2d at 134.

83. Id. at 872, 397 S.E.2d at 135. The court thus affirmed the trial judge's summary judgment in favor of the municipality. Id.


85. Id. at 211, 403 S.E.2d at 49. The court did hold, however, that plaintiff's tort claim could not be dismissed on grounds of ante litem notice. Id., 403 S.E.2d at 49.


87. The contract stated the maximum cost of the job and specified that any change in the sum could be made only by a duly executed change order. Id. at 138, 395 S.E.2d at 385.

88. The municipality argued noncompliance with the change order procedure, and the contractor maintained that all changes were made by authorized municipal officials who agreed to wait until the project was completed to resolve the increases. Id. at 139, 395 S.E.2d at 386.
also disagreed upon applicability of the arbitration clause. Affirming the trial judge's confirmation of the award, the court of appeals ferreted from the record the following conclusion: "The dispute between the parties involved the meaning, interpretation and application of certain terms of the contract and these were matters for the arbitrators to determine."  

E. Legislation

In the interpretation of local government legislative enactments, courts generally will not consider evidence of legislators' "motives" and "intent" in determining "legislative intent." The materiality of this general principle in a peculiar factual setting made for one of the more intriguing facets of the survey period.

The context was the unlikely one of condemnation. Fulton County v. Dangerfield encompassed a condemnor's appeal from the trial judge's admission of condemnees' evidence of the property's "extra value" as a site for an advertising sign. That evidence was based on statements by participants in a hearing that concluded in a municipality's denial of a sign permit for the property. The court of appeals sustained admissibil-

89. The Georgia Supreme Court had previously determined, without opinion, that the claim was the proper subject of arbitration. Id.
90. The municipality relied upon O.C.G.A. § 9-9-93(b)(3), which provides that an arbitration award shall be vacated if the court finds that the arbitrators overstepped their authority. Id. (citing O.C.G.A. § 9-9-93(b)(3) (1982)).
91. 196 Ga. App. at 140, 395 S.E.2d at 387.
92. For treatment of this principle, see generally R. Perry Sentell, Jr., "Motive" and "Intent" in Statutory Interpretation: Their Role in Georgia Local Government Law, Urb.
94. Id. at 208-09, 393 S.E.2d at 285. A county had condemned the property for use as a transit station. On local government condemnation generally, see R. Perry Sentell, Jr., Con.
95. 195 Ga. App. at 208-09, 393 S.E.2d at 285. "The opinion was that, since all requirements had been met but MARTA had advised the city that the property was being condemned, the permit was denied for this reason." Id.
ity of the evidence, reasoning that issuance or denial of a sign permit “was an administrative ministerial act and not legislative.”

Granting certiorari, a majority of the supreme court reversed. The general principle’s “underlying rationale” required exclusion of the condemnees’ evidence. “If the courts cannot properly rely on the testimony of the legislators themselves, then speculation by an outsider, based on hearsay and opinion, is even more inherently unreliable.” Accordingly, the court held “the testimony concerning the subjective intent of the legislative body of the [municipality] was inadmissible.”

F. Property

It was in the setting of eminent domain that the supreme court canvassed some of the most basic (and important) principles of state and local government law. Background for the episode encompassed the court’s 1985 decision denying the State Department of Transportation power to condemn municipal property. In apparent response, the legislature enacted statutes purporting to supply the missing authority. Those statutes created the State Commission on the Condemnation of Public Property, comprised the Commission of executive-branch officials, and required Commission approval of all state-agency condemnations of public property. Accordingly, the statutes assumed red-flag prominence for municipal challenge.

The challenge materialized in Department of Transportation v. City of Atlanta, a broad spectrum assault of constitutional complexion. Es-
sentially, the attack charged executive branch exercise of a legislative power. In requiring Commission approval of eminent domain, challenger elaborated, the statute violated the Georgia Constitution's mandate of separation of powers and its proscription on delegating legislative power.100 The trial judge agreed on both scores.110

Initially, the supreme court emphasized that neither constitutional provision could operate in a vacuum.111 The “controlling issue,” the court proffered, was whether the statute contained “sufficient guidelines for the Commission to follow.”112 The statute required that the Commission base its approval on a determination of the “public interest”113 and that the approved condemnation then advance under applicable eminent domain procedures.114 Those prerequisites constituted sufficient “guidelines,” the court concluded, and the Commission's authority “does not amount to an improper delegation of legislative power and does not violate separation-of-powers principles.”115 Reversing the decision below, therefore, the

106. The case arose from Commission approval of the DOT’s condemnation of municipal parks for constructing the Presidential Parkway. Id. at 699, 398 S.E.2d at 567.

107. All parties conceded that condemnation is a legislative power. Id. at 702 n.1, 398 S.E.2d at 570 n.1.

108. GA. CONST. art. I, § 2, para. 3. The Georgia Constitution provides in pertinent part as follows: “The legislative, judicial, and executive powers shall forever remain separate and distinct; and no person discharging the duties of one shall at the same time exercise the functions of either of the others except as herein provided.” Id.

109. GA. CONST. art. III, § 1, para. 1. The Georgia Constitution provides in pertinent part as follows: “The legislative power of the state shall be vested in a General Assembly which shall consist of a Senate and a House of Representatives.” Id.


111. The court reasoned that “in our complex society,” the general assembly “cannot find all facts and make all applications of legislative policy.” 260 Ga. at 703, 398 S.E.2d at 571.

112. Id. If so, “the executive official or commission is not ‘exercis[ing] the functions of the legislature, in that it is not making a purely legislative decision, but is acting administratively pursuant to the direction of the legislature.” Id. (quoting GA. CONST. art. I, § 2, para. 3).

113. O.C.G.A. § 50-16-183(b) (1982). In making that determination, the Commission must “consider whether the current public use of the property or the proposed public use of the property is more in the public interest.” 260 Ga. at 703, 398 S.E.2d at 572.


115. 260 Ga. at 704, 398 S.E.2d at 572. The court also rejected a procedural due process contention: “[W]e can see no constitutional basis for the argument that more process is due when public property is involved than when private property is involved.” Id. Thus, the property owner is entitled to no notice or opportunity to be heard. Likewise, the court
court proclaimed state agencies sufficiently armed to condemn municipal property.116

G. Liability

Frequently, it is claimed, the municipal government’s engine sputters, resulting in manifold harms and inconveniences. Suits arising from these asserted governmental glitches constitute staples of this annual survey.117

Georgia's traditional approach to the issue found classic exposition in Mayor & Aldermen of Savannah v. Radford.118 Plaintiff charged that municipal employees interfered with her husband's funeral at the municipal cemetery. The trial judge rejected plaintiff's claim for damages, holding municipal operation of the cemetery a "governmental function."119 Reversing, the court of appeals reasoned that "[i]nsofar as there continue to be lots sold for burial purposes and related services provided," operation of the cemetery constituted "a ministerial function."120 Reversing the court of appeals, a majority of the supreme court delved into the unique history of the cemetery,121 concluding that over time its "lesser function" of burial had "merged with and into" its "greater function" of "cultural, historical, and recreational purposes for the general public."122 That

turned aside substantive due process arguments, holding that the statute provided the Commission with adequate authority to make a reasoned decision. Id.

116. Id. at 704-05, 398 S.E.2d at 572-73. Forcefully dissenting, Presiding Justice Smith urged that the statute created "an impermissible delegation of legislative authority" in failing to mark out sufficiently the limits of the power it purported to grant; and that under the separation of powers command, "[m]embers of the executive branch of state government are constitutionally prohibited from making final legislative decisions regarding the condemnation of public property." Id. at 709-10, 398 S.E.2d at 575 (Smith, J., dissenting).

In a separate dissent, Justice Hunt also emphasized the nonexistence of guidelines. Id. at 710, 398 S.E.2d at 575 (Hunt, J., dissenting).

117. See generally R. Perry Sentell, Jr., The Law of Municipal Tort Liability in Georgia (4th ed. 1988) (The study traces the history of municipal tort liability generally and analyzes the current state of the law in Georgia).


121. 261 Ga. at 130-31, 401 S.E.2d at 710. Because of that uniqueness, the court was able to distinguish and preserve City of Atlanta v. Rich, 64 Ga. App. 193, 12 S.E.2d 436 (1940).

261 Ga. at 130-31, 401 S.E.2d at 710.

122. 261 Ga. at 130-31, 401 S.E.2d at 710.
merger, the court held, converted operation of the cemetery into a "governmental function."\textsuperscript{122}

Receiving far less judicial solicitude, \textit{Pinkston v. City of Albany}\textsuperscript{124} arose from plaintiff's arrest by municipal police officers.\textsuperscript{125} First, the court rejected a lack-of-probable-cause contention, observing that "by plaintiff’s own statement, he was at a fire in a public place, with alcohol, displaying a weapon, and he refused to put out the fire."\textsuperscript{126} Second, the court discounted a claim for the violation of civil rights:\textsuperscript{127} Plaintiff "has not even alleged that any of the asserted wrongs committed against him resulted from . . . an intentionally corrupt or impermissible policy on the part of the city."\textsuperscript{128} Finally, on plaintiff’s slander charge, the court responded that "truth is a perfect defense."\textsuperscript{129}

The survey period encompassed two instances of municipal "nuisance" liability.\textsuperscript{130} In \textit{City of Lawrenceville v. Heard},\textsuperscript{131} the court affirmed a homeowner’s judgment for the continuing nuisance of excessive water runoff.\textsuperscript{132} With evidence of increased drainage from municipally approved subdivisions, as well as municipal failure to maintain upstream culverts,

\begin{itemize}
\item [123.] Id. Accordingly, the court held the municipality immune from tort liability in the case. \textit{Id}. In his dissent, Presiding Justice Smith "violently disagree[d]" with the majority and characterized the "governmental" classification of the cemetery "a figment of someone’s imagination totally lacking support in the record." \textit{Id}. at 135-36, 401 S.E.2d at 713 (Smith, J., dissenting). Justice Hunt dissented on grounds that although the cemetery served both governmental and ministerial purposes, plaintiff’s alleged injury arose from the latter, and there should be no immunity in regard to it. \textit{Id}. at 136, 401 S.E.2d at 714 (Hunt, J., dissenting).


\item [125.] \textit{Id}. at 44, 395 S.E.2d at 588. Plaintiff sued the municipality and seven members of the police department. \textit{Id}.

\item [126.] \textit{Id}. at 44-46, 395 S.E.2d at 588-90. Thus, plaintiff’s own version admitted enough, the court reasoned, to exclude the claim of an arrest based on personal spite and desire to injure under O.C.G.A. §§ 51-7-2 and 51-7-3. 196 Ga. App. at 46, 395 S.E.2d at 590.


\item [128.] 196 Ga. App. at 47, 395 S.E.2d at 590.

\item [129.] \textit{Id}. Plaintiff alleged slander as a result of the officer’s statement that he was being arrested for attempted escape. The court thus affirmed the trial judge’s grant of summary judgment in favor of defendants. \textit{Id}., 395 S.E.2d at 591.


\item [132.] \textit{Id}. at 583, 391 S.E.2d at 444. Plaintiff claimed damages for property erosion, flooding of his basement, warped floors, and cracks in chimney and foundation. \textit{Id}. at 580-81, 391 S.E.2d at 442-43.
\end{itemize}
the court could detect no reason for reversal. Similarly, in *City of Atlanta v. Murphy*, the court affirmed a property owner's judgment for nuisance resulting from municipal operation of a landfill. Initially, the court rejected municipal protests of "double recovery": "Damages for discomfort and annoyance caused to the owner and his family are separate and distinct from damage to the value of the realty." The court also refused to accept the contention that, because plaintiff remained on the property, the damages were excessive. The fact that plaintiff was willing to put up with the nuisance did not preclude recovery for the resulting damages.

Concluding the survey period's asserted glitches, *City of Atlanta v. J.A. Jones Construction Co.* projected direct (and dynamic) conflict between (and within) the appellate courts. The case arose from municipal acceptance of a late bid for construction of a parking deck. Plaintiff, lowest timely bidder, sued the municipality under both state law (lost profits) and federal law (denial of due process). At trial, the jury found

133. *Id.* at 582-83, 391 S.E.2d at 444. Although both parties produced expert testimony, the court held that the only issue on appeal was whether there was "any evidence" in support of the verdict and judgment. *Id.* at 582, 391 S.E.2d at 444. The court also affirmed judgment n.o.v. for the municipality on the point of punitive damages. *Id.* at 583, 391 S.E.2d at 444. The court rejected as "without merit" plaintiff's contention that "attorney fees are recoverable in nuisance actions against municipalities even absent proof of bad faith or other grounds delineated in OCGA sec. 13-6-11." *Id.* The court distinguished the supreme court's decision in *City of Columbus v. Myszka*, 246 Ga. 571, 272 S.E.2d 302 (1980), on the ground that a statute authorized the jury's verdict in that case. 194 Ga. App. at 583, 391 S.E.2d at 444.


135. *Id.* at 654, 391 S.E.2d at 477. Plaintiff claimed damages for odors, pests, and wild animals and obtained separate verdicts and judgments for loss of rental value, damages, and attorney fees. *Id.* at 652, 391 S.E.2d at 476.

136. *Id.* at 653, 391 S.E.2d at 476. "In an action for nuisance, the plaintiff may recover for both damage to person and damage to property." *Id.*

137. *Id.* at 654, 391 S.E.2d at 477. The court also upheld the award for attorney fees on the ground that plaintiff presented evidence of municipal bad faith. *Id.* at 653-54, 391 S.E.2d at 476-77.


139. *Id.* at 658, 398 S.E.2d at 370. Specified closing time for bids was 2:00 p.m.; the contested bid was received at 2:03 p.m., after the municipality had announced that no other bids would be accepted; another bid, submitted between 2:05 and 2:10 p.m., was rejected as untimely; all bids were for over $13,000,000; and the late contested bid was $10,500 less than plaintiff's bid. *City of Atlanta v. J.A. Jones Constr. Co.*, 195 Ga. App. 72, 72-73, 392 S.E.2d 564, 566, rev'd, 260 Ga. 658, 398 S.E.2d 369 (1990).

140. 260 Ga. at 658, 398 S.E.2d at 370. The latter claim was asserted under 42 U.S.C. § 1983 and grounded upon municipal failure to afford plaintiff a hearing on its complaint concerning acceptance of the late bid. *Id.*
sizeable awards on both counts, and the trial court entered judgment; the court of appeals affirmed.\textsuperscript{141} A majority of the supreme court reversed both awards.\textsuperscript{148} Although approving the frustrated bidder's right to "appropriate relief,"\textsuperscript{14} the court unfurled the "purpose" of the bid process: to protect public coffers and to assure taxpayers quality work at lowest possible price.\textsuperscript{144} In the court's view, those objectives limited plaintiff's recovery to "reasonable costs of bid preparation."\textsuperscript{148} Recovery for lost profits would "unduly punish the tax-paying public while compensating the plaintiffs for effort they did not make and risks they did not take."\textsuperscript{144} The explicated rationale also precluded plaintiff's due process recovery. Thus, municipal failure to afford a hearing resulted only in plaintiff's loss of the contract, and recovery for that wrong was (again) the expense of bid preparation. An additional award under federal law would constitute "impermissible double recovery."\textsuperscript{147}

Although the five-justice majority opinion took pains to specify that personal liability was not in issue,\textsuperscript{148} four of those justices joined in a concurring opinion.\textsuperscript{149} Their announced purpose was "to suggest the possibilities of additional relief . . . as might avail for a proper case in the future."\textsuperscript{160} Both suggestions focused on liability of the officials themselves.\textsuperscript{161} First, the concurrence noted the "long-standing distinction, in cases of official immunity, between ministerial and discretionary functions as to negligent acts of public officials."\textsuperscript{162} Second (and "[m]ore im-

\begin{footnotes}
\item[141] Id.
\item[142] Id. at 658-60, 398 S.E.2d at 370-71.
\item[143] Id. at 659, 398 S.E.2d at 370.
\item[144] Id. at 658, 398 S.E.2d at 370.
\item[145] Id. at 659, 398 S.E.2d at 370. That cost was established at trial to be $22,125.05. \textit{Id.}, 398 S.E.2d at 371.
\item[146] Id. "Limiting recovery to reasonable bid preparation costs is keeping with the legitimate governmental objective of rewarding the lowest qualified bidder and guarding against public officials shirking their duties while, at the same time, preventing unwarranted waste of taxpayers' money." \textit{Id.}
\item[147] Id. The court directed the trial judge to enter judgment for plaintiff in the amount of $22,125.05, with interest. \textit{Id.}
\item[148] Id.
\item[149] Id. at 660-61, 398 S.E.2d at 371-72 (Clarke, C.J., Weltner, Bell & Hunt, JJ., concurring). Justice Weltner wrote the opinion and was joined by Chief Justice Clarke and Justices Bell and Hunt. \textit{Id.}
\item[150] Id. at 660, 398 S.E.2d at 371 (Clarke, C.J., Weltner, Bell & Hunt, JJ., concurring).
\item[152] 260 Ga. at 660, 398 S.E.2d at 371 (Clarke, C.J., Weltner, Bell & Hunt, JJ., concurring). "[W]here there is no self-insurance fund, the distinction between ministerial and
important”), fraud and corruption on the part of a public official resulting in the unlawful award of a publicly-bid contract may subject the fraudulent and corrupt official to personal liability.

H. Zoning

Traditionally, local government zoning provides exception for the special instance of a “nonconforming use.” Discontinuation of such a “use” claimed the supreme court’s attention in Ansley House, Inc. v. City of Atlanta. The controversy arose from the municipality’s revocation of a business license for nonconforming premises. Under its ordinance, the municipality maintained that discontinuation for a continuous period of one year had destroyed the permissibility of the nonconforming use. Plaintiff countered that his acquisition of the property within the year, and his acts in restoring its condition, retained the “use” status. A majority of the court accepted plaintiff’s position, holding the ordinance to create only a “rebuttable presumption” of abandonment—a presumption sufficiently rebutted by plaintiff’s actions. Those actions presented “convincing evidence of an intent not to abandon the nonconforming use,” the court reasoned, and tolled the running of the ordinance’s “for-

discretionary acts is still viable in ruling on immunity for public officials for liability for their negligent acts.” Id. (quoting Logue v. Wright, 260 Ga. 206, 206, 392 S.E.2d 235, 236 (1990)).

153. Id.

154. Id. at 661, 398 S.E.2d at 372. Presiding Justice Smith, in a forceful dissenting opinion, urged that the issue of personal liability should be addressed, and that the judgments against the municipality should be affirmed. Id. at 662, 398 S.E.2d at 373 (Smith, J., dissenting). A second dissent, by Justice Fletcher, took the opposite approach, urging that the breach was only de minimis and that municipal officials should be allowed discretion to award the contract to the lowest bidder. Id. at 665, 398 S.E.2d at 375 (Fletcher, J., dissenting).


156. Id. at 540, 397 S.E.2d at 419. The municipality had revoked the former owner’s business license to operate a rooming house (the nonconforming use) because of housing, building, and electrical code violations. Plaintiffs later purchased the property with the understanding that its nonconforming use status continued, only to experience subsequent municipal revocation of the status. Id. at 540-42, 397 S.E.2d at 419-20.

157. Id. at 541, 397 S.E.2d at 420. I.e., after that period of discontinuation, the premises could not be used “except in conformity with the regulations of the district in which it is located.” Id. (quoting ATLANTA, GA., ZONING ORDINANCE § 16-24.005(5) (1980)).

158. Id. at 540-41, 397 S.E.2d at 419-20. Those acts included “obtaining a building permit, beginning renovations, applying for a business license, and obtaining a temporary certificate of occupancy.” Id. at 543, 397 S.E.2d at 421.

159. Id. “Appellant has presented ample evidence of a series of closely connected overt acts, occurring months prior to the expiration of the period specified in the ordinance, which rebut that presumption.” Id.
feiture period."\(^{160}\) Upon restoration of the property, therefore, plaintiff was entitled to continuation of its nonconforming use status.\(^{161}\)

More procedural in complexion, City of Atlanta v. Cates\(^{162}\) featured a rezoning effort by landowners who had failed at such an effort some three years earlier.\(^{163}\) Assessing the municipality’s defense of res judicata, a majority of the supreme court denied one of its prior decisions “to mean that a simple change in the rezoning application creates a new cause of action.”\(^{164}\) Plaintiffs could nevertheless avoid res judicata by demonstrating “a change in the circumstances affecting the use of the land,” a change rendering the present zoning classification unconstitutional.\(^{165}\) Plaintiffs’ affidavits created “a genuine issue of fact” in that respect,\(^{166}\) the court held, rendering res judicata, as a matter of law, inapplicable.\(^{167}\)

II. COUNTIES

A. Powers

The survey period’s power controversies tended toward intra-county administrative disagreements over the reach of the county commissioners’ authority. The supreme court drew the lines of resolution, yielding results that juxtaposed themselves in an interesting pattern.

In McCorkle v. Bignault,\(^{168}\) disagreement centered on the financial authority of the commission’s chairman. Specifically, the chairman claimed approval power over attorney fee requests submitted by the tripartite

160. Id. “The fact that appellant has no business license to operate the property as a rooming house, and could not apply for such license until one year after the date of the previous license’s revocation, is irrelevant so long as there is, as here, ample evidence of the owner’s intent not to abandon the nonconforming use prior to expiration of the specified period.” Id.

161. Id. Justices Weltner, Hunt, and Benham dissented, asserting that the former owner’s intent not to abandon could not be transferred to the successor owners. Id. at 543-44, 397 S.E.2d at 421-23 (Weltner, Hunt & Benham, JJ., dissenting).


163. Id. at 772-73, 399 S.E.2d at 475.

164. Id. at 773, 399 S.E.2d at 475. This was the meaning the municipality attributed to Trend Dev. Corp. v. Douglas County, 259 Ga. 425, 383 S.E.2d 123 (1989). The court reasoned that Trend was limited to its specific facts. 260 Ga. at 773, 399 S.E.2d at 475.

165. 260 Ga. at 773, 399 S.E.2d at 475. “A classification that was constitutional in 1985 or 1987 might not be constitutional now.” Id.

166. Id. The court also disagreed with the municipal contention that Trend required that all affirmative defenses must be raised before the zoning board. Id. at 774, 399 S.E.2d at 475.

167. Id. at 773, 399 S.E.2d at 475. The court thus affirmed the trial judge in denying the municipality’s motion for summary judgment. Justices Bell, Hunt, and Fletcher dissented. Id. at 774, 399 S.E.2d at 475-76 (Bell, Hunt & Fletcher, JJ., dissenting).

committee managing the county's indigent defense program.\textsuperscript{169} Upon challenge, the court found the chairman's approval of county disbursements "merely a matter of custom" not mandated by ordinance.\textsuperscript{170} The county's voluntary participation in the state-funded indigent defense program bound the county to program guidelines.\textsuperscript{171} Those guidelines "provide for a procedure that is independent of the county except to the extent of the county's representatives on the tripartite committee."\textsuperscript{172} Consequently, the court sustained an order enjoining the chairman's approval of attorney fee requests.

In contrast, the court in \textit{Board of Commissioners of Randolph County v. Wilson}\textsuperscript{174} upheld the challenged power. Specifically, the court rejected the county sheriff's charge that by reducing his previous year's budget,\textsuperscript{176} the commissioners were invading his statutory power to appoint deputies.\textsuperscript{177} The court countered by emphasizing the commissioners' statutory duty to approve deputy salaries.\textsuperscript{178} Exercise of that duty, the court reasoned, neither abolished positions nor encroached on appointment.\textsuperscript{178} That the reduced budget may require the sheriff to "adjust" the number and compensation of deputies failed to demonstrate the commissioners' abuse of discretion.\textsuperscript{179}

\textsuperscript{169} \textit{Id.} at 758-59, 399 S.E.2d at 916-17. The committee is required by O.C.G.A. § 17-12-37 (1990); it had selected a panel of local attorneys to whom indigent cases were assigned on a rotating basis. The chairman claimed power to review and approve all requests for payment of attorney fees in excess of $999. 260 Ga. at 758-59, 399 S.E.2d at 916-17.

\textsuperscript{170} 260 Ga. at 760, 399 S.E.2d at 917.

\textsuperscript{171} \textit{Id.} The program is authorized and structured by O.C.G.A. §§ 17-12-30 to -62 (1990). 260 Ga. at 758, 399 S.E.2d at 916.

\textsuperscript{172} 260 Ga. at 760, 399 S.E.2d at 917.

\textsuperscript{173} \textit{Id.} at 761, 399 S.E.2d at 918. The court limited the injunction "to the issue of funds allocated for indigent defense." \textit{Id.}


\textsuperscript{175} \textit{Id.} at 482, 396 S.E.2d at 904. The sheriff requested an aggregate sum to pay five deputies' salaries, and the commissioners budgeted a lesser aggregate sum. \textit{Id.}

\textsuperscript{176} O.C.G.A. § 15-16-23 (1990). Local statutes also conferred the appointment power upon the sheriff. 260 Ga. at 482, 396 S.E.2d at 903-04.

\textsuperscript{177} 260 Ga. at 483, 396 S.E.2d at 904. "Indeed, the commission's power to approve the deputy sheriffs' salaries is recognized in the emphasized language of the local act." \textit{Id.} (footnote omitted).

\textsuperscript{178} \textit{Id.} The court disagreed with the trial judge's interpretation that the commissioners must budget deputies on a line-item basis. "By approving or disapproving the sheriff's budget request for salaries, whether done separately or as a lump sum, the commissioners have performed their duty under the language of the act." \textit{Id.}

\textsuperscript{179} \textit{Id.}, 396 S.E.2d at 904-05. The court denied that the commissioners' budgeting process crossed over into discharging the sheriff's deputies. "We view this case, however, as involving the power of the commission to approve the sheriff's budget rather than the power of the sheriff to hire deputies." \textit{Id.} at 484, 396 S.E.2d at 905.
B. Officers and Employees

In an unusually wide array of contexts, county employment issues reared their countenances during this survey period. Balkcom v. Jones County featured compensation claims of two former county commissioners recalled from office in 1982. On grounds of the recall statute's unconstitutionality, plaintiffs sought recovery for unpaid salaries and benefits. Because plaintiffs' periods of entitlement expired at the end of 1984, however, the court of appeals held the claims statutorily foreclosed.

Likewise resolved on statutory grounds, Diefenderfer v. Pierce focused upon prerequisites for the position of assistant to the county's chief executive. Those prerequisites included a college degree "and . . . at least five years of experience in" various capacities "or any combination thereof." The supreme court held the "or any combination thereof" language exclusively applicable to the experience portion of the requirement. Accordingly, the court granted a petition for quo warranto, holding that one needed a college degree regardless of experience.

In Madden v. Bellew, the appellate courts themselves disagreed over expiration of the county attorney's term of employment. Attention focused on statutes authorizing the commission chairman's employment of personnel "with the concurrence and approval of a majority of the members of the board." Rejecting the court of appeals position that employment terminated when newly elected commissioners took office, the su-

181. Id. at 378, 395 S.E.2d at 890. The recall took place under O.C.G.A. § 21-4-1. Id. For treatment of the subject, see R. Perry Sentell, Jr., Remembering Recall in Local Government Law, 10 Ga. L. Rev. 883 (1976), reprinted in P. SENTELL, ADDITIONAL STUDIES, supra note 1, at 327.
182. 196 Ga. App. at 379, 395 S.E.2d at 890. The statute requires that actions for the recovery of wages "shall be brought within two years after the right of action has accrued." Id. (quoting O.C.G.A. § 9-3-22 (1982)). The court affirmed the trial judge's decision for the county. Id.
185. Id. at 427, 396 S.E.2d at 228.
186. Id. For treatment of this popular action in the local government context, see R. PERRY SENTELL, JR., THE WRIT OF QUO WARRANTO IN GEORGIA LOCAL GOVERNMENT LAW (1987).
188. For a second issue of considerably more importance, see infra text accompanying notes 226-45.
190. The new board took office in January 1989, and the commissioners' defeat of the chairman's recommendation to continue the previous attorney occurred on January 24, 1989. In March, plaintiffs (three commissioners) instituted this action. Madden v. Bellew,
The Supreme Court feared that "county governments would be subject to considerable turmoil after every election in which new commissioners were elected." Accordingly, the court held that the county attorney's term expired only when "a majority of the county commission withdrew approval of his employment." Burbridge v. Hensley involved the correct procedure for bringing a sheriff's department within the county civil service system. The court of appeals viewed the authorizing statute to mandate two county ordinances: first, an ordinance creating a county civil service commission; second, a subsequent ordinance authorizing departments to apply for coverage. The court held that the county's failure to adopt the second ordinance invalidated an interim sheriff's application for his department's coverage. Accordingly, the civil service commission possessed no jurisdiction over the sheriff's department nor any power to order a former employee's reinstatement and back pay.

Finally, Lundy v. State presented an indicted district attorney's investigator's claim to specified grand jury protections statutorily conferred upon "peace officers." The court disputed neither defendant's status as a covered peace officer nor the fact of his employment when the alleged acts occurred. However, the indictment followed by several months defendant's discharge from his position. "Given that the purpose of the statute is to prevent officials from being distracted from the performance of their duties," the court affirmed the trial judge's summary judgment in favor of the noncomplying sheriff.


191. 260 Ga. at 531, 397 S.E.2d at 688.
192. Id. at 531, 397 S.E.2d at 689. That is, when the commissioners defeated the chairman's recommendation. Id.
194. Id. at 523-25, 391 S.E.2d at 5-7. The action was grounded upon the civil service commission's affirmation of a grievance committee's recommendation of reinstatement and back pay for a former department employee. Id. at 523, 391 S.E.2d at 6.
195. Id. at 524, 391 S.E.2d at 6 (citing O.C.G.A. § 36-1-21 (1987 & Supp. 1991)).
196. Id. at 525, 391 S.E.2d at 7.
197. Id., 391 S.E.2d at 6-7. The court affirmed the trial judge's summary judgment in favor of the noncomplying sheriff. Id., 391 S.E.2d at 7.
199. Id. at 682, 394 S.E.2d at 560. Those rights include receiving a copy of the indictment before it is presented to the grand jury, the right to appear, with counsel, before the grand jury, and the right to make a sworn statement. Id. (citing O.C.G.A. §§ 17-7-52, 45-11-4 (1990)). For treatment of these protections in local government law, see R. Perry Sentell, Jr., Georgia Local Government Officials and the Grand Jury, 26 Ga. Sr. B.J. 50 (1989).
200. 195 Ga. App. at 682, 394 S.E.2d at 560. Defendant had been convicted on nine counts of bribery and three counts of theft by taking for acts that occurred while he was the district attorney's investigator. Id.
of their duties while they defend themselves against baseless charges,” the court refused to extend the protections to one no longer an officer when the proceedings commenced.

C. Regulation

Few subjects better illustrate the multi-faceted issues of local government regulation than that of licensing. Cook v. Cobb County featured that subject via a challenge to county revocation of a sign permit. Sustaining the challenge, the supreme court emphasized an ordinance requiring that permit revocation be effected by “the zoning administrator or the county’s designee.” The official who revoked challenger’s permit was neither the administrator nor possessed of written county authorization. The court discounted the official’s claim of verbal delegation, invalidated the revocation, and declared challenger entitled to construct a sign.

The permit power fared no better in Dinsmore Development Co. v. Cherokee County, involving an appeal from county denial of a landfill permit. Examining the material ordinance, the court inquired whether a general statement of “purposes” provided the county board with sufficient “guidelines” for regulating landfills. Characterizing the statement

201. Id. at 683, 394 S.E.2d at 561.
202. Id. Additionally, the court held the evidence sufficient to support defendant’s convictions. Id. at 683-84, 394 S.E.2d at 561-62.
205. Id. at 634, 397 S.E.2d at 921. Challengers abandoned the original sign site, failed in their attempt to obtain a new site, and suffered revocation of their original permit because of the erection of another sign within a prohibited distance. Id.
206. Id., 397 S.E.2d at 922 (citing Cobb County, Ga., Ordinance § 14(B)(1)(a)).
207. Id. at 635, 397 S.E.2d at 922. The court said, “There was no substantive proof of a delegation of the power to revoke sign permits.” Id.
208. Id. The court reversed the trial judge’s decision to the contrary and dismissed both a permanent injunction and an award of fines. Id. Justice Benham dissented without opinion. Id. (Benham, J., dissenting).
210. Id. at 727, 398 S.E.2d at 539. Plaintiffs sought a permit from the county board of zoning adjustment for a landfill on agriculturally zoned land and appealed the board’s denial. Id.
211. Id. at 727-29, 398 S.E.2d at 539 (citing Cherokee County, Ga., Zoning Ordinance, Art. X, § E(3), (g)(8)). Plaintiffs contended that the ordinance lacked objective guidelines upon which the board could base its denial of a permit. Id. at 727, 398 S.E.2d at 539.
as only one "of general goals and purposes," the court held it devoid of criteria or objective standards. Accordingly, plaintiffs prevailed in their pursuit of the special use permit.

The period's regulatory fixation upon waste disposal continued apace in Mayor & Aldermen of Forsyth v. Monroe County. The case encompassed a county's effort to prohibit waste disposal at a municipal landfill located in an unincorporated area. Because the subject waste would originate outside the county, argument revolved around a statute requiring county consent to the transaction. The supreme court observed, however, that a federal district court had declared that statute unconstitutional, a decision then on appeal to the eleventh circuit. That decision, the court held, estopped consideration of the statute in this proceeding.

The remaining cases involved county enforcement of garbage ordinances against individuals. In Hogan v. DeKalb County, the court of appeals upheld enforcement against an owner seeking to collect garbage from his own apartment complexes and commercial building. The court construed the ordinance to restrict collection efforts to the county or its licensee, with an exception only for owners of single-family dwelling

statement of purpose contained in the ordinance enumerated such concerns as congestion, safety, health, general welfare, adequate light and air, transportation, water, sewerage, schools, parks, desirable living conditions, stability of neighborhoods, and encouraging the most appropriate use of lands. Id. at 728-29, 398 S.E.2d at 540 (citing Cherokee County, Ga., Zoning Ordinance, Art. I).

212. Id. at 729, 398 S.E.2d at 540.

213. Id. It was not sufficient, the court held, to meet the "applicant of common intelligence" standard required of such regulatory measures. Id. For a discussion of how close that call can be, see R. Perry Sentell, Jr., "Ascertainable Standards" versus "Unbridled Discretion," in Local Government Regulation, Ga. County Government 19 (Dec. 1989); 1 GMA Info. Series 1 (Jan. 1990).

214. 260 Ga. at 729, 398 S.E.2d at 540. That is, the court reversed the trial judge's decision to the contrary, but held that applicants' right to the permit depended upon meeting other requirements not yet fulfilled. Id.


216. Id. at 296-97, 392 S.E.2d at 865-66 (citing O.C.G.A. § 36-1-16 (1987 & Supp. 1991)). The statute prohibits the transport of waste across county boundaries for the purpose of dumping unless permission is first obtained from the county in which the dump is located. Id.

217. Id. at 297, 392 S.E.2d at 866. That decision, rendered three months after the trial judge had ruled in this case, declared the ordinance an impermissible burden on interstate commerce. Diamond Waste, Inc. v. Monroe County, Ga., 731 F. Supp. 505 (M.D. Ga 1990), aff'd in part, vacated in part, 939 F.2d 941 (11th Cir. 1991).

218. 260 Ga. at 297, 392 S.E.2d at 866. The court held that estoppel by judgment precluded its consideration of the statute and required reversal of the trial judge, "because judgments from a federal court remain binding during the pendency of an appeal and are not suspended." Id.


220. Id. at 728-29, 397 S.E.2d at 16-17.
The individual fared no better in *Sliney v. State*, the supreme court’s review of a citation issued for removal of refuse from a dumpster. Rebuffing defendant’s attack on the subject ordinance, the court conceded the measure to be “inartfully drafted,” but construed as synonymous its terms “waste,” “litter,” “garbage,” and “refuse.” So interpreted, the ordinance provided adequate standards for the guidance of those whom it regulated.

D. Contracts

In 1988, the Georgia Supreme Court set the local government law world on its ear by expressing doubt whether counties remained covered by the statutory prohibition on “binding contracts.” An oddity of codification, the court indicated, may have restricted the proscription to municipalities. In 1990, the court resolved “to confront the issue” in *Madden v. Bellew*, a case presenting controversy over the duration of a county commission’s appointment of an attorney. For analysis, the court simply recalled its earlier characterization of the principle as one “‘applicable generally to legislative or governmental bodies.’”

---

221. *Id.* at 729, 397 S.E.2d at 17. The court thus upheld the trial court’s judgment for the county. *Id.*


223. *Id.* at 167, 391 S.E.2d at 115.

224. *Id.* at 168, 391 S.E.2d at 115. “It shall be unlawful for any person to remove waste or litter from public containers or to place in such containers any material other than garbage.” *Id.* at 167, 391 S.E.2d at 115 (quoting *Lowndes County, Ga., Code* § 9.8(d)).

225. *Id.* at 168, 391 S.E.2d at 115. “This ordinance, whether wise or not, was enacted for what the county perceived to be health and safety purposes in the exercise of its police power.” *Id.* (footnote omitted). Presiding Justice Smith, joined by Justice Benham, dissented on grounds that the terms of the ordinance were not sufficiently clear and that the ordinance conferred unfettered discretion upon the police. *Id.* at 169-70, 391 S.E.2d at 116 (Smith & Benham, JJ., dissenting).


229. *Id.* at 530, 397 S.E.2d at 688. On the point of when the county attorney’s employment terminated, see *supra* text accompanying notes 180-202.

230. 260 Ga. at 531, 397 S.E.2d at 688 (quoting *Aven v. Steiner Cancer Hosp.*, 189 Ga. 126, 5 S.E.2d 356 (1939)).
moving the suspense, the court reaffirmed applicability of the prohibition to counties "as fully as it applies to municipalities." 231

Explicitly authorized county contracts encounter additional prerequisites. Failure to require a contractor's payment bond, for example, renders the county liable for materialman losses on a public works project. 233 In *Kelly Energy Systems, Inc. v. Board of Commissioners of Clarke County,* 234 the court of appeals considered when such a loss accrued. 235 Discounting the significance of a particular letter from contractor to materialman, the court held the latter's claim to "accrue" only upon notice of the contractor's bankruptcy. 236 That notice, the court concluded, started the twelve-month period of time in which the materialman must in turn provide notice of its claim to the county. 237

On occasion, the supreme court cautions counties on the wisdom of certain (albeit authorized) contracts. In *Straughan & Straughan v. Douglas,* 238 the court "questioned the practice of conditioning the appointment of an attorney to represent an indigent defendant in a death penalty case upon the payment of a fixed fee, the amount of which has been decided in advance." 239 Nevertheless, "[t]he fact that the [indigent's] case ended prior to trial does not negate the agreement." 240 Holding the county responsible for the contract amount, 241 the court emphasized that it would

---


234. *Id.* at 520, 396 S.E.2d 488 (1990). The case involved a county contract for roofing work, county failure to require the contractor to post a bond, contractor's abandonment of job and filing for bankruptcy, and materialman's effort to recover costs of materials supplied. *Id.* at 519, 396 S.E.2d 498-500.

235. *Id.* at 520-21, 396 S.E.2d 500. The letter apologized for delay in payment and requested materialman's patience. The court said it did not signify the contractor's insolvency. *Id.*

236. *Id.* (citing O.C.G.A. § 36-11-1 (1987)). For treatment of this so-called *ante litem* requirement, see R. Perry Sentell, Jr., *Claims Against Counties: The Difference A Year Makes,* 36 MERCER L. REV. 1 (1984). "Inasmuch as there was some evidence that [the contractor] was not insolvent on November 17, 1986, we reverse the trial court's grant of a directed verdict in favor of Clarke County." 196 Ga. App. at 521, 396 S.E.2d 500.


238. *Id.* at 823, 400 S.E.2d 907. "The situation presented here is another example of why we question and advise the practice." *Id.*

239. *Id.*

240. *Id.* The contract stated a fixed fee and obligated the attorneys to provide all legal services to an indigent defendant in a death penalty case from outset through all appeals. The court noted the county's authority to contract for indigent defense in O.C.G.A. § 17-12-44 (1990). 260 Ga. at 823, 400 S.E.2d 907. After the contract was executed, the state withdrew notice of intent to seek the death penalty, and defendant plead guilty and received a life sentence. *Id.* at 822, 400 S.E.2d 906.
not "now rewrite the agreement [of the parties]."\textsuperscript{241}

At a point, the court's caution converts to public policy disdain. \textit{Sears Roebuck & Co. v. Parsons}\textsuperscript{242} featured a county board of tax assessors' contingency fee contract with a private auditor. Specifically, the auditor agreed to audit designated personal property tax returns and to receive compensation fixed at a percentage of additional tax collections.\textsuperscript{242} Conceding statutory authority for county contracts to "‘search out and appraise unreturned properties,'"\textsuperscript{244} the court condemned the constitutionality of the contingent fee: "Fairness and impartiality are threatened where a private organization has a financial stake in the amount of tax collected as a result of the assessment it recommends.\textsuperscript{248}

\textit{E. Property}

The period provided appropriately contrasting episodes concerning county ownership of roads. In \textit{Bryant v. Kern & Co.},\textsuperscript{246} an automobile driver's action for personal injuries\textsuperscript{247} focused on a road dedicated by a private developer but never formally accepted by the county.\textsuperscript{248} Plumbing the essentials of implied acceptance, the court of appeals noted the county's approval of the plat, inspection of construction, requirement of a maintenance bond, and order for an intersection stop sign.\textsuperscript{249} Those acts effected the county's implied acceptance and released the developer from liability for plaintiff's collision.\textsuperscript{250}

In the second instance, \textit{Glass v. Carnes},\textsuperscript{251} the supreme court held the county without power to reopen a road which it had previously declared abandoned.\textsuperscript{252} Moreover, because the county had never acquired fee sim-

\begin{itemize}
\item \textsuperscript{241} 260 Ga. at 823, 400 S.E.2d at 907. Justice Hunt, joined by Presiding Justice Smith, dissented. \textit{Id.}, 400 S.E.2d at 908 (Smith & Hunt, JJ., dissenting).
\item \textsuperscript{242} 260 Ga. 824, 401 S.E.2d 4 (1991).
\item \textsuperscript{243} \textit{Id.} at 824, 401 S.E.2d at 4. Plaintiff in the case, a "designated tax payer" chosen for audit, attacked the contract as a "bounty hunter" agreement. \textit{Id.}
\item \textsuperscript{244} \textit{Id.} at 825, 401 S.E.2d at 4 (quoting O.C.G.A. § 48-5-298(a)(3) (1982)).
\item \textsuperscript{245} \textit{Id.}, 401 S.E.2d at 5. The court thus reversed the trial judge's judgment favoring the validity of the contract. \textit{Id.}
\item \textsuperscript{246} 196 Ga. App. 165, 395 S.E.2d 620 (1990).
\item \textsuperscript{247} \textit{Id.} at 165, 395 S.E.2d at 620. Plaintiff sought to impose liability on the developer for a missing stop sign, and developer entered a third-party complaint against the county. \textit{Id.}
\item \textsuperscript{248} \textit{Id.} at 165-66, 395 S.E.2d at 620. Developer's dedication was undisputed, as was the lack of a formal county acceptance. \textit{Id.} at 166-67, 395 S.E.2d at 622.
\item \textsuperscript{249} \textit{Id.} at 167, 395 S.E.2d at 622.
\item \textsuperscript{250} \textit{Id.} at 167-68, 395 S.E.2d at 622. "At the time of the collision, it was incumbent on the county, not defendants, to erect traffic control devices on [the road]." \textit{Id.} at 168, 395 S.E.2d at 622.
\item \textsuperscript{251} 260 Ga. 627, 398 S.E.2d 7 (1990).
\item \textsuperscript{252} \textit{Id.} at 631, 398 S.E.2d at 10. The court relied upon O.C.G.A. § 32-7-2(b)(1) (1991).
\end{itemize}
ple title to the road,\textsuperscript{253} that land, upon county abandonment, came under the presumptive ownership of the abutting owners.\textsuperscript{264}

\textbf{F. Condemnation}

Two instances within the survey period hint at the rich diversity reflected by the law of local government condemnation.\textsuperscript{255} In \textit{Cobb County v. Sevani},\textsuperscript{256} the court of appeals confronted a condemnee's claim for attorney fees based "entirely upon the manner in which Condemnor had conducted the pre-acquisition appraisal and negotiations."\textsuperscript{257} The focus of the 1986 attorney fee statute,\textsuperscript{258} the court reasoned, in no way implicates actions prior to a legal proceeding: \textit{"Condemnor's preacquisition activities are totally irrelevant to the issue of whether it engaged in abusive litigation in the superior court."}\textsuperscript{259} Although the preacquisition activities may have impeached the county's declaration of taking, they provided no basis for condemnee's recovery of attorney fees.\textsuperscript{260}

The second instance, \textit{Cobb County v. Webb Development, Inc.},\textsuperscript{261} confronted the supreme court with a dramatic confluence of condemnation and mandamus.\textsuperscript{262} Specifically, plaintiff sought to mandamus the county's condemnation of easements for sewer connections to plaintiff's subdivision lots.\textsuperscript{263} The court canvassed evidence that plaintiff had met every

\begin{itemize}
\item \textsuperscript{253} 260 Ga. at 632, 398 S.E.2d at 11. As by express grant in a deed or through eminent domain. \textit{Id.}
\item \textsuperscript{254} \textit{Id.} Thus, the court affirmed the trial judge's decision that the county could not reopen the road. \textit{Id.} at 631, 398 S.E.2d at 12.
\item \textsuperscript{255} For emphasis of that diversity, see R. Perry Sentell, Jr., \textit{Condemning Local Government Condemnation}, 39 MERCER L. REV. 11 (1987); R. Perry Sentell, Jr., \textit{Local Government Liability Limitations: "Causation" is to Tort as "Police Power" is to Eminent Domain, URBAN GA., Jan.-Feb. 1987, at 20.
\item \textsuperscript{256} 196 Ga. App. 247, 395 S.E.2d 572 (1990).
\item \textsuperscript{257} \textit{Id.} at 247, 395 S.E.2d at 573.
\item \textsuperscript{258} O.C.G.A. § 9-15-14 (1996).
\item \textsuperscript{259} 196 Ga. at 248, 395 S.E.2d at 573-74. Here condemnee never challenged condemnor's legal right to condemn the property, and the issue of just and adequate compensation was resolved by the jury and not the superior court. \textit{Id.}, 395 S.E.2d at 574.
\item \textsuperscript{260} \textit{Id.}
\item \textsuperscript{261} \textit{Id.} at 249, 395 S.E.2d at 574. "Condemnee could not, however, acquiesce in condemnor's taking of the property, proceed to trial before a jury on the issue of 'just and adequate compensation,' and then move for attorney's fees pursuant to OCGA sec. 9-15-14 based upon Condemnor's alleged abusive pre-acquisition activities." \textit{Id.} The court reversed the trial judge's grant of condemnee's motion for attorney fees. \textit{Id.}
\item \textsuperscript{262} 260 Ga. 605, 398 S.E.2d 3 (1990).
\item \textsuperscript{263} For treatment of this extraordinary writ, see R. Perry Sentell, Jr., \textit{Miscasting Mandamus in Georgia Local Government Law} (1989).
\item \textsuperscript{264} 260 Ga. at 605-06, 398 S.E.2d at 3. The county had approved plaintiff's development of the subdivision. \textit{Id.}
\end{itemize}
articulated county standard, had exhausted negotiation efforts and alternatives, had expended considerable sums in developing the subdivision, and was required by county ordinance to connect his lots to sewer lines. Affirming the trial judge's issuance of mandamus, the court viewed the evidence as establishing both plaintiff's "clear legal right" to relief and the county's "gross abuse of discretion."

G. Liability

The supreme court bounded the county liability province with two mileposts during the period. At the threshold, the court tendered its solution to Logue v. Wright, an action alleging injury from the negligent driving of a county deputy sheriff. In favoring summary judgment for the deputy, the court plumbed the relevant points of departure. For "mere negligence" in his "official capacity," the county officer enjoyed sovereign immunity for "discretionary" acts unless the county "waived" that immunity by obtaining "insurance." Omission of a blue light or siren when failing to yield the right of way constituted an act of negligence, the court reasoned, and the deputy's decision to rush to an emergency constituted the exercise of discretion. As for insurance, local gov-

265. Id. at 608, 398 S.E.2d at 5. These articulable standards included both the standards in effect when plaintiff's subdivision plans were originally approved, as well as standards that the county later adopted. Id.

266. Id.

267. Id. "When an official act is discretionary, the court may compel the exercise of the discretion, but it cannot direct the manner in which it shall be exercised . . . . The trial court did not err in allowing the Board to 'retain' the option to negotiate or condemn, nor in allowing the Board to select the route if it condemns." Id. at 608-09, 398 S.E.2d at 6. Justice Weltner dissented. Id. at 609, 398 S.E.2d at 6 (Weltner, J., dissenting).


270. As opposed to acts of malice, corruption, wilfulness, or reckless disregard for the safety of others.

271. As opposed to an action against the officer in his "personal and individual" capacity.

272. As opposed to "ministerial acts."


274. 260 Ga. at 207-08, 392 S.E.2d at 237. Negligence in performance of the act did not change its character. Id. at 208, 392 S.E.2d at 237.
ernments are required to insure neither their “motor vehicle” mishaps nor their officers and employees. Moreover, unlike the state, local governments possess no authority to formulate self-insurance programs for employees.

It remained only for the court to fit principles to facts. First, the county had purchased no liability insurance. Second, although the county budgeted its “department of risk management” to compensate claims against the county and its employees, that program was devoid of statutory authorization. Accordingly, the court declared, it “is not a self-insurance plan which will waive sovereign immunity.”

Logue guided the court of appeals through a series of subsequent controversies. In Joyce v. Van Arsdale, the court employed Logue to emphasize that county employees “may be held liable for the negligent performance of a ministerial act.” The court held that a road superintendent following orders to close a bridge acted ministerially, and if negligent, would bear liability for plaintiff’s collision with a barricade. In contrast, Vertner v. Gerber focused on a deputy warden who made work assignments for prison inmates. The court held that the assignments were acts of discretion involving “judgment and experience,” and thus immunized the deputy from liability for an inmate’s assault.


276. O.C.G.A. § 45-9-20 (1990). “It is apparent that the statute authorizing this purchase does not require it.” 260 Ga. at 208, 392 S.E.2d at 237. Moreover, “[n]othing in Toombs County v. O’Neal requires that counties procure insurance.” Id.


278. 260 Ga. at 209, 392 S.E.2d at 238. “We hold that under the statutes dealing with liability insurance for government employees and officials, only state self-insurance plans will waive sovereign immunity. There is no provision for a county to set up a self-insurance plan.” Id. Presiding Justice Smith dissented forcefully and at length. Id. (Smith, P.J., dissenting).


280. Id. at 96, 395 S.E.2d at 276. This was true, the court said, even when the county had not waived immunity by purchasing insurance. Id.

281. Id. Although carrying out the commissioners’ decision “undoubtedly involved the exercise of some judgment,” the “execution of a specific task is characterized as ministerial even though the manner in which it is accomplished is left to the employee’s discretion.” Id. at 97, 395 S.E.2d at 277.

282. Id. Thus, the court reversed the trial judge’s summary judgment for the employees. Id.


284. Id. at 647, 402 S.E.2d at 316. No evidence suggested that the deputy “merely followed established guidelines in making these assignments.” Id.
In *Brantley v. Edwards*, the court absolved a county from responsibility for an automobile accident. First, the county's denial of insurance went unrefuted. Second, its decision to abstain from "motor vehicle" insurance was discretionary. Plaintiff suffered a similar fate in *Pizza Hut of America, Inc. v. Hood*, a case concerning a drowning at a county park. Awarding summary judgment for the county, the court noted its policy of defending and paying claims from a "Self-Funded Insurance Internal Service Fund." Under *Logue*, the court asserted, that fund "was not a self-insurance plan that could waive sovereign immunity."

The supreme court unveiled its other revelation near the close of the survey period with *DeKalb County v. Orwig*. The action alleged "nuisance" for the second overflow of sewage into plaintiff's home. The overflow resulted from third party obstruction of a sewer line. The county defended on grounds that its conduct (failure to discover the obstruction three weeks earlier upon the first overflow) did not constitute the inverse condemnation necessary for county "nuisance" liability. Although conceding historical accuracy in the county's position, the court of appeals announced the supreme court's "implicit" repudiation of that position. As in the municipal sphere, the court proclaimed county nuisance liability no longer required inverse condemnation, and recoverable damages no longer pivoted upon property depreciation.

---

285. *Id.* While on unguarded trash pick-up detail, the inmate chased his immediate supervisor with a pitchfork and wound up stabbing plaintiff who was working in the vicinity. *Id.* at 646, 402 S.E.2d at 316; see also *Gregory v. Cardenas*, 198 Ga. App. 697, 402 S.E.2d 757 (1991) (no evidence 'countering deputy sheriffs' evidence of discretion in responding to a downed stop sign).
287. *Id.* at 714, 399 S.E.2d at 216. The court thus sustained summary judgments for the county and the commissioners. *Id.*
289. *Id.* at 113, 400 S.E.2d at 659. The county had specifically decided against carrying liability insurance. *Id.*
290. *Id.*
Granting certiorari, the supreme court lost little time in reclaiming the past. Charging the court of appeals with misinterpretation, the court could scarcely have been more explicit: "[A] county cannot be liable for a nuisance which does not rise to the level of a taking of property." Recoverable damages, in turn, focus exclusively on property value and "cannot include such items as damages for mental distress and expenses of litigation." Significantly, therefore, Orwig entrenches the local government nuisance dichotomy with an unprecedented deliberateness.

Between the two liability mileposts of the period, the court of appeals operated on more traditional terrain. In the "civil rights" theater, Cleveland v. Fulton County featured a "Section 1983" complaint for county delay in servicing an "E-911 call" from a facility located outside the county. On grounds that defendant had no connection with or control over plaintiff's decedent, the court found no "constitutional duty" to provide the services. As for the county's "undertaking" to serve, the court denied that the Fourteenth Amendment transformed every state law duty into a constitutional obligation. Although enjoying no greater substantive success, a dismissed county school teacher in Allen v. Bergman prevailed on a procedural point: "[S]tates may no longer require litigants to exhaust administrative remedies before asserting claims pursuant to 42 U.S.C. § 1981 and 42 U.S.C. § 1983 in state courts."

---

294. 261 Ga. at 138, 402 S.E.2d at 514. The supreme court disapproved one of its quotations in Wheaton and declared that decision "not susceptible" to the court of appeals "interpretation." Id.
295. Id.
296. Id.
300. 42 U.S.C. § 1983 (1988). The subject of the call was a patient in a state mental health institute that was located in another county. Defendant county delayed in transferring the call, and the patient died. 196 Ga. App. at 169, 396 S.E.2d at 3.
301. 196 Ga. App. at 169, 396 S.E.2d at 3. The court reasoned that the "threshold element" necessary to a § 1983 claim was a "deprivation of rights [I] secured by the constitution and laws of the United States." Id.
302. Id. at 169-70, 396 S.E.2d at 3. The court thus affirmed summary judgment for the county. Id. at 170, 396 S.E.2d at 4.
304. Id. at 58, 400 S.E.2d at 348-49. The admonition came from Felder v. Casey, 487 U.S. 131 (1988). On the merits, the court rejected plaintiff's charge of handicap discrimination against the county school board for termination upon her refusal to move to another school. 198 Ga. App. at 58-59, 400 S.E.2d at 348-49.
Finally, Hayes v. Medical Department of DeKalb County Jail\textsuperscript{305} exposed yet another victim to the historic time mandate for claims against counties.\textsuperscript{306} Plaintiff in Hayes filed his negligence action on October 12, 1989, alleging that he was given the wrong medication while a county jail inmate. Because plaintiff was aware "of any injury that may have occurred, and whose conduct was involved by early May 1988," the court perceived his action as having been filed beyond twelve months of accrual.\textsuperscript{307}

\textbf{H. Zoning}

The overarching issue of zoning, whatever its guise in the particular case, goes to local government discretion in striking the eternal balance between "public good" and "individual rights."\textsuperscript{308} Fulton County v. Wallace\textsuperscript{309} involved a county’s reaction to a trial judge’s invalidation of the "apartment development" zone for plaintiff’s property.\textsuperscript{310} After the apartment restriction was deemed invalid, the county removed it, thereby permitting use for any residential purpose, but not "commercial shopping" as plaintiff had requested.\textsuperscript{311} A unanimous supreme court emphasized that the land was "fringe area" property,\textsuperscript{312} an integral part of a Community Unit Plan,\textsuperscript{313} and that opinions had genuinely differed over appropriate compliance with the trial judge’s decision.\textsuperscript{314} In these circumstances,
the county’s attempt to reach a compromise satisfactory to the interested constituencies did not rise to the level of inverse condemnation.315

County discretion also dominated Emory University v. Levitas,316 a challenge to the county’s grant of a building height variance.317 Holding that the trial judge should have reviewed the grant under an “any-evidence standard,”318 the court examined the county ordinance. That ordinance allowed a variance when “exceptional conditions” rendered development requirements unduly harsh upon the property owner.319 Under the “exceptional conditions” language, the court found that the county did not abuse its discretion in permitting a building sufficiently high to avoid its encroachment into a bordering rare and unique first-growth forest.320

A landowner frequently responds to the county’s refusal of zoning exceptions with an action in mandamus.321 Shockley v. Fayette County322 featured such a response to a variance denial by the county board of zoning appeals.323 To the county’s objection that plaintiff had not appealed the constitutional issues from the board to the county commission, the supreme court conceded that the required procedure was somewhat unclear.324 Because this county’s ordinance specified no means of proceeding
from the board of zoning appeals' decisions, however, mandamus to the superior court was proper.\footnote{325}

Also proceeding in mandamus, plaintiff in \textit{Tilley Properties, Inc. v. Bartow County}\footnote{326} raised a novel issue under the general statutes comprising the "Zoning Procedures Law."\footnote{327} The statutes require notice and hearing before the local government adopts "policies and procedures which govern calling and conducting hearings."\footnote{328} That requirement, plaintiff maintained, invalidated a zoning ordinance adopted when the county failed to conduct a hearing for "adopt[ing the] policies and procedures to govern calling and conducting of zoning hearings."\footnote{329} The supreme court agreed with plaintiff's interpretation, emphasized the requirement's "mandatory" character, and invalidated the county zoning ordinance.\footnote{330} Accordingly, the court held plaintiff's property unzoned and ordered issuance of a land use certificate.\footnote{331}

\section*{III. Legislation}

Space limitations render impossible a meaningful description of 1991 statutes affecting local government. The following selected sketches (all general statutes) indicate the range of concerns legislatively addressed this year.

The author of a local bill must submit an affidavit stating that the requisite notice of intent to introduce the legislation has been legally published.\footnote{332}

A permit modification procedure was established for local governments desiring to extend the life of existing land disposal facilities.\footnote{333} Addition-

\footnote{325} \textit{Id.} at 490-91, 396 S.E.2d at 884. The court emphasized that the issues must be raised before the board in order to provide the board with the opportunity to grant the variance and thereby remedy the alleged deficiency as applied to plaintiff's property. \textit{Id.} at 491, 396 S.E.2d at 884. Justices Weltner and Hunt concurred with reservations. \textit{Id.} (Hunt & Weltner, JJ., dissenting).


\footnote{328} \textit{Id.} § 36-66-5.

\footnote{329} 261 Ga. at 154, 401 S.E.2d at 528.

\footnote{330} \textit{Id.} at 153-55, 401 S.E.2d at 528-29.

\footnote{331} \textit{Id.} at 155, 401 S.E.2d at 529. The court thus reversed the trial judge's denial of plaintiff's petition for mandamus. \textit{Id.} Justice Fletcher, joined by Justice Benham, dissented on the ground that the county did provoke notice and hearing prior to the adoption of the zoning ordinance, and thus satisfied the statute. \textit{Id.} (Benham & Fletcher, JJ., dissenting). The dissent denied that the statute required two separate public hearings, one prior to establishing procedures for conducting hearings and another prior to adopting the zoning ordinance itself. \textit{Id.} (Benham & Fletcher, JJ., dissenting).


ally, local governments with facilities having less than twenty-four months of remaining capacity are allowed to vertically expand the facilities for up to two years.844

Local governments are authorized to preserve burial grounds and to issue permits for disturbing such grounds.845 Counties are freed from limitations upon expenses incurred for the burial of deceased indigents; the amount of expense incurred is now a matter of county discretion.846

Local governments are authorized to reimburse legal expenses of officers charged with theft or embezzlement of the government's property if the official is found not guilty of the charge or if the charge is dismissed.847 Public officials are criminally liable for the offense of bribery if they solicit or receive property to which they are not otherwise entitled upon the representation that their official actions are thereby influenced.848

Local government hospital authorities are empowered to own and operate projects in other counties and municipalities upon approval of those governments. Authorities may also provide assistance to organizations rendering health services to citizens without regard to the citizens' residences.849

A county may impose fines up to $1,000 (increased from $500) for violations of ordinances affecting the county's unincorporated area.846

An applicant for local government rezoning must disclose any campaign contributions in excess of $250 made within two years immediately preceding the application to any official who will consider the application.841

IV. Conclusion

This year's stunning victory calls for unrestrained celebration of independence in the camp of local government law. Justified jubilation must not blur, however, the bifocal vision of the present agenda: a deference of civility to other disciplines, but an unyielding vigilance against the aggression of ambivalence. Next year's survey will map the environmental strategy.

334. Id.
335. Id. §§ 36-72-1 to -16 (Supp. 1991).
338. Id. § 16-10-2 (Supp. 1991).
339. Id. §§ 31-7-71, 31-7-75 (1991).