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Local Government Law

by R. Perry Sentell, Jr.*

The arresting officer established the case and the Defendant, sensing the inevitability of his plight, entered a plea of guilty. The City Court Judge, a compassionate man, . . . began his routine of delivering a short lecture on the evils of alcohol . . . . "Now you see, John, this . . . is a perfect example of what happens when you start drinking. You go out, you get drunk, you get behind the wheel, and here you are severely injured. By the way, what's your prognosis?"

It was apparent . . . that [the Defendant] considered the Judge's question to be of utmost importance. However, it was also evident that the Defendant had no idea what he was being asked. After a lengthy silence, while the Defendant considered all the ramifications of his possible responses, he looked the Judge square in the eye and said: "Baptist?"!

Some believe that the "law" of local government, both decisional and statutory, frequently hinges upon issues of denominational significance.

I. MUNICIPALITIES

A. Annexation

The survey period featured the first litigated appearance of a 1998 statute authorizing a county to impose a "bona fide land use classifica-

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tion objection" to a proposed municipal annexation.\(^2\) *Baker v. City of Marietta*\(^3\) presented a trial court's decisions that the county had insufficiently invoked the statute\(^4\) and that the statute itself was unconstitutional.\(^5\) On appeal, the Georgia Supreme Court held the trial judge's first decision to render his second decision ineffective.\(^6\) The court reasoned as follows:

When the trial court turned its attention to the petition for declaratory judgment, it had already resolved the controversy between the county and the city on the annexation and rezoning of the 16-acre parcel at issue by ruling that the county commission chairman's objection, endorsed by the county commission prior to the entry of final judgment, was not sufficient to invoke the procedure which required resolution of county-city disputes about annexation prior to the annexation being effective.\(^7\)

Accordingly, the court concluded, "there no longer existed an 'actual controversy' between the city and county regarding the contested annexation and re-zoning," and "the trial court could not enter a declaratory judgment" of unconstitutionality.\(^8\)

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3. 271 Ga. 210, 518 S.E.2d 879 (1999). The municipality informed the county that it would consider a petition for annexation of 16 acres of land and a petition for rezoning that land from "residential" to "office-institutional." The chair of the county commission, by letter, objected to the procedure, and the city proceeded to annex and rezone the property without resolving the county's objections. *Id.* at 211, 518 S.E.2d at 881.

4. The trial court held that an objection by only the chair of the county commission was insufficient and that no evidence of the ground of objection was presented to the court. *Id.* at 212, 518 S.E.2d at 882.

5. *Id.* The trial court held the statute to violate *GA. CONST.* art. IX, § 2, para. 4, by giving a county the right to interfere with the municipality's internal decisions on zoning. *Id.*

6. *Id.* at 215, 518 S.E.2d at 884.

7. *Id.* at 214, 518 S.E.2d at 883.

8. *Id.* "Entry of a declaratory judgment under such circumstances is an erroneous advisory opinion which rules in a party's favor as to future litigation over the subject
B. Dissolution

In 1993, the Georgia General Assembly provided an additional method for dissolving municipal corporations via a procedure for identifying “inactive municipalities” as those failing to provide at least three of eleven enumerated services, failing to hold at least six council meetings per year, and failing to hold regular elections.® Automatically repealing the charters of municipalities so identified on July 1, 1995, the statute also empowered any citizen to bring thereafter an action for “a declaration of the dissolution of the municipal corporation.”

City of Lithia Springs v. Turley presented a citizen effort under the statute to dissolve a municipality allegedly failing to provide the requisite services. Although finding that the city provided “road and street construction or maintenance” services, the trial court declared municipal-county contracts for other services unlawful and issued an order of dissolution. On appeal, the Georgia Court of Appeals disagreed: The court denied that the contracts clearly constituted illegal “gratuities” and also found triable issues of fact on other disputed matter and must be vacated.” Id. at 215, 518 S.E.2d at 884.

9. O.C.G.A. § 36-30-7.1(a) (2000). For a background discussion of all municipal territorial boundary procedures, including the dissolution procedures prior to the 1993 statute, see Municipal De-Annexation, supra note 2. For notation of the statute’s enactment at the time, see R. Perry Sentell, Jr., Local Government Law, 45 MERCER L. REV. 325, 360 (1993).

10. O.C.G.A. § 36-30-7.1(j). “Any such action shall be brought in the superior court of the county wherein the legal situs of the municipal corporation is located.” Id.


12. Id. at 472, 526 S.E.2d at 366. The municipality had been reincorporated in 1996 and had entered into a series of intergovernmental contracts for services with the county. It was undisputed that the municipality held the requisite meetings and conducted the requisite elections. As for the matter of citizen standing to challenge the city’s existence, the court observed that “[t]he plain language of the Code section gives the [citizens] standing to bring this declaratory judgment action.” Id. at 474, 526 S.E.2d at 367.

13. Id. at 473, 526 S.E.2d at 366.

14. For instance, the trial court found the fire protection contract to violate the gratuities prohibition of the GA. CONST. art. III, § 6, para. 6(a): “The General Assembly shall not have the power to grant any donation or gratuity.” Id. at 474, 526 S.E.2d at 367.

15. Id. The trial court granted summary judgment to the citizens. Id. at 472, 526 S.E.2d at 366.

16. Id. at 475, 526 S.E.2d at 368. “Genuine issues of material fact exist about whether [the county] is receiving substantial benefits under the Fire Protection Contract, and further evidence is needed to establish whether it is receiving more than a nominal amount of money.” Id.
services. Accordingly, the court vacated the order of dissolution and reversed summary judgment against the municipality.

C. Officers and Employees

A focused issue of "duty" and the question of compensable "injury" under workers' compensation constituted matters of concern to municipal officers and employees during the survey period. Oglethorpe Development Group, Inc. v. Coleman featured an effort to mandamus the mayor's placement on the city commission's meeting agenda of a developer's presentation of a feasibility study for operating the municipal civic center. Rejecting that effort, the supreme court observed that plaintiff had failed to counter the mayor's evidence that he "had no duty or authority to set the agenda for the Commissioners' meetings." The court emphasized that a "mandamus will not [be] issue[d] to compel an officer to perform acts not within his official powers or duties."

In Columbus Fire Department/Columbus Consolidated Government v. Ledford, the court of appeals affirmed an administrative law judge's denial of a municipal firefighter's "post-traumatic stress" claim for workers' compensation benefits. Emphasizing its "any evidence"
standard of review,\textsuperscript{25} the court agreed that the claimant had failed to satisfy the condition that "his psychological problems arose out of an accident in which a compensable physical injury was sustained."\textsuperscript{26} In fact, the court observed: "[I]t is undisputed that on . . . the date of the purported accident," a panic attack during a survival training session, the claimant "did not sustain any physical injury."\textsuperscript{27} Accordingly, the court reversed the trial judge's reversal of the administrative law judge's decision.\textsuperscript{26}

\textbf{D. Elections}

The municipal mayor's election attracted challenge in \textit{Holton v. Hollingsworth},\textsuperscript{28} an attack upon the validity of a vote cast by a convicted felon who had completed his sentence but failed to reregister to vote.\textsuperscript{30} Although rejecting the attack, the supreme court conceded that a convicted felon could not vote or remain registered to vote while serving his sentence.\textsuperscript{31} Nevertheless, the court asserted, "a person who loses his status as a registered voter does not have to sign his name again before the registrars may lawfully restore his name to the list of


\textsuperscript{25} "When supported by any evidence, findings of fact by the State Board are conclusive and binding on reviewing courts, and judges lack authority to set aside an award based on disagreement with the Board's conclusions." 240 Ga. App. at 196-97, 523 S.E.2d at 60-61.

\textsuperscript{26} \textit{Id.} at 197, 523 S.E.2d at 61. The court elaborated that in order for a psychological injury to be compensable, it must satisfy two conditions precedent: (1) it must arise out of an accident in which a compensable physical injury was sustained; and (2) while the physical injury need not be the precipitating cause of the psychological condition or problems, at a minimum the physical injury must contribute to the continuation of the psychological trauma.

\textit{Id.}

\textsuperscript{27} \textit{Id.} "[The claimant's physician] concluded that [claimant] had experienced a panic attack." \textit{Id.}

\textsuperscript{28} \textit{Id.} at 196, 523 S.E.2d at 60. "The superior court erred by substituting its own findings and in reversing the State Board's award." \textit{Id.}

\textsuperscript{29} 270 Ga. 591, 514 S.E.2d 6 (1999).

\textsuperscript{30} \textit{Id.} at 591-92, 514 S.E.2d at 8. The court explained that under the circumstances three voters must be disqualified in order for plaintiff's challenge to succeed. \textit{Id.} at 592, 514 S.E.2d at 8. In addition to the attack upon the felon's vote, plaintiff also challenged an absentee ballot and alleged four other voters unqualified on grounds of residency. \textit{Id.} at 592-93, 514 S.E.2d at 8-9. The court rejected the additional challenges as well. \textit{Id.} at 594, 514 S.E.2d at 10.

\textsuperscript{31} \textit{Id.} at 592, 514 S.E.2d at 8. The court relied upon GA. CONST. art. II, § 1, para. 3(a): "No person who has been convicted of a felony involving moral turpitude may register, remain registered, or vote except upon completion of the sentence." \textit{Id.}
registered voters." Consequently, the convicted felon "did not have to 'reregister' once he completed his sentence," and his vote was valid.

E. Powers

Municipalities confronted charges of bad faith and impropriety in an assortment of power contexts. *City of Marietta v. Edwards* presented such a charge against the municipality's condemnation of property it had sold to the condemnees only three months earlier. Plaintiffs claimed that they were misled during the sales proceeding and that the city had exercised its condemnation power in bad faith. Reviewing the evidence, the supreme court viewed assurances by the city's sales facilitator to show "at most, that the [city's] condemnation plans were uncertain, changing, and inaccurately communicated during the course of . . . [the] sales transaction." That evidence, the court asserted, "does not show bad faith in the subsequent condemnation," for it does not reveal "'conscious wrongdoing motivated by improper interest or will.'"

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32. Id. The court reasoned that "the phrase 'remain registered' refers to the status or condition of being registered or having one's name on the list of registered voters, rather than signing the oath and otherwise complying with the registration law." Id.

33. Id. The court thus affirmed the trial judge's decision upholding the validity of the election. Id. at 594, 514 S.E.2d at 10.


35. Id. at 349, 519 S.E.2d at 217. Plaintiffs alleged that they purchased the property from the municipality in November, that they spent substantial amounts of money on renovations, and that the council voted to condemn a right-of-way through the property in February. Id.

36. Id. at 349-50, 519 S.E.2d at 217-18. One of plaintiffs testified that the city's sales facilitator told him that if he refused to sell the property to the municipality, "'the matter would, more than likely, be dropped.'" Id. at 350, 519 S.E.2d at 218 (quoting testimony from trial).

37. Id. The court reasoned that the municipal agent's statement "indicates only that the City probably would not exercise its legal right of condemnation. It certainly does not guarantee that the City would not do so." Id. Moreover, the court elaborated that plaintiffs were attempting "to estop the City from the exercise of its right of eminent domain by asserting [the agent's] unauthorized statements as evidence of the City's bad faith. This is precisely what [statutory law] prohibits." Id. For treatment of estoppel as it applies in Georgia local government law, see R. Perry Sentell, Jr., The Doctrine of Estoppel in Georgia Local Government Law (1995).

38. 271 Ga. at 351, 519 S.E.2d at 218 (quoting Craven v. Georgia Power Co., 248 Ga. 79, 80, 281 S.E.2d 568, 569 (1981)). "The question is whether the City has lost the constitutional right to condemn the property because of its subsequent bad faith exercise of that right . . . . [T]he Court of Appeals [283 Ga. App. 622, 504 S.E.2d 726] erred in reversing the trial court's grant of summary judgment in favor of the City . . . ." Id., 519 S.E.2d at 219 (emphasis added).
The court of appeals also turned a deaf ear to charges of condemnation improprieties in *City of Griffin v. McKemie*. The municipality filed a petition to condemn plaintiffs' land for a sewer line but later (when the award exceeded the city's appraisal) abandoned the condemnation and redesigned its sewer system. The court rejected plaintiffs' claim for attorney fees under the Georgia Relocation Assistance and Land Acquisition Act because no federal funds financed the city's sewer project. As for plaintiffs' remaining statutory authority for attorney fees, the court held "there must be some evidence of improper conduct." Yet, the trial judge's order revealed "only that the City made an economic decision to abandon the proceedings, a decision which is not the equivalent of improper conduct."

Providing a distinctive contrast in settings, *Pyle v. City of Cedartown* arose from the municipality's disposition of a cemetery lot. In conveying to her stepson the title to her late husband's lot, plaintiff charged that the city had acted fraudulently and with the intent of inflicting emotional distress. Once again, the court could not find sufficient municipal culpability.

40.  *Id.* at 180, 522 S.E.2d at 289. "Following the dismissal of the condemnation action, the [plaintiffs] filed a motion for attorney fees pursuant to OCGA § 22-4-7 and 9-15-14." *Id.*
42.  240 Ga. App. at 181, 522 S.E.2d at 290. The court reasoned that "the Act contains legislative findings declaring its applicability when a public entity 'acquires land, with federal financial assistance, for a public use.'" *Id.* (quoting O.C.G.A. § 22-4-2 (1982)).
43.  *Id.* at 182, 522 S.E.2d at 290 (quoting Department of Transp. v. Woods, 269 Ga. 53, 56, 494 S.E.2d 507, 510 (1998)). "To sustain an award of fees under OCGA § 9-15-14(b) in a condemnation case, the Supreme Court has held that 'there must be some evidence of improper conduct, a lack of substantial justification, or an intent to delay or harass.'" *Id.*
44.  *Id.*, 522 S.E.2d at 291. "The order, therefore, does not contain a specific finding of improper conduct sufficient to support the award of attorney fees under OCGA § 9-15-14(b)." *Id.* The court thus reversed the trial judge's award of attorney fees to the plaintiffs. *Id.*
46.  *Id.* at 446, 524 S.E.2d at 8. Plaintiff and her stepson were together when the burial lot was selected. Plaintiff told the municipal cemetery superintendent that the plot should be placed in her name, but later, upon instructions from the funeral home, the municipality conveyed the plot to the stepson. *Id.* at 445-46, 524 S.E.2d at 8.
47.  *Id.* at 446, 524 S.E.2d at 8.
agent. 48 Similarly, the court held that a mere breach of municipal duty did not rise to intentional infliction of emotional distress. 49

Even assuming the City breached its duty to [plaintiff] by transferring title to her husband's burial plot to her stepson, "[u]nder these circumstances, it is difficult to imagine how the recitation of the facts to an average member of the community would arouse his resentment . . . and leave him to exclaim '[o]utrageous!'" 50

F. Regulation

The Georgia Supreme Court passed upon the municipal exercise of regulatory power in the contexts of historic districting, alcoholic beverage sales, and the suppression of litter. 51 In City of Dalton v. Carrol, 52 the court rejected a plea in laches against municipal enforcement of historic district requirements. 53 Because the city did not discover until five

48. Id. at 447, 524 S.E.2d at 9. The court enumerated five elements of "the tort of fraud," and reasoned as follows: "Even if [the municipal agent] made a representation . . . by asking for and writing [plaintiff's] name and address as the person to whom the City was to convey the burial plot, there is no evidence that [the agent] intended the representation to be false." Id.

49. Id. The court enumerated four elements for "a claim for intentional infliction of emotional distress" and reasoned as follows: "Although there may be evidence to show that [plaintiff] suffered severe emotional distress, there is no evidence that the City intended to harm her." Id.

50. Id. (quoting Williams v. Stepler, 227 Ga. App. 591, 594, 490 S.E.2d 167, 171 (1997)). The court thus affirmed the trial judge's grant of summary judgment to the municipality on both claims. Id. at 448, 524 S.E.2d at 9.

Although an action for municipal breach of a construction contract, in Savannah Airport Comm'n v. Higgerson-Buchanan, Inc., 238 Ga. App. 548, 519 S.E.2d 475 (1999), the court of appeals found the necessary "bad faith." There, the court held the evidence clear that under the contract, the contractor was to clear the area within the project plans, that the city commission later purported to reduce the number of acres included in the project, and that the commission's action was not a "change order," but rather "was done for the purpose of giving the Commission an economic advantage to the detriment of the contractor." Id. at 551, 519 S.E.2d at 477. Thus, the court affirmed a finding of liability against the commission. Id.


52. 271 Ga. 1, 515 S.E.2d 144 (1999).

53. Id. at 2, 515 S.E.2d at 145.
months later that the landowner's predecessor in title had erected a metal carport in the historic district, "it was the failure of . . . [the] predecessor-in-title to seek the required building permit that caused the delay between the illegal construction in December and the city's discovery of it in May." Consequently, the court reasoned, "the city was not responsible for any prejudice that [the landowner] suffered due to the five-month delay in enforcement."

The court likewise sided with the local government in Dickerson v. Augusta-Richmond County Commission, an action to mandamus the issuance of a license to retail off-premises beer and wine. Although the convenience store had operated under a license for thirty years prior to plaintiff's purchase of the establishment, the court denied the request for mandamus. Observing the objections offered at the license hearing and the government's stated reasons for its denial, the court upheld the decision as "based on specific, objective criteria set forth in the . . . Code." "Each licensing request is unique," the court reminded the plaintiff, "and must be considered individually, based on factors present at the time."

54. Id. at 1-2, 515 S.E.2d at 145. "Among the factors to consider in determining whether laches applies are the length of the delay, the reasons for it, the resulting loss of evidence, and the prejudice suffered." Id.

55. Id. at 2, 515 S.E.2d at 145. Additionally, the court reasoned that the landowner had made no effort to comply with the city ordinances, and although the historic commission had twice placed the issue on its agenda, the landowner failed to attend either meeting. Id. "Under these circumstances, we conclude that it is not inequitable to permit the city to enforce its claim against [the landowner]." Id. The court thus reversed the trial judge's application of laches in favor of the landowner. Id.


57. Id. at 612, 523 S.E.2d at 310.

58. Id. at 613, 523 S.E.2d at 31. Marking the "drastic" nature of mandamus, the court noted that "it will not issue to compel a public official to do a discretionary act unless the official has grossly abused such discretion." Id. For an in-depth discussion of mandamus in Georgia local government law, both the extensive popularity of the proceeding and the judicial restrictiveness in its utilization, see MISCASTING MANDAMUS, supra note 22.

59. These touched upon the store's location in proximity to churches and recreation centers, an increase in traffic and minors near the store, and a rise in crime rate in the locality. 271 Ga. at 612, 523 S.E.2d at 311.

60. The governing authority reasoned that "the character of the neighborhood would be affected adversely if the application were granted." Id.

61. Id. at 613, 523 S.E.2d at 311. The court cited the Augusta-Richmond County Code § 6-2-64(f), which enumerated schools, churches, libraries or public recreational areas. Id.

62. Id. (quoting Chu v. Augusta-Richmond County, 269 Ga. 822, 825, 504 S.E.2d 693, 693 (1998)). The court thus affirmed the trial judge's denial of plaintiff's petition for mandamus. Id.
The municipal regulation of litter enjoyed far less success in Statesboro Publishing Co. v. City of Sylvania. There, the ordinance prohibited distribution of free written materials in yards, in driveways, or on porches and required that the materials be delivered personally, by mail, or by a “mailbox hanging device.” Characterizing this ordinance as an invalid regulation of content-neutral speech under both state and federal constitutions, a majority of the court elaborated its objections. First, the court pointed to existing less intrusive means of preventing such litter; second, the court deemed the permitted alternative delivery methods to be “prohibitively expensive.”

G. Liability

Claimants’ efforts at hurdling the barrier of municipal tort immunity abated only slightly during the period under scrutiny. One source of that immunity is the Recreational Property Act, the statute exempting landowners from any “duty of care to keep the premises safe for entry or use by others for recreational purposes.” The court of

64. Defendant “delivers the Penny-Saver, a weekly shopper newspaper, without charge to . . . city residents by throwing the paper in yards or driveways.” Id. at 92, 516 S.E.2d at 297.
65. Id.
66. The court held that the ordinance includes “within its scope every kind of unsolicited written speech” and that it “bans a substantial amount of speech that residents may want to hear and that the city has not shown creates litter or destroys its beauty.” Id. at 94, 516 S.E.2d at 298.
67. Id. at 95-96, 516 S.E.2d at 299.
68. Id. at 94, 516 S.E.2d at 298. The court mentioned such means as requiring the publisher to retrieve uncollected papers in a timely manner, prosecuting the publisher for papers found in streets, and punishing residents for failing to collect litter from their own yards. Id.
69. Id. at 95, 516 S.E.2d at 299. “A city cannot limit the speaker or publisher to methods of delivery that are prohibitively expensive, such as mail or hand delivery.” Id. The court thus reversed the trial judge’s decision of constitutionality. Id. at 96, 516 S.E.2d at 299.
71. O.C.G.A. §§ 51-3-20 to -26 (1982).
72. O.C.G.A. § 51-3-22 (1982). The statute declares its object “to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting the owners’ liability toward persons entering thereon for recreational purposes.”
appeals employed that exemption in Julian v. City of Rome against a bicycle rider injured in a fall upon a muddy city-owned walkway. On grounds that the municipality intended the walkway as an extension of a county park, maintained by the county recreational authority, the court rejected plaintiff’s action in negligence. Although the walkway ended in the “downtown [area] and provide[d] access to the city’s businesses, any ‘indirect financial benefit’ the city may derive for this access does not remove the Riverway from the protection of the RPA.

The municipality’s nonownership of property may also prove dispositive of a negligence claim. Moore-Sapp Investors v. Richards featured the action of one who, without permission, walked across property owned by a third party and stepped into a hole where a city water meter “either was or had been at one time.” Expressing incredulity at the resulting negligence action, the court asserted that if plaintiff “had no permission to cross the land on which the hole was located and was owed no duty of exercising ordinary care by the owner of the land, it defies logic to find that he was owed a greater duty by the city, which did not own the land.”

The court proved far more receptive to the negligence claim advanced in Harper v. City of East Point for a sexual assault committed by a

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Id. § 51-3-20.
74. Id. at 822, 517 S.E.2d at 80.
75. “No fee is charged for the use of the Riverway. Although the Riverway is owned by the City . . . , it is primarily maintained by the county recreational authority.” Id. at 823, 519 S.E.2d at 80.
76. “Thus, the RPA shields landowners from liability arising under a negligence cause of action.” Id.
77. Id.
78. Id. (quoting City of Tybee Island v. Godinho, 270 Ga. 567, 569, 511 S.E.2d 517, 519 (1999)). The court thus affirmed the trial judge’s summary judgment for the municipality. Id.
80. Id. at 798, 522 S.E.2d at 741. Plaintiff was taking a short cut to a store at night. The trial court had held that because the municipality did not own the property, it owed plaintiff a duty of ordinary care. Id. at 799, 522 S.E.2d at 741.
81. The court also held the property owner entitled to summary judgment: “A landowner is under no duty to keep premises in a safe condition for the benefit of trespassers or bare licensees.” Id.
82. Id. at 800, 522 S.E.2d at 742. “Because we have determined that the hole was not a mantrap and no evidence was introduced that the city acted wantonly or wilfully, the trial court erred in denying the city’s motion for summary judgment.” Id.
municipal police officer. Reversing the trial judge's adverse summary judgment, the court carefully reviewed plaintiff's evidence of negligent retention. The court assessed a series of previous complaints by women against the officer as follows: "A jury could find that [the officer's] conduct gave warning to the City that his behavior reflected an escalating sexual deviancy likely to result eventually in the sexual assault of a female while he was on duty.

On two occasions, claimants sought (unsuccessfully) to employ the "nuisance" escape from municipal tort immunity. City of Douglasville v. Queen presented an action on behalf of two small girls struck by a train while attending the city's Fourth of July parade. On grounds that "it was not unlawful for the City to route the parade in issue onto those streets that passed next to railroad property," the supreme court rejected "as a matter of law the position that the City's holding of its parade in the vicinity of railroad property which contained no danger created or maintained by the City constituted a nuisance."

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84. Id. at 375, 515 S.E.2d at 624. The officer had sexually assaulted plaintiff while she was locked in the back of his patrol car. Id.

85. "The City persuaded the trial court that [plaintiff] presented no evidence it had constructive knowledge of [the officer's] propensity to sexually assault another person." Id. at 376, 515 S.E.2d at 625.

86. Id. "[Plaintiff] presented evidence from which a jury could find that the City should have known that [the officer] was prone to committing a sexual assault." Id.

87. Those complaints had advanced from harassing phone calls, to intimate questions, to following, to attempting to peer around a door at a woman in her nightgown. Id. at 377, 515 S.E.2d at 626.

88. Id.

Moreover, [the officer] was a police officer, a position that wields enormous power and intimidation over those vulnerable citizens an officer is sworn to protect. The City as his employer owed a higher duty to protect citizens from an abuse of that power, a duty which private employers do not share.

Id.


91. Id. at 770, 514 S.E.2d at 197. The parade route traditionally employed the city's main business thoroughfare, which was adjacent to the railroad. The girls attended the parade with their parents and were struck while walking on the railroad tracks. Id. at 772, 514 S.E.2d at 198.

92. Id. at 773, 514 S.E.2d at 199. The supreme court thus reversed the court of appeals' denial of a summary judgment to the municipality on the nuisance claim. Id. The court stated: "To hold otherwise would be to label as a nuisance any properly-conducted activity held by a public entity on any of its property that is adjacent to and does not
The court of appeals proved equally unreceptive to the nuisance charge in *City of Vidalia v. Brown,* a pedestrian’s action for injuries from stepping into a hole "located about nine feet from the edge of the paved street near the middle of the ten-foot wide strip used as a drainage area which also contained public utility lines and a residential mailbox." Employing the supreme court’s nuisance "guidelines" from *City of Bowman v. Gunnells,* the court concluded that "there was no evidence of a defect or degree of misfeasance in excess of mere negligence sufficient to establish a nuisance."

Two instances of the period turned upon the historic “ante litem notice” requirement, the statutory mandate that, prior to filing suit against a municipality, claimants must provide written notice of the claim within six months of the incident. In *Evans v. City of Covington,* plaintiff contacted the city about her fall on a defective sidewalk;
the municipality referred plaintiff to its insurer; and the insurer began payments to plaintiff under a partial settlement preserving plaintiff's right to seek further compensation if her injuries proved worse than expected. When the insurer subsequently refused to make further payments, more than six months after the accident, plaintiff sent the municipality written notice of her claim.99 Affirming summary judgment for the municipality, the court of appeals held that neither the city,100 its officials,101 nor its insurer,102 possessed power to waive plaintiff’s timely compliance with the notice mandate, and “a city cannot be estopped from raising the defense of no ante litem notice.”103

The second instance, Jacobs v. Littleton,104 arose out of plaintiff's arrest by a municipal police officer. When plaintiff subsequently sued the arresting officer, the municipality, the municipal police department, and other municipal officials, the trial court rendered summary judgment for all defendants on grounds that plaintiff failed to provide ante litem notice.105 The court of appeals held the notice mandate applicable only to claims against the municipality.106 Accordingly, the court upheld summary judgment to the city and its police department but reversed as to “the individual city employee defendants.”107

Finally, City of Griffin v. Jackson108 presented an action resulting from plaintiff's collision with a municipal police vehicle. On appeal, the city complained that the trial judge had struck the city's pleadings as a

99. Id. at 374, 523 S.E.2d at 595. Ten months after her accident, plaintiff concluded that her injuries were worse, but the insurer refused to pay more than $15,000. Plaintiff then sued the city for negligence. Id.

100. “[A] city council has no right to waive the requirements of OCGA § 36-33-5 . . . .” Id. at 375, 523 S.E.2d at 596.

101. “Even if a city official had expressly waived the requirement, this waiver would have been ineffectual.” Id. at 374, 523 S.E.2d at 596.

102. “[A]n insurer is not an agent of a city for purposes of the ante litem notice.” Id. at 375, 523 S.E.2d at 596.

103. Id., 523 S.E.2d at 596. For treatment of estoppel's operation in the law of local government generally, see R. Perry Sentell, Jr., THE DOCTRINE OF ESTOPPEL IN GEORGIA LOCAL GOVERNMENT LAW (1985).


105. Id. at 403, 525 S.E.2d at 435. The arrest followed an incident at a school board meeting; an altercation ensued; and both the officer and the arrestee were injured. Id. at 403-04, 525 S.E.2d at 435.

106. Id. at 405, 525 S.E.2d at 436. The court reasoned that the notice statute must be strictly construed as in derogation of the common law. Id. Accordingly, the statute “requires notice only if the claim is against the municipality; it does not require ante litem notice to individual employees of a municipality.” Id.

107. Id. Additionally, the court denied plaintiff's contention that her mental incapacity tolled the running of the notice statute with respect to the municipality. Id.

sanction for failing to produce relevant photographs. After lengthy review of the evidence, the court sustained the trial judge's actions: "It is not necessary to show intentional destruction or hiding of the photographs to support the imposition of sanctions." Rather, "the evidence was sufficient to show a consistent pattern of conduct by the city calculated to frustrate any attempt to locate the photographs and to mislead the court and the plaintiff as to the fate of the photographs."

H. Authorities

Haney v. Development Authority of Bremen presented the supreme court with a novel issue: the original interpretation of a statute enacted thirty years previously—The Public Lawsuits Act. The case featured an intervention by city residents to oppose the municipal development authority's issuance of revenue bonds to finance construction of a public golf course in the city's industrial park. Plaintiffs appealed from the

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109. Id. at 374, 520 S.E.2d at 511. After first denying and then admitting that it possessed photographs of the accident scene, the municipality failed to comply with the trial court's order to produce them. Id. at 375, 520 S.E.2d at 512. "Despite the trial court's order, the city still did not produce the photographs. On May 16, 1997, 18 months after first stating that it would produce the photographs, the city filed a motion for protective order, claiming that it was unable to locate the photographs." Id.

110. Id. at 377, 520 S.E.2d at 513. The court emphasized the broad discretion possessed by judges in applying sanctions against disobedient parties. Id.

111. Id. at 378, 520 S.E.2d at 513. This was the court's response to the city's argument that there could be no finding of willfulness because there was no direct evidence that the city maliciously destroyed the photographs in order to avoid producing them to plaintiff. Id. at 377, 520 S.E.2d at 513.

112. Id. at 378, 520 S.E.2d at 513. It is at least arguable that the mere disappearance of photographs within the control of a party, which have been the subject of litigation for more than a year and which the party has repeatedly promised and been ordered to produce, can support an inference of bad faith, particularly where the party offers no explanation as to how they disappeared. Id. at 378-79, 520 S.E.2d at 514.


115. Id. at 403, 519 S.E.2d at 666. The municipal development authority had issued notes to purchase 400 acres of land for an industrial park. Environmental regulations rendered the land unsuitable for industrial development. In order to pay off the notes, the development authority sought to issue revenue bonds to finance a public golf course on the land. The proceeds from the bonds would be used to pay off the notes, to design and construct the golf course, and to satisfy the bonds. Id. at 404, 519 S.E.2d at 666. "If the project's operating revenues are insufficient to pay for the expenses of operating the golf
trial court's validation of the bonds. They also challenged the judge's order (under the Public Lawsuits Act) that intervenors post a surety bond to cover the authority's costs and damages during the appeal.\textsuperscript{116} In reviewing the latter challenge, the supreme court emphasized the Act's restricted application to "non-meritorious or frivolous litigation."\textsuperscript{117} Because the intervenors sought to raise "meritorious claims" regarding the propriety of the authority's proposed contracts and project, the court invalidated the judge's order as an abuse of discretion.\textsuperscript{118}

Proceeding to a review of the proposals themselves, the court held the golf course to be neither a "sports facil[y]"\textsuperscript{119} nor a "project" to develop "trade, commerce, [or] industry."\textsuperscript{120} Accordingly, the court concluded, the undertaking "violates both the Georgia Constitution and the Development Authority Law."\textsuperscript{121}

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\textsuperscript{116} Id., 519 S.E.2d at 667.

\textsuperscript{117} Id. "The trial court found that the appeal will delay the issuance of the bonds and prevent the authority from completing the golf course and retiring the notes . . . ." Id.

\textsuperscript{118} Id. at 406, 519 S.E.2d at 668. "Thus, while any lawsuit filed against a public project may increase its costs, the act makes clear that the legislature intended to discourage frivolous or non-meritorious challenges because their harm to the public purse offsets any benefit." Id.


\textsuperscript{120} O.C.G.A. § 36-62-2(6)(N) (2000). "Despite charging admission fees in an attempt to cover its operating expenses and debt service, the project is not a traditional business enterprise conducted for profit and thus does not meet the definition of a trade, industry, or commerce." 271 Ga. at 408, 519 S.E.2d at 669.

\textsuperscript{121} Id., 519 S.E.2d at 670. A dissenting opinion focused upon the majority's reversal of the trial judge's order of the surety bond: "The fact that an appellate court may later find merit where the trial court has found none does not mean that the trial court abused its discretion in requiring an appeal bond." Id. at 409, 519 S.E.2d at 670 (Carley, J., dissenting).
I. Zoning

Both appellate courts addressed procedural issues of zoning during the survey period. The supreme court posed its issue as follows: "What constitutes sufficient notice to the zoning authority of a challenge to the constitutionality of an existing zoning classification as applied to particular property?" In answering that question, the court held that such notice "does not have to meet a high standard of particularity" and that only "fair notice" of a constitutional challenge is necessary. Overruling a prior decision, the court found sufficient particularity in remarks by the property owner's representative at the council hearing concerning aspects of the property and concluding that "the existing zoning, I do not believe is really what you would call a constitutional zoning."  

The court of appeals confronted the failure of a municipal zoning appeals board ("BZA") to respond to a property owner's appeal of a zoning variance denial to the superior court. Holding the superior court's grant of a default judgment to constitute reversible error, the court stated the trial judge's "sole function" was as follows: "[T]o determine (1) whether there was any evidence to support the findings of the BZA and (2) whether the BZA had abused its discretion." The board was not required to respond to the property owner's appeal, the court concluded, and "the merits of the action had already been determined at the hearing held by the BZA.

122. Ashkouti v. City of Suwanee, 271 Ga. 154, 155, 516 S.E.2d 785, 786 (1999). Plaintiffs sought to rezone certain property, and following a hearing, the municipal council denied the application. Plaintiffs then filed suit asserting the present zoning classification was unconstitutional. Id.
123. Id.
125. 271 Ga. at 154, 516 S.E.2d at 786. The court reversed the trial judge's grant of the city's motion for summary judgment. Id. at 156, 516 S.E.2d at 786.
126. City of Atlanta Bd. of Zoning Adjustment v. Kelly, 238 Ga. App. 799, 800, 520 S.E.2d 269, 270 (1999). The property owner sought a side yard set back variance; the board of zoning appeals denied the variance; the owner appealed to the superior court; and, due to administrative oversight, the board did not file a timely response. The trial judge entered default judgment in favor of the property owner and reversed the zoning appeals board's decision. Id.
127. Id. at 801, 520 S.E.2d at 271. "But here, notwithstanding the fact that an appealable decision had been rendered by the BZA, the court imposed judgment by default and decided the merits." Id.
128. Id. On remand, the court directed that unless the property owner proved "that the [board] exceeded its discretionary powers or acted arbitrarily and capriciously, the decision of the [board] must be affirmed." Id.
II. COUNTIES

A. Home Rule

Home rule holds elaborate and historic significance in Georgia local government law. Counties claim home rule status directly from the Georgia Constitution via a provision delegating, inter alia, the power to enact ordinances amending local statutes on nonexcepted subjects. That power emerged as the litigated issue in Krieger v. Walton County Board of Commissioners, the most recent saga in an ongoing dispute between a chairman and a board of commissioners. More specifically, the chairman challenged the board’s adoption of five ordinances that amended local statutes so as to detract from the chairman’s functions. Because the board had directed his physical removal from the room before voting on the ordinances, plaintiff attacked the measures as unconstitutional home rule exercises. Reviewing the trial judge’s denial of plaintiff’s position, the supreme court examined the precise nature of each ordinance and concluded that they “were duly adopted under the procedures set out in [the home rule provision] of the Georgia Constitution.” Sustaining the validity of the measures, the court expressly rejected the chairman’s unsupported assertion “that his removal from the first board meeting and absence during the initial vote somehow invalidated the board’s adoption of the amendments.”

130. GA. CONST. art. IX, § 2, para. 1.
133. The chairman had attempted to prevent the reading of the ordinances and refused to abide by the commissioners’ vote that he be removed as presiding officer of the meeting. The commissioners then had the chairman removed from the chamber by county deputy sheriffs. 271 Ga. at 792, 524 S.E.2d at 462-63.
134. Id., 524 S.E.2d at 463.
135. Three ordinances pertained to personnel subject to the jurisdiction of the governing authority. One ordinance deleted a portion of a local statute empowering the chairman to supervise all county work. The final ordinance created the office of county manager to be filled by the board. Id., 524 S.E.2d at 462.
136. Id. at 794, 524 S.E.2d at 464.
137. Id.
B. Officers and Employees

County officers and employees were involved in a significant portion of this year's local government litigation. One of the most basic issues presented was that of Nash v. Pierce.\(^{138}\) How many different positions can an official hold?\(^{139}\) More precisely, the court of appeals declared, a general statute\(^{140}\) prohibits any other county officer from also serving as county treasurer.\(^{141}\) Consequently, a contrary local statute\(^{142}\) could not validly designate as treasurer the chair of the county commission.\(^{143}\)

The supreme court viewed as equally clear the issue in Stubbs v. Carpenter,\(^{144}\) an action to mandamus the county's state court judge to conduct civil trials.\(^{145}\) Despite the extraordinary nature of mandamus\(^{146}\) and conceding the considerable discretion inhering in the


\(^{139}\) Id. at 467, 519 S.E.2d at 463. The case arose when three members of the county commission sought injunctive relief against the commission chairman to prevent his performing specified functions. Id. at 466, 519 S.E.2d at 462.

\(^{140}\) O.C.G.A. § 36-6-1(a) (2000).

\(^{141}\) 238 Ga. App. at 467, 519 S.E.2d at 463.

\(^{142}\) 1965 Ga. Laws 2670.

\(^{143}\) 238 Ga. App. at 467, 519 S.E.2d at 463. The court held that the general statute “contradicted the local act and as a general law prevailed.” Id. Accordingly, the court affirmed the trial judge's determination against the commission chair. Id.

On the pervading issue of the tests by which the Georgia appellate courts determine the validity of local statutes on subjects treated by general statutes, specifically focusing upon the supreme court's latest announced “test,” see R. Perry Sentell, Jr., The Georgia Supreme Court and Local Government Law: Two Sheets to the Wind, 16 GA. ST. U. L. REV. 361 (1999).

Yet another period contest over right to office resulted in Bruce v. Maxwell, 270 Ga. 883, 515 S.E.2d 149 (1999), a quo warranto proceeding brought by a suspended county tax commissioner who later resigned from the office in return for a nolle prosequi of criminal charges. Id. at 883, 515 S.E.2d at 150. The supreme court reasoned as follows: “[Petitioner] does not contest [her replacement's] qualifications. She simply asserts that [the replacement] should not have been appointed as the interim tax commissioner because she was suspended improperly . . . . [T]hat issue was rendered moot when [petitioner] resigned her office.” Id. For treatment of the extensive role of quo warranto in Georgia local government law, see R. Perry Sentell, Jr., The WRIT OF QUO WARRANTO IN GEORGIA LOCAL GOVERNMENT LAW (1987).

\(^{144}\) 271 Ga. 327, 519 S.E.2d 451 (1999).

\(^{145}\) Id. at 327, 519 S.E.2d at 451. Although the judge was statutorily required to hold four terms of court each year and despite a backlog of cases, no civil cases had been tried since 1966. Id.

\(^{146}\) “Mandamus does not lie in this case unless it can be said that the judge's discretion has been grossly abused.” Id. at 328, 519 S.E.2d at 452. On the more general point of how frequently unsuccessful mandamus actions are in local government law, see
the court nevertheless ordered the mandamus.148 "We hold that the judge's refusal to schedule civil cases for trial for more than two years is a gross abuse of discretion under the circumstances of this case."149

Several of the contests touched upon matters of compensation. In Dudley v. Rowland,150 a part-time county chief magistrate declared himself a full-time magistrate and sought to mandamus the commissioners to pay the commensurate salary.151 Because the petitioner worked full-time hours, the supreme court held that he must be paid the salary specified by general statute.152 Declaring the commissioners without power to reduce that salary,153 the court asserted that "[a]ny change in compensation for county magistrates can be effected only by a local act of the General Assembly."154

Similar compensation concerns prompted the county tax commissioner's action in Brown v. Liberty County,155 claiming entitlement to fees or commissions in addition to her salary and attacking the salary statute
Rejecting her attack, the supreme court held that when construed in harmony with other measures, the salary statute controlled the case. That statute prevailed over a local enactment that plaintiff relied upon and precluded additional fees under other general statutes. Consequently, the court affirmed the county's partial summary judgment in the case.

Financial concerns, albeit retirement benefits, likewise generated the action by county court reporters in Miller v. Clayton County to mandamus inclusion, for purposes of retirement benefits, sums plaintiffs received for services other than taking testimony in felony cases. The supreme court reviewed the arrangements under which those other services (e.g., preparing transcripts for indigent defendants, transcribing bond, and forfeiture hearings) were rendered and rejected plaintiffs' claims. In performing those services, the court held that the court reporters "occupied the status of independent contractors in regard to the compensation they received in addition to their annual base salaries." So considered, that compensation need not be included by the county in determining plaintiffs' retirement benefits.

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156. Id. at 634, 522 S.E.2d at 466. "The county's position was that OCGA § 48-5-183 controlled, and entitled [the Commissioner] to receive only her salary unsupplemented by any fees or commissions." Id.

157. In effect, the court employed the statutory construction technique, in pari materia. For analysis of that technique, in the context of Georgia case law, see Statutory Construction in Georgia: The Doctrine of In Pari Materia, in R. Perry Sentell, Jr., Studies in Georgia Statutory Law 259 (1997).


159. 271 Ga. at 634, 522 S.E.2d at 466.


161. 271 Ga. at 635, 522 S.E.2d at 467. "For her entire tenure, her statutorily mandated minimum salary under OCGA § 48-5-183 has been higher than that provided in the local act, as well as higher than the maximum salary permitted in order to receive fees pursuant to OCGA §§ 40-2-33 and 48-5-180." Id.

162. Id. at 636, 522 S.E.2d at 467. "Therefore, the trial court correctly granted partial summary judgment in favor of the County." Id.


164. Id.

165. Plaintiffs "were not hired by the County and cannot be fired by the County;" they "take no instruction from the commissioners or any County employee; . . . the County does not set their hours of work, the sequence of their work, or the amount they work; and . . . [they] are not required to render their services personally." Id. at 137, 518 S.E.2d at 404.

166. Id. at 136, 518 S.E.2d at 403.

167. Id. at 137, 518 S.E.2d at 404.

168. Id. at 135, 518 S.E.2d at 403. The court thus affirmed the trial judge's denial of plaintiffs' petition for a mandamus against the county. Id. at 137, 518 S.E.2d at 404.
The court of appeals took two occasions to remind superior courts of their limited ("any evidence") review standard when considering county employee appeals from decisions by the state board of workers' compensation. In *Bibb County v. Short*, the trial judge reversed the board's denial of compensation for an employee's psychological impairment allegedly caused by physical injury on the job. Reversing the reversal, the court of appeals emphasized the board's reliance upon an independent board-certified psychiatrist's examination. Given "some medical evidence supporting the board's decision," the court held that the superior court erred in "substituting its factual findings for those of the State Board." The court rendered a similar decision in *Bibb County v. Higgins*, involving a county employee's death from a stroke that allegedly resulted from job-related stress and exertion. Reviewing the evidence relied upon by the state board in denying compensation, the court declared the evidence sufficient to support the board's determination. Accordingly, "the superior court was without authority to reverse it."

Finally, in *Ianicelli v. McNeely*, the supreme court rejected a county citizen's contention that members of the school board, each of whom was married to a school system employee, were in violation of Georgia's constitutional admonition that "[p]ublic officers are the trustees and servants of the people and are at all times amenable to

170. Id. at 291, 518 S.E.2d at 484. Plaintiff employee claimed that the psychological injury resulted from an injury to his foot received on the job and for which physical injury plaintiff was awarded workers' compensation. Id., 518 S.E.2d at 484-85.
171. Id. at 292, 518 S.E.2d at 485. That witness testified that plaintiff's "psychological profile was long-standing and preceded the ... accident." Id.
172. Id. at 291, 518 S.E.2d at 484. The superior court had relied upon other medical evidence "attributing [the employee's] psychological disability in part to the anger he developed over the work assignment that led to his physical injury." The court thus erred, the court of appeals held, "in not accepting [the State Board's] finding and in reversing the State Board's decision." Id. at 292, 518 S.E.2d at 485.
174. Id. at 161, 526 S.E.2d at 380. Claimant alleged the employee's stroke to have resulted from severe and uncontrolled hypertension and that job-related stress contributed to the hypertension causing the fatal stroke. Id.
175. The board had relied upon testimony of the county's medical expert to find that there was insufficient credible evidence that the employee's stroke arose out of and in the course of his employment with the county. Id. at 162, 526 S.E.2d at 380.
176. Id. at 163, 526 S.E.2d at 381. "Construing the evidence most favorably to the board's award as we are required to do, ... we conclude that the board weighed the evidence; [and] there was evidence to support the award ... " Id.
177. Id.
The court distinguished prior trustee decisions and characterized plaintiff's position as "based largely upon speculation." Affirming dismissal of the action, the court rebuffed the notion that "an elected school board official whose family members are employed by the local school system acts in violation of [his] public duty merely by participating in decisions affecting school operations."

C. Elections

The administrative success of county elections depends in no small part on the efficiency of the county's Chief Voting Registrar. In *Collier v. Board of Commissioners,* Pike County commissioners alleged that a registrar's inefficiency justified her removal from office by the superior court. Reviewing the registrar's appeal from the judge's "removal for cause" order, the court of appeals recounted evidence that two "voided elections were directly caused by [the registrar's] failure to follow the law and properly administer the duties of her office." That evidence, the court concluded, sufficiently supported the trial judge's order of removal for cause.

179. *Id.* at 236, 527 S.E.2d at 191 (quoting GA. CONST. art. I, § 2, para. 1).
180. See, e.g., Dunaway *v.* City of Marietta, 251 Ga. 727, 308 S.E.2d 823 (1983); Georgia Dep't of Human Resources *v.* Sistrunk, 249 Ga. 543, 291 S.E.2d 524 (1982). In these cases, the court asserted, "there was evidence that a public officer had definitely benefitted financially (or definitely stood to benefit financially) as a result of simply performing their official duties." 272 Ga. at 236, 527 S.E.2d at 191.
181. "We do not believe that our State Constitution's 'public trust' language is intended to effectuate such a sweeping and all-encompassing prohibition against the valuable right to seek election to local school boards." *Id.* at 237, 527 S.E.2d at 192.
182. The court emphasized, however, that "[i]t is the duty of the employee to ensure the integrity of local school system operations by intentionally acting in order to further the public's pecuniary gain (and, hence, their own), they would indeed have breached the public's trust." *Id.*
184. *Id.* at 605, 524 S.E.2d at 293. The commissioners brought their action for removal under O.C.G.A. § 21-2-212, which provides that the senior superior court judge has the right to remove a registrar "at any time for cause after notice and hearing." O.C.G.A. § 21-2-212 (1998).
185. The registrar conceded notice and hearing and contested "only whether the evidence was sufficient to remove her 'for cause.'" 240 Ga. App. at 605, 524 S.E.2d at 293.
186. *Id.* at 606, 524 S.E.2d at 293. One election had been voided because the names of 58 voters were placed in the wrong district and they were denied the right to vote in the proper district. The other election was voided because the chief registrar mishandled a number of absentee votes. *Id.* at 605, 524 S.E.2d at 293.
187. *Id.* at 606, 524 S.E.2d at 294. The court reasoned that although few prior cases addressed the issue of "cause" under the statute, the superior court's findings should be upheld if there is "any evidence" to support them. *Id.*
Crucial to a candidate's chance of election is his inclusion on the election ballot. In *Gathercoal v. Purcell*, plaintiff petitioned to mandamus the board of elections to place his name on the ballot as an independent candidate for the county board of commissioners. Summarily affirming denial of plaintiff's petition, the supreme court observed that "3,344 of the 4,511 signatures on [plaintiff's] petition were on pages notarized by a circulator." Accordingly, the court held that the elections board "correctly disqualified [those] signatures" and that the trial judge properly disallowed mandamus.

D. Openness

A vital facet of "openness in government" implicates the concept of meetings by a local governing authority conducted in the public eye. To assure the conduct of such meetings, Georgia's Open and Public Meetings Act provides that unexcepted meetings by a county governing authority are to be open to the public. In *Camden County v. Haddock*, a former finance director charged the county commission with violation of that Act in respect to her discharge. Assessing that plaintiff's claim depended on her assertion that the commissioners fired her, the supreme court found the evidence insufficient. Rather, the court explained that evidence revealed that the commissioners took no official action on plaintiff's employment and that she was fired by the county administrator based on what he perceived to be the commission's consensus. Additionally, under the Act's exception for "personnel

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189. *Id.* at 26, 517 S.E.2d at 780.
190. *Id.* Such action, the court asserted, violated its decision in *Poppell v. Lanier*, 270 Ga. 11, 507 S.E.2d 721 (1998): "The rule set forth in Poppell is clear and easily administered. Therefore, we decline . . . to overrule it." 271 Ga. at 27, 517 S.E.2d at 780.
191. *Id.* at 26, 517 S.E.2d at 780.
195. *Id.* at 665, 523 S.E.2d at 292. Plaintiff also charged a violation of procedural due process, but the court rejected that argument for the reason that she did not comply with the time requirements of the county's personnel policy. *Id.* at 664, 523 S.E.2d at 292.
196. *Id.* at 666-67, 523 S.E.2d at 293.
197. *Id.* "[T]he county administrator called [plaintiff] into his office and told her she was fired based on what he perceived to be the consensus of the county commission." *Id.* at 666, 523 S.E.2d at 293.
matters," the court found no violation from the fact that commission members discussed plaintiff's job performance at an earlier meeting.  

E. Regulation

County regulatory efforts attracted litigation in Kitchens v. Richmond County, an action to mandamus issuance of a building permit. Because the evidence failed to show plaintiff's vested right to a permit, the supreme court summarily denied the mandamus. The county commission's prior conditional approval of a permit, the court asserted, was insufficient: "The Comprehensive Zoning Ordinance provides that the Riverfront Development Review Board shall review all development plans in the riverfront zone and that no building permits shall be issued until the board has made a recommendation to the commission."  

Discretion in regulating alcoholic beverages served the county well in Bradshaw v. Dayton, an effort to mandamus the issuance of a license for the retail sale of beer and wine. Rejecting a due process attack, the supreme court reached two conclusions relative to the county

199. 271 Ga. at 667, 523 at 293. In an executive session prior to a vote to reprimand the county administrator for an auditor's report of missing general county funds, one of the commissioners remarked to the administrator that plaintiff "needed to go." Id. at 664, 523 S.E.2d at 292. The court held that the county was entitled to summary judgment on plaintiff's claim under the Open Meetings Act. Id. at 667, 523 S.E.2d at 293.
200. For background on the issue of county regulation generally, see Discretion, supra note 51; Reasoning By Riddle, supra note 51.
202. Id. at 20, 515 S.E.2d at 144. Plaintiff developer sought a permit to build ten townhouses on a riverfront lot, and the local government review board denied his proposal as incompatible with existing development. Id.
203. Id. "A building permit must have been legally obtained and validly issued to result in a vested right." Id.
204. Id. "To be entitled to mandamus, the petitioner must show there is a clear legal right to the relief sought or there has been a gross abuse of discretion." Id. See MISCASTING MANDAMUS, supra note 22.
205. 271 Ga. at 20, 515 S.E.2d at 144. "Finally, the county governing authority did not abuse its discretion in referring the matter to the review board as required by law." Id. at 21, 515 S.E.2d at 144. The court thus upheld the trial judge's denial of plaintiff's petition. Id.
206. For background on county regulation of alcoholic beverages, see A Sobering Vignette, supra note 51.
208. Id. at 884, 514 S.E.2d at 832. The county commission had rejected plaintiff's application on grounds that she did not meet the requirements for a "qualified location." Id.
ordinance's means of establishing “qualified [sales] locations.”\textsuperscript{209} First, reliance upon the number of registered voters, rather than population, “is not arbitrary in the constitutional sense.”\textsuperscript{210} Second, distance measurement from property lines, rather than buildings, “is not arbitrary, illogical, or vague.”\textsuperscript{211} Accordingly, the court declared the ordinance “reasonably related to its goal of regulating the retail sale of beer and wine.”\textsuperscript{212}

In Café Erotica, Inc. v. Peach County,\textsuperscript{213} the court again relied upon two conclusions to sustain an ordinance prohibiting the sale and consumption of alcoholic beverages in adult entertainment establishments.\textsuperscript{214} First, the county attorney’s characterization of the ordinance as an attempt to eliminate nude dancing did not detract from the measure’s content-neutral nature.\textsuperscript{215} Second, the county need not demonstrate its own experience with negative secondary effects of such establishments; rather, it could rely upon the studies of other jurisdictions.\textsuperscript{216} Again, therefore, the court affirmed a judgment of constitutionality.\textsuperscript{217}

Finally, the court reached its regulatory limit in Thelen v. State,\textsuperscript{218} a challenge to a county ordinance prohibiting “any loud, unnecessary or unusual sound or noise” that annoys others more than fifty feet removed.\textsuperscript{219} As criminally applied to the pilot of a helicopter who

\textsuperscript{209} Id.
\textsuperscript{210} Id. The ordinance limited “the number of qualified locations within each voting district to one location for every 500 registered voters.” Id.
\textsuperscript{211} Id. The ordinance specified a distance of 100 yards from churches, funeral homes, schools, colleges, or other retail sellers of beer and wine. Id.
\textsuperscript{212} Id. at 885, 514 S.E.2d at 832. The court thus affirmed the trial judge’s decision upholding the validity of the ordinance. Id. at 884, 514 S.E.2d at 832.
\textsuperscript{213} 272 Ga. 47, 526 S.E.2d 56 (2000).
\textsuperscript{214} Id. at 47, 526 S.E.2d at 56. This was the third installment in the county’s ongoing efforts. See Chambers v. Peach County, 266 Ga. 318, 467 S.E.2d 519 (1996); Chambers v. Peach County, 266 Ga. 672, 492 S.E.2d 191 (1997).
\textsuperscript{215} 272 Ga. at 48, 526 S.E.2d at 57-58. “[W]e conclude that the statement of the County Attorney, who was not on the Board of Commissioners and was not entitled to vote for enactment of the ordinance, is not sufficient evidence to cause us to depart from our ruling . . . that the ordinance is content-neutral.” Id.
\textsuperscript{216} Id. at 49, 526 S.E.2d at 58. “A local government may rely upon the studies conducted by other jurisdictions as long as the evidence it relies upon is reasonably believed to be related to the problem the city is attempting to address.” Id.
\textsuperscript{217} Id. at 50, 526 S.E.2d at 58. “[T]he trial court did not err when it . . . granted [the] County’s motion for summary judgment.” Id.
\textsuperscript{218} 272 Ga. 81, 526 S.E.2d 60 (2000).
\textsuperscript{219} Id. at 81, 526 S.E.2d at 61. Plaintiff appealed his conviction under the ordinance in the trial court. Id.
landed and took off from his dock,²²⁰ the court held that the language of the ordinance suffered from undue vagueness.²²¹ First, “it does not define a specific context in which it applies, thereby magnifying its inherent flaws.”²²² Second, the court reasoned that the standard of conduct specified “is dependent upon the individualized sensitivity of each complainant.”²²³ Finally, the court assured that the county could perfect a “more clearly worded and narrowly drawn ordinance,” protecting its citizens from noises affecting their health or safety, and nonetheless “insuring an ascertainable standard of guilt for due process requirements.”²²⁴

F. Contracts

Georgia statutory law has long required that all county contracts must be in writing.²²⁵ The court of appeals deemed that requirement decisive in the case of Waters v. Glynn County,²²⁶ an illegally terminated department head’s action against the county for back pay.²²⁷ Although conceding that the Georgia Constitution waives the county’s sovereign immunity in contract,²²⁸ the court held that “the mere acceptance of a written offer of employment for an indefinite term . . .

²²⁰ “Because [plaintiffs] vagueness challenge does not involve First Amendment freedoms, we must limit our decision to the application of the ordinance in light of the conduct to which it is applied in this case.” Id.
²²¹ Id. at 82, 526 S.E.2d at 62.
²²² Id. “By prohibiting 'any . . . unnecessary or unusual sound or noise which . . . annoys . . . others,' the ordinance here fails to provide the requisite clear notice and sufficiently definite warning of the conduct that is prohibited.” Id. (quoting Fratiello v. Manusco, 653 F. Supp. 775 (D.R.I. 1987)).
²²³ Id. at 83, 526 S.E.2d at 62 (quoting Nichols v. City of Gulfport, 589 So. 2d 1280, 1284 (Miss. 1991)). The court reasoned that “[w]hether the noise of a helicopter takeoff or landing is ‘unnecessary,’ ‘unusual,’ or ‘annoying’ to a neighbor more than 50 feet away ‘certainly depends upon the ear of the listener.’” Id.
²²⁴ Id. Accordingly, the court reversed plaintiff’s convictions of violating the ordinance. Id. See “Ascertainable Standards” versus “Unbridled Discretion,” supra note 51.
²²⁷ Id. at 438, 514 S.E.2d at 681. Prior litigation had determined plaintiff’s termination to be illegal. See Glynn County v. Waters, 268 Ga. 500, 503, 491 S.E.2d 370, 373 (1997).
²²⁸ Ga. CONST. art. I § 2, para. 9(c). “Thus, the defense of sovereign immunity has been waived for actions arising out of written contracts entered into by a county.” 237 Ga. App. at 439, 514 S.E.2d at 682 (emphasis in original).
does not create an enforceable written contract.” Consequently, the court held, “no enforceable contract exists.”

Yet another historic limitation upon local government’s contracting capabilities inheres in the state constitution’s prohibition against governmental gratuities. This limitation reared its countenance in Swanberg v. City of Tybee Island, an action testing title to land conveyed by a county to a municipality. In reviewing the quitclaim deed in issue, the supreme court called attention to an “express direction that the land shall be used solely by the Marine Rescue Squadron [MRS] . . . for rescue missions in the [municipal] area,” and noted that “MRS has continuously used the property in such manner.” That direction, the court reasoned, saved the contract and the municipal use of the land from plaintiffs’ charge of illegal gratuity: “No gratuity is involved where the municipality is receiving ample consideration for use of the property.”

Once entered into, successful county contracts depend upon acceptable performance by the other contracting party. Ruby-Collins, Inc. v. Cobb County featured an instance lacking these ingredients: a county’s breach of contract action for work on its water reclamation facility and the contractor’s counterclaim for removal from the list of prequali-

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229. Id., 514 S.E.2d at 683. “[Plaintiff] asserts he had a written contract with the county by virtue of his acceptance of the county’s written offer of employment.” Id. The following quote only appears in the official reporter. Moreover, the court continued, plaintiff “has failed to establish that his contract was entered on the minutes of the . . . County Commission.”

230. Id. The court thus affirmed the trial judge’s denial of plaintiff’s motion for summary judgment. Id. at 441, 514 S.E.2d at 684.

231. Ga. Const. art. III, § 6, para. 6(a).


233. Id. at 23, 518 S.E.2d at 115. Plaintiffs, owners of land abutting the right-of-way in issue, argued that the county had possessed and conveyed only an easement in the land that, when no longer used by the municipality as a right-of-way, reverted to adjacent property owners. Id. at 24, 518 S.E.2d at 115. The supreme court construed the interest owned and conveyed as a fee rather than an easement and thus not subject to a reversionary interest. Id. at 25, 518 S.E.2d at 117.

234. Id. at 26, 518 S.E.2d at 117.

235. Id. “Since it was shown that MRS uses the property in exchange for providing valuable rescue services to the area, the trial court correctly awarded summary judgment to [the municipality] on the issue of an impermissible gratuity.” Id.


237. “The County contended that the specially designed incinerator, installed by the subcontractor . . ., did not perform to the County’s satisfaction.” Id. at 518, 515 S.E.2d at 188-89.
fied eligible bidders for future county projects.\textsuperscript{238} Reviewing the trial judge's summary judgment against the counterclaim,\textsuperscript{239} the court of appeals emphasized the county's statutory authority\textsuperscript{240} to allow contracts for public projects and to "'reject any and all bids.'"\textsuperscript{241} "It follows," the court asserted, "that no particular prospective bidder has any legitimate claim of entitlement to be able to bid on any future contract the government may let."\textsuperscript{242} Consequently, defendant contractor possessed "no protected property interest in remaining on a list of potential bidders prequalified to bid on future public works contracts."\textsuperscript{243}

G. Roads

Statutory law permits a county to abandon a public road that serves "no substantial public purpose."\textsuperscript{244} A county's abandonment decision under this statute attracted the complaint in \textit{Torbett v. Butts County}\textsuperscript{245} of a landowner whose property adjoined the road in issue. Arguing that the road's disuse resulted from the county's failure to maintain and repair it, plaintiff petitioned to enjoin the county's abuse of discretion.\textsuperscript{246} In review of the matter, the supreme court found that disuse had resulted not from the condition of the road itself, "but from the fact that a bridge on the road was impassible."\textsuperscript{247} Moreover, the court concluded, "the county commission's consideration of the economic factors involved in the decision whether to abandon the road was proper and did

\textsuperscript{238} \textit{Id.} at 517-18, 515 S.E.2d at 188. Defendant contractor contended that under U.S.C. § 1983, the county had committed an unconstitutional "taking without due process of law . . . amounting to a 'blacklisting' of" defendant. \textit{Id.}

\textsuperscript{239} Defendant argued that "the trial court erred in failing to recognize a property or liberty interest protected by due process in not being removed from the list of contractors pre-qualified to bid on County public works." \textit{Id.} at 518, 515 S.E.2d at 189.

\textsuperscript{240} O.C.G.A. § 36-10-2.1 (2000).

\textsuperscript{241} 237 Ga. App. at 519, 515 S.E.2d at 189 (quoting O.C.G.A. § 36-10-2.1 (2000)).

\textsuperscript{242} \textit{Id.} at 520, 515 S.E.2d at 189-90. "The existence of such a discretion to reject bids is incompatible with an objectively reasonable expectation of legitimate claim of entitlement by any prospective bidder." \textit{Id.}, 515 S.E.2d at 189 (emphasis added).

\textsuperscript{243} \textit{Id.}, 515 S.E.2d at 190. The court thus affirmed the trial judge's summary judgment against the contractor's counterclaim. \textit{Id.}

\textsuperscript{244} O.C.G.A. § 32-7-2(b)(1) (1996).

\textsuperscript{245} 271 Ga. 521, 520 S.E.2d 684 (1999).

\textsuperscript{246} \textit{Id.} at 522, 520 S.E.2d at 685. Plaintiff argued that the road would be used if the county replaced a bridge, which had been destroyed some twenty years earlier and that "the abandonment of the road solely to avoid the expense of a new bridge was an abuse of discretion." \textit{Id.}

\textsuperscript{247} \textit{Id.} That fact, the court held, distinguished its decision in \textit{Cherokee County v. McBride}, 262 Ga. 460, 421 S.E.2d 530 (1992), in which disuse had resulted from the condition of the road itself. 271 Ga. at 522, 520 S.E.2d at 685.
not constitute an abuse of discretion." Accordingly, the court affirmed the trial judge's decision for the county.

H. Taxation

Local option sales taxes propelled issues to the appellate courts on two occasions during the survey period. In Thornton v. Clarke County School District, county residents and taxpayers sought to prevent the school district from constructing a new high school. Plaintiffs maintained that defendant had failed to file an environmental effects report and that it lacked authority under the sales tax referendum to demolish an existing school or to spend more than an estimated amount. As for plaintiffs' first contention, the supreme court simply read the Georgia Environmental Policy Act's coverage of "any department, board, bureau, commission, authority, or other agency of the state" to exclude county school districts. Accordingly, the district was not required to file the environmental effects report. Second, the court emphasized the "broad discretion" possessed by the board and observed that the "estimated cost" of a new high school came not from the referendum but from the board's meetings with the public. "Because none of the school board's plans violates the referendum, we find no violation of law or an abuse of discretion if the school board were to demolish the existing high

248. Id.
249. Id. at 523, 520 S.E.2d at 685. The court expressly relied upon its earlier decision in Smith v. Board of Comm'rs., 264 Ga. 316, 444 S.E.2d 775 (1994). 271 Ga. at 522, 520 S.E.2d at 685.
251. Id. at 634, 514 S.E.2d at 12. Plaintiffs sought a declaratory judgment, mandamus, and injunctive relief. Id.
253. Id. § 12-16-3(5). "Construing all of the component parts of the statute together leads to the conclusion that the Act was not intended to apply to local school districts." 270 Ga. at 635, 514 S.E.2d at 13.
254. Id. at 634, 514 S.E.2d at 12. The court conceded that its construction of this statute was in tension with its interpretations in the area of sovereign immunity but "decline[d] to extend our broad reading of that doctrine to construction of this statute." Id. at 635, 514 S.E.2d at 12.
255. This discretion came from the constitutional amendment authorizing the sales tax referendum for educational purposes. Ga. Const. art. VIII, § 6, para. 4.
256. 270 Ga. at 634, 514 S.E.2d at 12. "While the referendum addressed neither the estimated $18 million for construction of a new high school, nor plans for the existing high school, these matters were discussed by school board members at public meetings." Id. at 635, 514 S.E.2d at 13.
school or to spend more than the estimated $18 million for construction of a new school.\textsuperscript{257}

The court of appeals operated from a more restrictive perspective in \textit{Shadix v. Carroll County},\textsuperscript{258} involving a special purpose county sales and use tax. There, the referendum stated that the tax was to raise $34 million for a period of four years for road work and for a period of five years for capital improvements. When the tax yielded the specified amount of money in fewer than the years stated, plaintiffs sought to enjoin further collections.\textsuperscript{259} Passing on the authorizing statute as it then existed,\textsuperscript{260} the court asserted that "the voters approved a tax which would end within four years and five years, or upon the collection of $34 million dollars."\textsuperscript{261} Once that amount had been collected, the court held, "the county was obligated to cease its taxation."\textsuperscript{262}

\textbf{I. Liability}

Any negligence action, including one against a local government, requires that plaintiff prove defendant's violation of a duty, a requirement particularly problematic when defendant is charged only with nonfeasance rather than misfeasance.\textsuperscript{263} Absent a special relationship, a defendant (including a local government) owes no duty to prevent a third party from causing harm to another. Under the historic "public

\textsuperscript{257} \textit{Id.} at 635-36, 514 S.E.2d at 13. The court rejected plaintiffs' contention that the board was responsible for its representations under O.C.G.A. § 36-82-1(d). That statute "pertains specifically to bonded debt, whereas the referendum at issue in this case involves sales and use taxes. And the constitutional provision authorizing the present referendum does not contain a similar provision regarding adherence to statements of intentions." 270 Ga. at 636, 514 S.E.2d at 13. The court thus sustained the trial judge's dismissal of plaintiffs' complaint. \textit{Id.}


\textsuperscript{259} \textit{Id.} at 192, 521 S.E.2d at 101. The tax collections began in April 1994, and the specified amount of money had been raised by May 1998. The county contended that the five-year period specified on the ballot was controlling, regardless of the amount of money raised. \textit{Id.}

\textsuperscript{260} O.C.G.A. § 48-8-112(b)(3) (1995 & Supp. 2000). The court noted that under an amendment to this statute, not controlling in this case, "all SPLOST taxes clearly terminate when the maximum amount is raised." 239 Ga. at 195, 521 S.E.2d at 102-03. That amendment, the court said, applied only to referendums adopted after April 14, 1997. \textit{Id.}

\textsuperscript{261} \textit{Id.}, 521 S.E.2d at 103 (emphasis added).

\textsuperscript{262} \textit{Id.} at 196, 521 S.E.2d at 103. The court employed the statutory construction maxim of strictly construing tax statutes against the taxing authority. \textit{Id.} at 195, 521 S.E.2d at 103. The court thus reversed the trial judge's decision in favor of the county. \textit{Id.} at 197, 521 S.E.2d at 104.

\textsuperscript{263} W. PAGE KEETON ET AL, PROSSER AND KEETON ON TORTS 373 (5th ed. 1984).
duty doctrine," therefore, a local government owes its protections to the public at large, not to any particular individual.\textsuperscript{264}

Having announced its public duty doctrine in 1993, the Georgia Supreme Court found no local government duty to provide police protection against the acts and omissions of third parties.\textsuperscript{265} Five years later, the court of appeals held in \textit{Coffey v. Brooks County}\textsuperscript{266} that the doctrine did not apply when county police officers failed to protect the public "from hazardous conditions caused by the weather rather than by a third party."\textsuperscript{267} Taking the case on certiorari (under the style of \textit{Rowe v. Coffey}\textsuperscript{268}), the supreme court, via a combination of two two-justice opinions, reversed.\textsuperscript{269} Declaring the doctrine's applicability to county law enforcement officers who failed properly to inspect and barricade a public road washed out by a sudden rainstorm, the court rejected claims by citizens who wrecked their automobiles on the road.\textsuperscript{270} If there was no duty, the court held, there could be no negligence liability.\textsuperscript{271}

In addition to general negligence limitations, of course, Georgia counties also enjoy basic immunity to tort responsibility.\textsuperscript{272} Subject only to specific acts of waiver by the General Assembly, counties receive the constitution's express grant of sovereign immunity.\textsuperscript{273} The legislature enacted a statute of explicit waiver in 1955 when it authorized local governments to obtain liability insurance for the "ownership, maintenance, operation, or use of any motor vehicle."\textsuperscript{274} That statute constituted the basis of \textit{Butler v. Dawson County},\textsuperscript{275} an action for

\textsuperscript{264} See 2 SANDRA STEVENSON, ANTIEAU ON LOCAL GOVERNMENT LAW § 35.06 (1998).
\textsuperscript{266} 231 Ga. App. 886, 500 S.E.2d 341 (1998).
\textsuperscript{267} \textit{Id}. at 888, 500 S.E.2d at 345.
\textsuperscript{269} 270 Ga. at 716, 515 S.E.2d at 377.
\textsuperscript{270} \textit{Id}. "We . . . conclude that the scope of police protection for the purposes of the public duty doctrine includes the activities undertaken by [the officers] in this case." \textit{Id}.\textsuperscript{271}
\textsuperscript{271} \textit{Id}. For discussion of the entire "public duty doctrine" in Georgia local government law, see \textit{Georgia's Public Duty Doctrine, supra} note 92.
\textsuperscript{272} For perspective, see \textit{The "Crisis" Conundrum, supra} note 70; \textit{The Summer of '92, supra} note 70.
\textsuperscript{273} GA. CONST. art. I, § 2, para. 9(e). Additionally, O.C.G.A. § 36-1-4 provides that counties are not liable for any cause of action unless made so by statute.
plaintiff’s injury in a collision with a DUI arrestee released by the county prior to the accident. Because the county had purchased motor vehicle liability insurance, plaintiff contended that the county was responsible for failing to detain the arrestee and for permitting her to drive.\textsuperscript{276} The court of appeals rejected plaintiff’s argument: The car was neither owned by the county, nor was it being operated by an “authorized officer, agent, servant, attorney, or employee in the performance of his [or her] official duties.”\textsuperscript{277} Accordingly, the court held, there had been no waiver of county immunity under the insurance statute.\textsuperscript{278}

\textit{Chamlee v. Henry County Board of Education}\textsuperscript{279} presented a deviously distinguishable motor vehicle instance. There, plaintiffs sued the school board for injuries to their son who was hurt while riding in a faculty member’s car being test driven as part of the son’s automotive shop class.\textsuperscript{280} Because the car was neither owned by the county nor being driven by the shop instructor, defendant maintained that its insurance did not operate to waive immunity.\textsuperscript{281} Holding neither factor conclusive, the court of appeals reversed summary judgment for defendant.\textsuperscript{282} Overruling a prior decision,\textsuperscript{283} the court declared it

\textsuperscript{276} Id. at 810, 518 S.E.2d at 432. Plaintiff alleged that the arrestee was intoxicated and driving negligently at the time of the collision, that she possessed no driver’s license, that county officials permitted her to leave the jail to drive herself to the doctor, and that the county possessed liability insurance. \textit{Id.} at 809, 518 S.E.2d at 431.

\textsuperscript{277} Id. at 810, 518 S.E.2d at 432. “There were no allegations that [the arrestee] was required to report back to jail or that anyone would follow up her activities once she was released.” \textit{Id.} at 811, 518 S.E.2d at 432.

\textsuperscript{278} The waiver of immunity pleading prevailed in \textit{Maxwell v. Cronan}, 241 Ga. App. 491, 527 S.E.2d 1 (1999), an action alleging the county school district’s possession of liability insurance by one injured in a collision with defendant’s school bus. \textit{Id.} at 491-92, 527 S.E.2d at 1-2. Reversing a judgment on the pleadings in favor of defendants, the court of appeals held plaintiff’s allegation “sufficient to put the onus on the defendant school district to submit an affidavit denying the existence of a motor vehicle liability policy.” \textit{Id.} at 492, 527 S.E.2d at 2. Failure to negate immunity waiver, the court held, disentitled the school district to a judgment on the pleadings. \textit{Id.} at 493, 527 S.E.2d at 2.


\textsuperscript{280} Id. at 183, 521 S.E.2d at 79. The students received hands-on instruction by working on cars owned by students and teachers, and plaintiffs’ son was injured in a teacher’s car being test driven either by the son or another student. \textit{Id.}

\textsuperscript{281} Id. at 184, 521 S.E.2d at 80.

\textsuperscript{282} Id. at 189, 521 S.E.2d at 83.

\textsuperscript{283} The court said that \textit{Blumsack v. Bartow County}, 223 Ga. App. 392, 477 S.E.2d 642 (1996), “held that sovereign immunity is waived only if the negligent act arises from the ‘use’ of the vehicle, as opposed to ‘ownership, maintenance, or operation,’” and “there could be a waiver only if the [county] official is the person using the vehicle.” 239 Ga. App. at 187-88, 521 S.E.2d at 82 (quoting \textit{Blumsack}, 223 Ga. App. at 396, 477 S.E.2d at 645-46).
unnecessary that a governmental official must be personally driving the automobile. Rather, the court held, the insurance statute waived defendant's immunity if the car was being "used" by the shop instructor in connection with his teaching of the automotive shop class.

Another exception to sovereign immunity inheres in Georgia counties' traditional liability for the creation or maintenance of a nuisance. Plaintiffs successfully employed this exception in *Fielder v. Rice Construction Co.*, an action against the county by homeowners evicted for failure to remedy their septic system. Plaintiffs structured their nuisance claim on proof that the county knew of potential drainage problems on plaintiffs' lot, yielded to pressure to allow substandard septic tank conditions to be approved, and subsequently failed to require the contractor to correct the problem. Those facts, the court of appeals concluded, sufficiently raised a jury question on the county health department's liability for a nuisance. The "creation, power, and control over the cause of the nuisance that interfered with [plaintiffs'] right to use, enjoy, and dispose of the property without abatement cause[d] the Health Department to be potentially liable."
An effective bar to litigation against a local government is the plaintiff's prior valid promise not to bring it. Benson v. Carter featured such a promise by a teacher who agreed "that if she were 'nonrenewed' prior to accepting a school year contract with the [defendant] school district for the fourth consecutive year, she would not make any claims against the defendants for wrongful termination or institute any litigation." In her subsequent action for wrongful termination, plaintiff charged defendants with fraudulent inducement. The court of appeals affirmed summary judgment for the school district by reasoning that "there can be no breach of the implied covenant of good faith where a party to a contract has done what the provisions of the contract expressly give him the right to do.

Plaintiffs of the survey period also directed their claims against county officers and employees. Adams v. Hazelwood featured a student's action against a high school coach who assigned the student to a work detail (cutting weeds with a pair of scissors) for destruction of a nuisance does not arise solely from approval of construction projects which increase surface water runoff. However, such negligent approval is a factor in maintaining such nuisance, because the Health Department chose to act by approving the construction project, which gave rise to a nuisance resulting from the ground water and the failure of the septic field to percolate. The Health Department acted concurrently with [the developer] in creating the nuisance.

Id. at 366, 522 S.E.2d at 17. A dissenting opinion for three judges maintained that defendant had not created a nuisance. Id. at 369-70, 522 S.E.2d at 19 (Smith, J., dissenting).

292. Id. at 499, 526 S.E.2d at 923. In return, defendant school authorities had agreed to, and did, employ plaintiff for the first three years. Id. The court noted that "[u]nder OCGA § 20-2-942, a teacher obtains tenured status when he or she accepts a school year contract for the fourth consecutive year from the same local board of education." Id. at 500, 526 S.E.2d at 924. The effect of plaintiff's nonrenewal, therefore, would result in her failing to obtain tenured status.

293. Id. Plaintiff argued that "she was fraudulently induced to enter into the settlement agreement by false representations that she would be treated fairly and would not be prejudiced by the fact that she had threatened a lawsuit." Id.

294. Id. at 500-01, 526 S.E.2d at 924. "[Plaintiff] has no claim against the defendants for fraud. Making and violating a contemporaneous parol agreement inconsistent with a written agreement is not such fraud as would permit a varying of the written instrument, where no sufficient reason appears why the agreement was not incorporated in the writing." Id.


On grounds that defendant enjoyed "official immunity" unless he acted with "actual malice," the supreme court rejected the court of appeals' decision that a showing of "ill will" was sufficient. "In the context of official immunity," the court declared, "actual malice means a deliberate intention to do a wrongful act . . . . Such act may be accomplished with or without ill will and whether or not injury was intended." Here, the court found no evidence of the coach's deliberate intent to act wrongfully or to harm and, thus, sustained summary judgment in his favor.

J. Authorities

Litigation involving county authorities increased its tempo a bit during the period under scrutiny. The supreme court focused on the pivotal importance of the authority's creating legislation in Henderman v. Walton County Water & Sewerage Authority. There, on grounds of sovereign immunity, the court upheld summary judgment for the authority against charges of negligence in designing, inspecting, and maintaining plaintiffs' water lines. "The creation of a political

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297. Id. at 414, 520 S.E.2d at 897. Plaintiff complained of a wrist injury resulting from use of the scissors. Id.

298. Under the 1991 amendment to the Georgia Constitution, the court said that officers and employees "may be liable for injuries and damages if they act with actual malice or with actual intent to cause injury in the performance of their official functions." Id., 520 S.E.2d at 898 (quoting GA. CONST. art. I, § 2, para. 9(d)).

299. Id., 520 S.E.2d at 897 (citing Hazelwood v. Adams, 235 Ga. App. 607, 510 S.E.2d 147 (1998)). The court of appeals found that there was some evidence "from which a jury could find that [the coach] acted with ill will." Id. The supreme court reasoned that equating ill will and actual malice in this fashion would lead to the "absurd result" of piercing official immunity "solely on the basis of the defendant's rancorous personal feelings towards the plaintiff, even though the defendant's actions in regard to the disliked plaintiff may have been completely lawful and legally justified." Id. at 415, 520 S.E.2d at 898.

300. Id. (citations omitted).

301. Id. at 416, 520 S.E.2d at 899. The previously noted case of Chamlee also included a charge of individual liability on the part of the automotive shop instructor teaching the class in which the student was injured while riding in a faculty member's car that was being test driven as a part of the course. 239 Ga. App. at 183, 521 S.E.2d at 79. There, the court of appeals said that official immunity protected defendant for discretionary actions done without willfulness, malice, or corruption. Id. at 184, 521 S.E.2d at 79. "[M]onitoring, supervising and otherwise controlling students are considered discretionary acts," and the shop instructor was protected by official immunity. Id., 521 S.E.2d at 80.


303. Id. at 193, 515 S.E.2d at 618. Plaintiffs complained of "personal and property damage from bacteria-laden water." Id.
subdivision of the state and the extension of immunity to that subdivision is within the authority of the legislature.\textsuperscript{304}

Hay v. Development Authority\textsuperscript{306} featured a bond validation proceeding in which plaintiffs were denied the right to participate as objectors because they had not served a motion to intervene as prescribed by statute.\textsuperscript{306} Reversing that denial, the court of appeals turned its decision on the language of yet another statute: \textsuperscript{307} "Any citizen of this state who is a resident of the county, municipality, or political subdivision desiring to issue the bonds may become a party to the proceedings at or before the time set for the hearing."\textsuperscript{308} Under that language, the court held that citizens need not follow procedures of the intervention statute to become proper parties to the validation proceeding.\textsuperscript{309}

In Carroll County Water Authority v. Bunch,\textsuperscript{310} the authority complained of abusive litigation on the part of a consumer, the consumer's attorney, and the attorney's professional corporation.\textsuperscript{311} On grounds that plaintiff's ante litem notice was addressed only to the consumer and through his attorney,\textsuperscript{312} the court of appeals upheld a summary judgment for the attorney and his corporation.\textsuperscript{313} Expressly affording the abusive litigation statute a "strict judicial construction,"\textsuperscript{314} the court emphasized that "[t]he Water Authority's letter fails to specify [the

\textsuperscript{304} Id. 1972 Ga. Laws 3623 provided that the authority was "deemed to be a political subdivision of the State of Georgia" with "the same immunity and exemption from liability for torts and negligence as [the] County." 1972 Ga. Laws 3623, 3636.


\textsuperscript{306} Id. at 803, 521 S.E.2d at 913. O.C.G.A. § 9-11-24(c) requires the motion to intervene and an accompanying pleading. O.C.G.A. § 9-11-24(c) (1993).

\textsuperscript{307} 239 Ga. App. at 804, 521 S.E.2d at 913.

\textsuperscript{308} O.C.G.A. § 36-82-23 (2000).

\textsuperscript{309} 239 Ga. App. at 804-05, 521 S.E.2d at 914. "The words 'may become a party' have a somewhat different meaning from 'may intervene,' and on the face of OCGA § 36-82-23, there is no mandatory requirement of following the intervention procedure of OCGA § 9-11-24." Id. The court ordered another validation hearing in which plaintiffs would be allowed to participate as parties to the proceeding. Id. at 805, 521 S.E.2d at 914.


\textsuperscript{311} Id. at 533, 523 S.E.2d at 413. The authority had successfully defended itself against the consumer's claims of fraud and racketeering. Id.

\textsuperscript{312} The letter was addressed to the consumer "by and through [your] attorney of record." Id. at 534, 523 S.E.2d at 413.

\textsuperscript{313} Id. at 535, 523 S.E.2d at 414.

\textsuperscript{314} This was because the tort of abusive litigation is in derogation of the common law. Id. at 534, 523 S.E.2d at 413. "The result of strict judicial construction is that every person against whom an injured litigant would seek damages for abusive litigation must be given specific notice of that intent." Id. (emphasis added).
attorney or his corporation] as a party against whom damages for abusive litigation would be sought.\textsuperscript{315}

Finally, the court of appeals rendered its first impression construction of Georgia's Hospital Acquisition Act,\textsuperscript{316} a statute prohibiting the purchase of a nonprofit hospital without notifying the attorney general before consummation of the transaction.\textsuperscript{317} \textit{Sparks v. Hospital Authority}\textsuperscript{318} involved an agreement under which the authority transferred control and operation of its hospital to a private medical center. The agreement provided that it was binding on the parties but that the agreement would not be consummated until after the attorney general's approval.\textsuperscript{319} The court held that arrangement to fail the acquisition statute's requirement that "before any transaction is consummated[,] the Attorney General will hold a public hearing to provide a forum for meaningful public input about the transaction."\textsuperscript{320} Rather, the parties had "effectively consummated the transaction between themselves before any public hearing was held."\textsuperscript{321} Their agreement "contravened the Act's purpose--to provide community involvement in the transaction"--and the trial judge had erred in approving the transaction.\textsuperscript{322}

\textbf{K. Zoning}

In \textit{Gwinnett County v. Davis},\textsuperscript{323} the supreme court reversed for the second time a trial judge's decision that plaintiff landowners had shown a significant detriment from the current zoning of their property.\textsuperscript{324}

\begin{itemize}
\item[315.] \textit{Id.}
\item[316.] O.C.G.A. §§ 31-7-400 to -412 (Supp. 2000).
\item[317.] \textit{Id.} § 31-7-401. The statute requires that the parties to the agreement notify the Attorney General, specifies the information that they must provide, requires the Attorney General to hold a public hearing on the transaction, and requires that the Attorney General receive written comments from any interested person. \textit{Id.} §§ 31-7-401, -402, -405. The Attorney General is to determine whether the transaction is in the public interest. \textit{Id.} § 31-7-406.
\item[319.] \textit{Id.} at 486, 526 S.E.2d at 594-95.
\item[320.] \textit{Id.} at 487, 526 S.E.2d at 595.
\item[321.] \textit{Id.}
\item[322.] \textit{Id.}
\item[315.] \textit{Id.}
\item[323.] 271 Ga. 158, 517 S.E.2d 324 (1999).
\item[324.] \textit{Id.} at 159, 517 S.E.2d at 325. In that case, the court said, "the trial court concluded that the [plaintiffs] suffered a significant loss based solely on evidence that the
Reviewing the evidence, the court reasoned that plaintiffs had purchased their property as a single family residence and continued to use it in that manner. They offered no evidence that the property is worth less than they paid for it in 1994, or that they have been unable to sell the land for residential use as presently zoned. Rather, "all that has been shown is that the [plaintiffs] will suffer an economic loss if their rezoning request is denied," but "diminution in value alone does not constitute a constitutional deprivation." Accordingly, the court concluded, plaintiffs had not shown a "substantial detriment" nor "rebutted the constitutionality of the R-100 classification.

III. LEGISLATION

The General Assembly's first session of the new decade yielded a number of measures impacting Georgia's local governments. A few examples will at least serve to illustrate the range of the legislative agenda.

One important statute effected a number of changes in municipal annexations. It empowers cities in counties with a population of more than 100,000 to utilize the "100% method" of annexation; it restricts "spoke" annexations; it conditions first-time cross-county boundary annexations upon county approval; it permits ordinance annexation of unincorporated "islands" of more than fifty acres; and it requires clearer identification of annexed territory.

Additional local government authorizations included power to contract with private entities for the design and construction of waste-water treatment systems and water and sewer systems, power to dissolve
bond-free development authorities;\textsuperscript{335} resolution of service delivery strategies by superior court;\textsuperscript{336} extension of the special local option sales tax statute to fund transportation facilities;\textsuperscript{337} power of "wet" local governments to permit alcoholic beverage sales on election day;\textsuperscript{338} power to operate speed detection devices in marked historic districts as in school and residential zones;\textsuperscript{339} and power to prequalify private engineers who may be used for building code inspections if the local government cannot provide the inspection within two days.\textsuperscript{340}

Additional local government impositions included the requirement that local governments codify their ordinances and provide a copy to the State Law Library;\textsuperscript{341} the requirement there be a limitation on the use of multiyear lease purchase contracts for real property projects (not to exceed 7.5\% of local government revenues or $25 million);\textsuperscript{342} the requirement that all public works contracts with private entities be in writing and available for public inspection;\textsuperscript{343} the requirement that local government vehicles (other than law enforcement) be identified by visible decals containing the name of the governmental entity;\textsuperscript{344} and the requirement that local governments post notice as to their building code inspectors' qualifications, specify building code violations upon

\textsuperscript{335} H.B. 1205, 145th Leg. (Ga. 2000). The statute provides that upon the authority's dissolution, its assets and debts must be assigned to the parent (dissolving) local government. \textit{Id.}

\textsuperscript{336} H.B. 1430, 145th Leg. (Ga. 2000). Unresolved service delivery disputes are to be decided by a visiting or senior superior court judge, and mandatory mediation will be an option for the judge. \textit{Id.}

\textsuperscript{337} H.B. 1303, 145th Leg. (Ga. 2000).

\textsuperscript{338} H.B. 1339, 145th Leg. (Ga. 2000). The local government may pass an ordinance prohibiting such sales. \textit{Id.}

\textsuperscript{339} H.B. 865, 145th Leg. (Ga. 2000). The local government may issue speeding tickets in historic districts for infractions of less than ten miles per hour over the posted limit. \textit{Id.}

\textsuperscript{340} H.B. 151, 145th Leg. (Ga. 2000). The local government must accept the inspection unless it notifies the engineer of deficiencies within two days. \textit{Id.}

\textsuperscript{341} S.B. 295, 145th Leg. (Ga. 2000). The local government must make copies of the codification available to the public at reasonable price. \textit{Id.}

\textsuperscript{342} H.B. 1450, 145th Leg. (Ga. 2000). Certificates of Purchase (COPs) for multiyear lease purchase contracts may be used for obtaining equipment and other personal property within the 7.5\% revenue limitation. \textit{Id.}

\textsuperscript{343} H.B. 1079, 145th Leg. (Ga. 2000). The statute provides the method of advertising for bids and prequalifying bidders and holds bidders to their bids for a period of 60 days. The statute does not apply to local government contracts under $100,000, road contracts, or contracts necessitated by emergencies. \textit{Id.}

\textsuperscript{344} H.B. 648, 145th Leg. (Ga. 2000). Local governments may exempt certain of their vehicles by adopting an ordinance or resolution following a public hearing on the matter. \textit{Id.}
denial of a permit, and notify permit holders of local amendments to the state minimum standards code.\footnote{345}

Finally, a resolution established a joint legislative study committee to study the conditions, needs, and problems of preserving and accessing historic local records throughout Georgia.\footnote{346}

IV. CONCLUSION

Whatever their denomination, developments in local government law this year, both by volume and by substance, reflect a congregation of issues both baffling and divine. Truly, they testify to a higher presence in Georgia’s legal constellation.

\footnote{345} H.B. 150, 145th Leg. (Ga. 2000). Qualified inspectors must complete a training course. \textit{Id.}

\footnote{346} H.R. 1011, 145th Leg. (Ga. 2000).