Local Government Law

R. Perry Sentell Jr.
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by R. Perry Sentell, Jr.*

The City Attorney served (in those days) simultaneously as Judge of the Recorder's Court. On convening that court one Monday morning, he was shocked to see one of the community's most prominent citizens before him, charged with "drunk and disorderly."

I inquired as to the type of plea he wished to enter. Evidently having heard of "nolo contendere" but not remembering the exact nature or pronunciation of the plea, the citizen responded: "I would like to plead low profile."

The "law" of local government, both decisional and statutory, frequently fosters a similar sentiment.

I. MUNICIPALITIES

A. Annexation

Georgia municipal annexations are accomplished through two basic methods: (a) the General Assembly's enactment of a local annexation statute; and (b) the municipality's adoption of an annexation ordinance.²

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


The latter method, as authorized by general statutes, encompasses three systems, each of which operates upon an expression of (some degree of) the annexed subjects' consent. Whether a municipality can contract away its annexation power under the second method remained, prior to 1998, an unresolved issue.

*City of Centerville v. City of Warner Robins* featured a 1995 "consent order" describing exclusive water and sewer service areas of two neighboring municipalities. The order also purported to estop each city from considering petitions or requests for annexation of territory within the other's service area. Sustaining enforcement of that order, a majority of the Georgia Supreme Court denied that the trial court usurped "for itself control over the legislative function of annexation." Nothing prevented the two municipalities from covenanting not to exercise their annexation authority, the court reasoned, and "the superior court merely enforced that agreement."

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5. "Both parties were in agreement with the terms of the order, and both parties expressed a desire that the court enter the order and thereby bring an end to the controversy. Accordingly, for these reasons, we agree with the superior court that the 1995 Order was a consent order." *Id.* at 184-85, 508 S.E.2d at 164.

6. The order described the exclusive service area of one municipality by metes and bounds; although the order provided no such description for the other municipality, the court held it to "indicate a mutual intention that [both municipalities] were to be assigned exclusive service areas." *Id.* at 186, 508 S.E.2d at 165.

7. "Furthermore, both municipalities were estopped from 'entertain[ing], accept[ing], or approv[ing] of an annexation petition or request which includes territory or property within the water or sewer service area of the other party.'" *Id.* at 183, 508 S.E.2d at 163.

8. Plaintiff municipality had sued to enjoin defendant municipality from violating the 1995 order, and the trial court permanently enjoined defendant from providing water and sewer services in plaintiff's service area; the court also enjoined defendant from annexing any of the property contained in plaintiff's exclusive service area. *Id.*

9. *Id.* at 185, 508 S.E.2d at 164. Defendant municipality had maintained that "the power of annexation is a legislative function that is not subject to control by the judiciary." *Id.*

10. "Having been granted these powers, nothing prevented [the municipalities] from covenanting in the 1995 Consent Order not to exercise them." *Id.* at 185 n.8, 508 S.E.2d at 164 n.8.

11. *Id.* at 185, 508 S.E.2d at 164. The court was careful to emphasize that neither the consent order nor the trial court's order of enforcement "have any impact whatsoever on the General Assembly's plenary authority to annex municipal property." *Id.* at 185 n.8, 508 S.E.2d at 164 n.8.
B. Officers and Employees

Compensation, compensation incentives, and retirement benefits all featured prominently in litigation emanating from municipal officers and employees during the survey period. In Angel v. Hart, the court of appeals rejected complaints by three police officers who, when returned to regular patrol, lost the ten percent pay increases they enjoyed while working in the force's special investigation unit. Evidence indicated "that the temporary nature of the pay increases was understood or at least implied," and the reductions thus violated no "charter or ordinance allowing demotions only for cause." Plaintiffs' substantive due process position fared no better: "[A]n employee with a property right in employment is protected only by the procedural component of the Due Process Clause, not its substantive component." The compensation incentive ordinance featured in Columbus Consolidated Government v. Schmidt rewarded employees who attained a college degree. Affording the ordinance a "plain meaning" construction, the supreme court limited its application "only to employees who attained their degree after the ordinance's effective date."

A forceful dissenting opinion for two justices took direct issue with the majority: "[Defendant municipality] has no power to agree that it will not annex property and, consequently, the superior court does not have the power to enjoin annexation by [defendant], whether by consent or otherwise." Further, the dissent asserted, "[N]othing in the statutes by which the General Assembly has delegated its legislative annexation power . . . can be construed to permit a municipality to relinquish its authority to [annex] property even by the terms of an agreement with another municipality." The court reasoned that "the ordinance fails to state that it shall apply to degrees attained prior to its effective date and laws generally apply prospectively." Plaintiff employees sought mandamus to apply the incentive pay to educational degrees attained prior to the ordinance's effective date. The court reasoned that "the ordinance fails to state that it shall apply to degrees attained prior to its effective date and laws generally apply prospectively."
The court likewise declared "unambiguous" the municipal retirement ordinance of *Strickland v. City of Albany*, an ordinance distinguishing between the spouses of retired and non-retired city employees. The surviving spouse of a retired employee could continue to receive benefits upon remarriage, an option not available for the surviving spouses of non-retired employees. Rejecting a claim of unconstitutional classification, the court asserted that plaintiff knew the terms of the retirement plan before her remarriage and suffered no due process violation. As for equal protection, the court found "a rational basis for affording retired City employees and their spouses additional or more attractive pension options than non-retired City employees and their spouses."  

C. Legislation

It is a legislative adage that municipal "laws" in conflict with state "laws" are generally ineffective. Affording context for that adage, *Allen v. City of Atlanta* focused upon the following "work rule" of a municipal police department: "A firearm shall not be discharged if the lives of innocent persons may be in danger." Contrasting that rule with the state "self defense" and "arrest" statutes, the court of appeals

22. Id. at 32, 504 S.E.2d at 667. "The Plan unambiguously provides that, because her husband was not a retired City employee at the time of his death, [plaintiff's] benefits would terminate upon her remarriage." Id.
23. The surviving spouse of a non-retired city employee received benefits until her own death or remarriage. A retired employee could elect "a joint and survivor annuity which would pay him a lesser pension but, upon his death, would continue to pay benefits to his widow without regard to her remarriage." Id. at 31, 504 S.E.2d at 667.
24. Id. at 32, 504 S.E.2d at 667. "Because [plaintiff] never had any property right in post-remarriage benefits under the Plan, the termination of payments upon her remarriage would not constitute a violation of due process." Id.
25. Id., 504 S.E.2d at 668. "Generally, retired employees have worked longer, have contributed more to the Plan and are older individuals with shorter life expectancies than non-retired employees." Id. Moreover, the court concluded, "O.C.G.A. § 47-5-40(c) authorizes 'reasonable' classifications in municipal pension plans." Id. at 33, 504 S.E.2d 668.
27. Id. at 516, 510 S.E.2d at 65. The municipality relied upon this rule to suspend a police officer who attempted to investigate a parked vehicle containing two persons. The driver started the vehicle and drove toward the officer. "As the vehicle came at him, [the officer] fired a shot from his gun into the driver's side window. The shot hit the driver and grazed the person sitting in the passenger seat." Id.
29. Id. § 17-4-20(b) (1997).
perceived an impasse. Neither statute “automatically prohibits the discharge of a firearm if the lives of innocent people may be in danger,” the municipal rule, however, “creates such a mandatory prohibition.” Under the statutes, “the presence of a bystander at a crime or arrest scene does not override all other considerations;” contrarily, the rule’s “mandatory language . . . would lead to such a result.” Accordingly, the court declared the department rule in conflict with state statutes and invalidated a police officer’s suspension for its violation.

D. Elections

The survey period presented two failed efforts at invalidating municipal elections. Hendry v. Smith featured the contest of a mayor’s election, the challenger charging the incumbent with vote solicitation at the polling place. The supreme court found no evidence that the mayor’s conduct in and around city hall violated election statutes. Additionally, none of the incumbent’s actions “in any way placed the result of the election in doubt.”

30. The state self-defense statute, O.C.G.A. § 16-3-21(a), permits a person’s use of deadly force “only if he reasonably believes that such force is necessary to prevent death or great bodily injury to himself or a third person or to prevent the commission of a forcible felony.” The statute expressly prohibits conflicting local government legislation. The state arrest statute, O.C.G.A. § 17-4-20(b), permits an officer’s use of deadly force “when the officer reasonably believes that the suspect poses an immediate threat of physical violence to the officer or others.” This statute expressly prohibits conflicting local government legislation.


32. Id. The court asserted that the rule “does not allow for any exercise of judgment of an officer faced with a self-defense or arrest situation in which the discharge of a gun might endanger innocent bystanders.” Id.

33. Id. at 518, 510 S.E.2d at 66.

34. Id. The court emphasized that it had no quarrel with the rule’s purpose of ensuring the safety of innocent bystanders; “rather, it is the mandatory language of the rule that is problematic.” Id.

35. Id., 510 S.E.2d at 67. “[T]he suspension of [the officer] based on the charged violation of that rule cannot stand.” Id.


37. Id. at 17-18, 505 S.E.2d at 217. While the polls were open, the mayor went twice to speak with the poll manager, shook hands and spoke briefly with a departing voter, and spoke with a police officer and two other acquaintances outside the building. Id.

38. Id. at 18, 505 S.E.2d at 217-18. “Election returns are presumed to be valid and it is the burden of the party contesting the election to show irregularity or illegality sufficient to place the result of the election in doubt.” Id., 505 S.E.2d at 217 (citing Streeter v. Paschal, 267 Ga. 207, 208, 476 S.E.2d 759, 760 (1996)).

39. Id., 505 S.E.2d at 217-18. The incumbent won the election by a margin of 91 votes. Id. at 17, 505 S.E.2d at 217.
The court reached the same result in Hunt v. Crawford, a challenge by a candidate who lost a city council election by a margin of ten votes. Although conceding misconduct on the part of the winner's poll watcher in checking lists of voters, the court carefully reviewed the evidence. "[T]here is no evidence in the record that any more than seven votes could have been affected by the alleged misconduct, and thus no evidence to demonstrate that the alleged misconduct placed in doubt the result of the election.

E. Contracts

The period's most striking municipal contract controversy arose in a case previously observed from another perspective: City of Centerville v. City of Warner Robins. The alleged contract appeared in what the Georgia Supreme Court variously termed both a "consent order" and a "consent judgment"—a superior court's 1995 order concerning

41. The poll watcher testified that he had checked the voters' list and reported to the election winner the names of supporters who had voted. O.C.G.A. § 21-3-317(c) prohibits election officers from "talking to voters, checking lists of electors, or participating in any other form of campaigning." 270 Ga. at 7, 507 S.E.2d at 725 (O.C.G.A. § 21-3-317 was repealed effective January 1, 1999).
42. Defendant admitted making telephone calls to six voters from the list her poll watcher supplied and "the evidence introduced at trial concerned twelve potential voters." Id. at 8, 507 S.E.2d at 725. Working through the evidence as to each potential voter, the court concluded that plaintiff "only demonstrated that seven votes at most ought to be nullified." Id. at 10, 507 S.E.2d at 726. Finally, "there was no evidence . . . from which it can be inferred that the alleged misconduct was more widespread than the record indicates." Id.
43. Id. at 10, 507 S.E.2d at 727. "The setting aside of an election in which the people have chosen their representative is a drastic remedy that should not be undertaken lightly." Id.
44. See the discussion under the topic, "Annexation," supra, or text accompanying supra notes 2-11.
46. [T]he superior court properly treated the 1995 Order as a consent judgment . . . . A consent judgment is one entered into by stipulation of the parties with the intention of resolving a dispute, and generally is brought to the court by the parties so that it may be entered by the court, thereby compromising and settling an action. The voluntary nature of a consent judgment is among its most notable characteristics.
47. "Both parties were in agreement with the terms of the order, and both parties expressed a desire that the court enter the order and thereby bring an end to the controversy. Accordingly, for these reasons, we agree with the superior court that the 1995 Order was a consent order." Id. at 184-85, 508 S.E.2d at 164.
two neighboring municipalities. In that order, the two governments purported to agree upon their exclusive water and sewer service areas; each municipality also agreed not to annex territory within the other's area. Some three years later, following disagreement between the two cities, the superior court permanently enjoined defendant from providing water and sewer service, and from annexing territory, in plaintiff's exclusive service area.

Upon defendant municipality's appeal to the supreme court, a majority of the justices found no obstacle to the cities' annexation covenant, nor to its enforcement by the superior court. It was left to a two-justice dissenting opinion to emphasize the distinctive legal realm occupied by municipal contracts. Many of those contracts fall subject to historic statutory mandate: "One council may not, by an ordinance, bind itself or its successors so as to prevent free legislation in matters of municipal government." This condemnation fully applies to

48. "The 1995 Consent Order was drafted and presented to the superior court by attorneys for [defendant municipality], and its contents were consented to by [plaintiff municipality's] counsel." Id. at 183, 508 S.E.2d at 163.

49. "Additionally, the 1995 Consent Order provided . . . that neither municipality could provide [water and sewer] services to areas within the exclusive area of the other municipality without first obtaining written consent." Id.

50. "Furthermore, both municipalities were estopped from 'entertain[ing], accept[ing], or approv[ing] of an annexation petition or request which includes territory or property within the water or sewer service area of the other party.'" Id.

51. This 1998 action ("the 1998 Order") was taken by the same superior court judge who entered the 1995 order. "The 1998 Order permanently enjoined [defendant municipality] from proceeding with its plan to provide water and sewer service [in plaintiff municipality's area]." Id. at 184, 508 S.E.2d at 163.

52. "In March 1998, the 1998 Order was amended on motion for clarification to also enjoin [defendant municipality] from annexing any of the property contained in [plaintiff municipality's] exclusive service area." Id.

53. The court expressly rejected defendant municipality's argument that "the power of annexation is a legislative function that is not subject to control by the judiciary" as misplaced. "However, the superior court in this matter did not seek to usurp for itself control over the legislative function of annexation." Id. at 185, 508 S.E.2d at 164.

54. Id. "In plain terms, [defendant municipality] agreed in the 1995 Consent Order not to seek the annexation of property that rightfully was within [plaintiff municipality's] service area, and the superior court merely enforced that agreement in its 1998 Order." Id.

55. Id. at 187-88, 508 S.E.2d at 166 (Carley, J., dissenting).

contracts as well as ordinances; it covers governmental or legislative endeavors; it reaches covenants between local governments; its violation yields an ultra vires nullity; that nullity is subject to neither estoppel nor ratification.  

Putting principles to facts, the dissent declared it “fundamental that a city council cannot deprive or restrict itself or its successors in the exercise of its annexation power by entering into a contract or agreement purporting to limit its authority to annex.” Accordingly, the dissent deemed the consent order “ultra vires,” “null,” and “void,” and held defendant municipality free to assert “the invalidity, ab initio, of its alleged agreement not to annex.”

Georgia holds historic commitment to its statutory (and common law) invalidation of a local government's attempt to bind itself in the future performance of its governmental functions. Does that commitment nullify a municipality's effort to bind itself in the future performance of its governmental function of annexation? In City of Centerville v. City of Warner Robins, two dissenting justices crafted a serious analysis of nullification. In failing even to acknowledge—much less address—that analysis, a majority of the Georgia Supreme Court displayed an unbecoming aloofness to an issue of crucial significance in local government law.

F. Powers

Municipal power challenges arose in two governmental contexts, and both challenges proved successful. Monticello, Ltd. v. City of Atlanta featured a municipal assessment of solid waste disposal fees, on a per unit basis, against unoccupied and uninhabitable apartments. The

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57. Id.
58. “Thus, an agreement between two municipalities for each to refrain from accepting annexation petitions without the consent of the other is null and void.” 270 Ga. at 188, 508 S.E.2d at 166 (Carley, J., dissenting).
59. Id. at 188-89, 508 S.E.2d at 166 (Carley, J., dissenting).
60. Id., 508 S.E.2d at 166-67.
61. Id. at 189, 508 S.E.2d at 167. “The annexation power is strictly legislative . . . . Neither municipality is estopped from challenging the legality of such an agreement.” Id. at 188, 508 S.E.2d at 166 (Carley, J., dissenting). Moreover, the dissent argued, “[defendant’s] agreement not to annex property is not rendered valid merely because of its inclusion in a consent order regarding water service areas.” Id. at 189, 508 S.E.2d at 167.
64. Plaintiff argued as follows:
Since 1990, the City . . . has assessed a fee against the property for each of the 224 units for the removal and disposal of solid waste or trash from the units. Because 134 of the 224 units have been unoccupied since 1990, no solid waste or
court of appeals reviewed the city's charter by distinguishing between "taxes" and "fees," by adopting an "in pari materia" interpretation, by subjugating home rule ordinances to inconsistent charter provisions, and by strictly construing municipal power grants. Clearly, the material charter authorization "contemplates assessment of a fee only against occupied premises," and not "individual apartment units which are neither occupied nor habitable." Finally, the court rejected the city's justification of mere availability, "an inchoate opportunity to take advantage of the service at some future date."

In City of Duluth v. Riverbrooke Properties, Inc., the court thwarted a municipal requirement that a developer file an "as built" survey for a subdivision lake which the city characterized as a surface water runoff trash was attributable to these units. Id. at 382, 499 S.E.2d at 158.

65. The court held that charter power ""to prescribe what should constitute a lot for sanitary purposes and assessment" and allowing assessments to be made on vacant lots for tax purposes therefore does not apply to the assessment of fees for the collection of solid waste." Id. at 385, 499 S.E.2d at 160.


67. "Under O.C.G.A. § 36-35-3(a), municipal corporations have the power to adopt only 'clearly reasonable ordinances, resolutions, or regulations . . . for which no provision has been made by general law and which are not inconsistent with the Constitution or any charter provision applicable thereto.' Municipal ordinances inconsistent with a city's charter are invalid." 231 Ga. App. at 384, 499 S.E.2d at 159. For a complete treatment of home rule in Georgia local government law, including this "first-tier" delegation of power, see R. Perry Sentell, Jr., The Georgia Home Rule System, 50 Mercer L. Rev. 99 (1998).

68. "A grant of power to a municipal corporation must be strictly construed, and any reasonable doubt concerning the existence of a power is resolved by the courts against the municipal corporation." 231 Ga. App. at 384, 499 S.E.2d at 159. For discussion of the continued applicability of this "Dillon's Rule" formulation in Georgia, see R. Perry Sentell, Jr., The Georgia Home Rule System, 50 Mercer L. Rev. 99 (1998).

69. 231 Ga. App. at 385, 499 S.E.2d at 160. "The payment of the fee and the removal of waste are expressed in conjunctive rather than disjunctive language, thus requiring that waste be actually removed from the premises in question." Id. at 386, 499 S.E.2d at 160.

70. Id. at 387, 499 S.E.2d at 162.

71. "The city contends that [plaintiff] receives a benefit from the mere availability of solid waste disposal service." Id. at 386, 499 S.E.2d at 161.

72. Id. at 387, 499 S.E.2d at 162. The court thus reversed the trial judge's grant of summary judgment in favor of the municipality. Id. at 389-90, 499 S.E.2d at 163.

detention facility. Surveying the controversy’s “complex facts,” the court held defendant’s water detention facilities in compliance with regulations effective when its plans were approved. Additionally, the court invoked the doctrine of municipal estoppel. The city delegated discretion to its planning director, and the director “chose not to require the ‘as-built’ survey and certification before the final plan was approved and the occupancy permits issued.” Accordingly, “such acts or omissions . . . were not the exercise of an ultra vires act, but the exercise by the Director of discretionary delegated police powers of the City within the scope of his authority.

G. Regulation

A number of challenged power exercises assumed a municipal regulatory focus—generally, regulation prevailed over challenge.

74. Id. at 51-53, 502 S.E.2d at 811-12. The problem arose when water backed up in a culvert carrying water runoff into the lake at a point already accepted by the city as a city street. The “as-built” survey demand “was a way to force [developer] to correct the problem to the satisfaction of the City’s engineers, because the defendants would have to obtain the approval of such ‘as-built’ survey and certification from the City.” Id. at 49, 502 S.E.2d at 809.

75. “Thus, the defendants acquired vested property rights under the preliminary developmental plan filed under the 1971 Regulations and, as a matter of law, such vested rights in the entire Riverbrooke Subdivision were ‘grandfathered’ from the effect of the subsequently adopted 1992 Regulations.” Id. at 51, 502 S.E.2d at 811.

76. Id. at 53, 502 S.E.2d at 812. The city “approved the final plat of the completed Riverbrooke Subdivision submitted by the defendants and issued certificates of occupancy for the completed residential units. No ‘as-built’ survey and certification of the lake was filed by the defendants . . .; however, the City approved the plans and occupancy permits nonetheless.” Id. at 48, 502 S.E.2d at 809.

77. The court observed that generally “estoppel . . . would not arise to frustrate a governmental function publicly expressed by the plain language of the ordinance prohibiting an act or omission, in this case, however, the governmental policy was not frustrated but was furthered by the acts or omissions of the Director . . ..” Id. at 54, 502 S.E.2d at 813. 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 (1985).

78. 233 Ga. App. at 54, 502 S.E.2d at 813. “While we have held that the 1992 Regulations are not applicable, the Director believed that he had the power to enforce them,” and chose not to do so. Id.

79. Id. The court thus affirmed the trial judge’s denial of relief to the municipality. Id.

Whipple v. City of Cordele\textsuperscript{81} presented plaintiff's attack upon a prohibition against keeping horses inside city limits. Plaintiff alleged municipal adoption of that ordinance only after she confirmed the absence of such prohibitions and expended funds for the purpose.\textsuperscript{82} Retroactivity found little favor with the court of appeals: "[Plaintiff] did not acquire a 'vested right' to keep horses on her property merely because no law then prohibited her from doing so."\textsuperscript{83} Indeed, "[t]he passage of an ordinance that applied in general to all city residents certainly created no such 'vested right,' nor did her communications with the city attorney, who merely informed her correctly of existing law."\textsuperscript{84}

The power's regulatory nature saved the monetary imposition challenged in Hadley v. City of Atlanta,\textsuperscript{85} an annual renewal charge upon taxicab holders of "Certificates of Public Necessity and Convenience."\textsuperscript{86} Reviewing charges of invalid taxation,\textsuperscript{87} the court directed inquiry to "whether the ordinance operates merely as a means to generate revenue or whether it acts effectively as a precondition, or license, for engaging in the occupation."\textsuperscript{88} The various investigations and inspections performed by the city taxicab bureau\textsuperscript{89} confirmed the presence of "actual regulatory services."\textsuperscript{90} Additionally, "monies at least equal to those collected as . . . renewal fees are given to the Bureau and used to defray the actual cost of the regulatory activities with which

\textsuperscript{83.} Id. at 274, 499 S.E.2d 115. "[Plaintiff] did not make formal or official application to modify her property; no formal application was required." Id.
\textsuperscript{84.} Id. Thus, the court held, plaintiff possessed no action for constitutional deprivation under 42 U.S.C. § 1983, and "[f]or similar reasons, [plaintiff] cannot show inverse condemnation." Id. The court thus affirmed the trial judge's grant of summary judgment in favor of the municipality. Id. at 277-78, 499 S.E.2d at 117.
\textsuperscript{86.} The initial cost of a certificate was $6,000. Beginning in 1995, the municipality imposed an annual "renewal fee" of $150 upon certificate holders. Id. at 871, 502 S.E.2d at 786.
\textsuperscript{87.} The court noted the city's authority to impose regulatory fees upon taxicabs in O.C.G.A. § 48-13-9. 232 Ga. App. at 872, 502 S.E.2d at 786.
\textsuperscript{88.} Id.
\textsuperscript{89.} The bureau investigated all taxicab companies, checked all drivers, and bi-annually inspected all vehicles. Id. at 872-73, 502 S.E.2d at 786-87.
\textsuperscript{90.} 232 Ga. App. at 874, 502 S.E.2d at 787.
it is charged." As for the city's imposition of several fees upon one occupation, "several regulatory activities are involved," and so long as the "fees approximate the regulatory costs involved, they are appropriate and lawful."

In Chamblee Visuals, LLC v. City of Chamblee, plaintiff protested municipal denial of a permit to build a new store. Sustaining the validity of the applicable city ordinance, the supreme court held that neither "nuisance" nor "unlawful purpose" constituted vague or overbroad standards. Further, the court concluded, a denial on grounds of plaintiff's intent to violate a criminal statute did not amount to "a prior restraint in violation of the state constitutional right to free speech."

91. Id. at 873, 502 S.E.2d at 787.
92. Id. at 875, 502 S.E.2d at 788.
93. Id. Again, the court distinguished taxation:
   When a tax to engage in a general business is exacted, another tax may not be imposed upon the doing of a particular portion of the business already taxed. But the purpose of fees is not to raise revenue; it is to cover the cost of regulating certain activities for the protection of the public.
Id.
95. Id. at 33, 506 S.E.2d at 114.
96. The ordinance permitted denial if the premises would constitute a nuisance or be used for an unlawful purpose. Id. at 34, 506 S.E.2d at 114.
97. Id. "The word "nuisance" has a definite and determined meaning in the law, and is not indefinite, vague, or uncertain." Id. (quoting Newman v. Sessions, 215 Ga. 54, 55, 108 S.E.2d 870, 871 (1959)). "An 'unlawful purpose' clearly includes 'a purpose to violate a criminal law.'" Id. (quoting Mixon v. State, 226 Ga. 869, 870, 178 S.E.2d 189, 190 (1970)).
98. Id., 506 S.E.2d at 115. The city denied the permit because plaintiff intended to violate O.C.G.A. § 16-12-80(c): "Any device designed or marketed as useful primarily for the stimulation of human genital organs is obscene material." Id. The court also rejected plaintiff's due process argument: "Visuals freely presented evidence and made statements in support of its application. In an administrative or quasi-judicial proceeding, due process requires only an informal hearing, not strict adherence to the rules of evidence." Id. at 35, 506 S.E.2d at 115. The court thus affirmed the trial judge's decision in favor of the municipality. Id., 506 S.E.2d at 116.

In Burton v. Campbell, 270 Ga. 564, 512 S.E.2d 889 (1999), plaintiff's store possessed a beer and wine license by virtue of a grandfather clause in the city ordinance relating to distance requirements. Id. at 564, 512 S.E.2d at 889. Under this clause, the supreme court held, plaintiff was entitled to a renewal of his beer and wine license but not to the issuance of a distilled spirits license. Id. "As the sale of distilled spirits is a non-grandfathered privilege which [plaintiff] must assert in his own right, his application for such a license remains subject to the distance requirements." Id. at 564-65, 512 S.E.2d at 890.
The survey period caught the supreme court in its historic role of mediator over municipal alleys. \textit{Hale v. City of Statham}\textsuperscript{99} displayed a dispute over municipal acceptance of land expressly dedicated as a public alley but never used by the public nor maintained by the city.\textsuperscript{100} Reviewing the municipality's evidence that it had removed the property from tax rolls,\textsuperscript{101} the court held that "a tax map is insufficient as a matter of law to manifest acceptance."\textsuperscript{102} Finding acceptance "a disputed issue of fact,"\textsuperscript{103} the court reversed a summary judgment for the city.\textsuperscript{104}

\section*{I. Liability}

Claimants' efforts at surmounting municipal tort immunity continued apace during the survey period.\textsuperscript{105} Several episodes focused upon a traditional exception to immunity—that of street and sidewalk defects.\textsuperscript{106} Plaintiff motorist in \textit{McKinley v. City of Cartersville}\textsuperscript{107} sought to press that exception into service for injuries allegedly caused by an inadequate stop sign.\textsuperscript{108} Refusing to extend theory to facts, however, the court of appeals held the street defect statute\textsuperscript{109} limited

\textsuperscript{100} Plaintiff property owners sought to enjoin the city from opening the contested alley. \textit{id.} at 817-18, 504 S.E.2d at 692. The court found an express dedication of the land from the fact that the original owner's recorded subdivision plat showed the alley's existence. \textit{id.} at 818, 504 S.E.2d at 692.
\textsuperscript{101} "The city claims acceptance based on its failure to tax the property." \textit{id.} at 819, 504 S.E.2d at 693.
\textsuperscript{102} \textit{id.} The court termed taxation exemption "one factor to consider in determining whether a government has exercised control over property." \textit{id.}
\textsuperscript{103} \textit{id.} Plaintiffs "presented an affidavit and photographs asserting that the public never used the alley as a passageway and the city never maintained the alley." \textit{id.}
\textsuperscript{104} \textit{id.}
\textsuperscript{106} This exception is one of historic origin, now codified in O.C.G.A. § 32-4-93. For treatment, see R. Perry Sentell, Jr., \textit{The Law of Municipal Tort Liability in Georgia} 62-116 (4th ed. 1988).
\textsuperscript{108} \textit{id.} at 659, 503 S.E.2d at 559. Plaintiff alleged that the municipality's failure to erect an appropriate stop sign at the specified intersection constituted a street "defect" within the meaning of the above statute. \textit{id.}, 503 S.E.2d at 560.
\textsuperscript{109} O.C.G.A. § 32-4-93(a) (1996).
to the "physical condition" of the streets themselves.\textsuperscript{110} So restricted, the statute failed to reach "the regulation of traffic."
\textsuperscript{111}

The second episode pointed out the tension between street defect liability\textsuperscript{112} and the immunity provided by Georgia's Recreational Property Act.\textsuperscript{113} Plaintiff in \textit{City of Tybee Island v. Godinho}\textsuperscript{114} sued for injuries suffered from a fall on a city sidewalk adjacent to the state-owned beach.\textsuperscript{115} Reversing the court of appeals,\textsuperscript{116} the supreme court declared municipal immunity for recreational property.\textsuperscript{117} First, the court read the Act's "plain language" to include a sidewalk which only provided access to recreational property owned by another.\textsuperscript{118} Second, the court deemed it immaterial that some sidewalk users may spend money at city businesses:\textsuperscript{119} "[T]he City is not in the business of entertainment or recreation and does not seek to make a profit from the use of the sidewalk."\textsuperscript{120}

\textit{Woodall v. City of Villa Rica}\textsuperscript{121} also featured injuries resulting from alleged sidewalk defects, but the case turned upon compliance with the

\begin{itemize}
\item \textsuperscript{110} 232 Ga. App. at 660, 503 S.E.2d at 560. "The reference to 'defects' in the Code section refers to the physical condition of the street itself; it includes defects brought about by the forces of nature and by persons and which render the street unsafe and includes objects adjacent to and suspended over the street." \textit{Id.}
\item \textsuperscript{111} \textit{Id.} The court thus affirmed the trial judge's award of summary judgment for the municipality. \textit{Id.}
\item \textsuperscript{112} O.C.G.A. § 32-4-93 (1996).
\item \textsuperscript{113} \textit{Id.} § 51-3-20 to -26 (1981).
\item \textsuperscript{114} 270 Ga. 567, 511 S.E.2d 517 (1999).
\item \textsuperscript{115} \textit{Id.} at 567, 511 S.E.2d at 518. Plaintiff fell on a broken section of pavement. "The sidewalk ran adjacent to a large parking lot on one side and to the beach on the other side." \textit{Id.}
\item \textsuperscript{117} 270 Ga. at 569, 511 S.E.2d at 519.
\item \textsuperscript{118} \textit{Id.} at 568, 511 S.E.2d at 518. "Moreover, to exclude coverage in these circumstances might encourage people not to provide access to their property for the purpose of permitting people to enjoy property owned by others, and thus would defeat the very purpose of the [Recreational Property Act]." \textit{Id.}, 511 S.E.2d at 518-19.
\item \textsuperscript{119} The court reasoned that "although there is some evidence in the record from which it can be inferred that the City might receive an indirect financial benefit from the sidewalk, we conclude that . . . this evidence is insufficient to take the sidewalk outside the protection of the RPA." \textit{Id.} at 569, 511 S.E.2d at 519.
\item \textsuperscript{120} \textit{Id.} The court also rejected plaintiff's position that the Recreational Property Act was in conflict with the sidewalk defect statute: "Simply stated, the RPA will control when the sidewalk is used for a 'recreational purpose' and the other requirements of the RPA are satisfied, and § 32-4-93 [the street defect statute] will apply in other cases." \textit{Id.}
\item \textsuperscript{121} 236 Ga. App. 788, 513 S.E.2d 525 (1999).
\end{itemize}
"ante litem" notice statute. Emphasizing the statute's requirement that plaintiff's claim "shall be submitted for adjustment," the court of appeals disqualified a letter of general complaints. "The bare mention of plaintiff's arm needing surgery after she tripped on uneven concrete," buried amid numerous other observations on municipal deficiencies, was insufficient "to put a reasonable recipient on notice that the injury specified will be pursued as a claim for money damages against the municipality."

Yet another statute governed Pearson v. City of Atlanta, an action for a decedent struck by a suspect fleeing municipal police pursuit. Under a 1995 enactment, the city's liability pivoted upon whether "the law enforcement officer acted with reckless disregard for proper law enforcement procedures in the officer's decision to initiate or continue the pursuit." Reviewing uncontroverted testimony, the court of appeals found no evidence of a failure to "balance the risks

124. 236 Ga. App. at 790, 513 S.E.2d at 527. Plaintiff's son had written the letter to the city council and manager, referring to a prior letter complaining of generally poor sidewalks, instances of poor zoning ordinances, the absence of building requirements, and the responsiveness of elected officials to property owners. Id. at 788-89, 513 S.E.2d at 526.
125. Id. at 789-90, 513 S.E.2d at 527.
126. Id. at 790, 513 S.E.2d at 527. The court thus affirmed summary judgment for the municipality. Id.
129. Id. at 97, 499 S.E.2d at 91. Plaintiff's decedent was killed when his car was struck by the car of a suspect attempting to elude a city police officer in a high speed chase during evening rush hour traffic. Id.
130. Id. at 98, 499 S.E.2d at 91 (quoting O.C.G.A. § 40-6-6(d)). This statute "has promulgated a reckless disregard standard rather than a standard of mere negligence." Id., 499 S.E.2d at 92.
131. The officer testified to "actions of slowing before going through a red light, exceeding the speed limit during light or non-existent traffic, and disregarding regulations governing direction of traffic movement when oncoming traffic was light or non-existent." Id.
inherent in the pursuit.” Thus, plaintiff had failed to show that the officer's “conduct ever arose to the level of 'reckless disregard.'”

Assertedly deficient law enforcement also accounted for *Dybas v. Town of Chester,* an alleged municipal failure to prevent unlicensed children from driving on public roads. Rejecting plaintiff's action for the death of her husband, the court reasoned that "where failure to provide police protection is alleged, there can be no liability based on a municipality's duty to protect the general public." The court also rebuffed plaintiff's efforts to avoid the "public duty" doctrine by showing a "special relationship.

Several cases featured “nuisance” attempts to escape from municipal tort immunity. The tactic succeeded in *Queen v. City of Douglasville,* an action on behalf of two small girls struck by a train while attending the city's Fourth-of-July parade. Reversing the municipal-

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132. Id. "Additionally, . . . pursuit did not commence until after the suspect's vehicle suddenly began to accelerate and [the officer] thereafter activated his siren and lights." Id. at 98-99, 499 S.E.2d at 92. Thus, “the danger to the public had commenced before a pursuit was initiated.” Id. at 99, 499 S.E.2d at 92.

133. Id. at 98, 499 S.E.2d at 92. The court thus affirmed summary judgment for the municipality. Id. at 101, 499 S.E.2d at 94.


135. Id. at 98, 499 S.E.2d at 92. Plaintiff's 89-year-old husband "was walking on the right-hand side of the road when a car driven by [a] 13-year-old [driver] struck and killed him." Id. at 113, 505 S.E.2d at 275.


137. Plaintiff "argues that the town can still be found liable for negligence under the 'special duty' exception to the public duty doctrine because a special relationship existed between [her husband] and the town such that the town owed a special duty to him." Id. at 114, 505 S.E.2d at 275.

138. Id. at 114-15, 505 S.E.2d at 276. The court listed the three requirements for establishing the "special relationship" exception: an explicit assurance, knowledge that inaction would cause harm, and justifiable and detrimental reliance. Id. at 115, 505 S.E.2d at 276. The court affirmed summary judgment for the municipality. Id.


140. 232 Ga. App. 68, 500 S.E.2d 918 (1998) (Georgia Supreme Court reversed this case in *City of Douglasville v. Queen,* 270 Ga. 770, 514 S.E.2d 195 (1999)).

141. Id. at 68, 500 S.E.2d at 920. 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 when walking on the railroad tracks "looking down and talking." Id.
ity's summary judgment, the court of appeals found municipal misfeasance in holding the parade in the congested area, awareness of the pedestrian-train congestion in prior years, and that "the dangerous conditions had been regularly repeated with each year's parade."

The court reached a similar conclusion in Martin v. City of Fort Valley, a claim for flood damage to plaintiff's property. Emphasizing the Georgia municipality's historic nuisance responsibility, the court relied upon expert testimony that the city's drainage system, not a state highway, caused the damage in issue.

142. The court reviewed the "guidelines" for determining a municipal nuisance from City of Bowman v. Gunnells, 243 Ga. 809, 256 S.E.2d 782 (1979): a degree of municipal misfeasance exceeding mere negligence; a continuous or regularly repetitious condition; and failure to act within a reasonable time after knowledge of the condition. 232 Ga. App. at 69, 500 S.E.2d at 920.

143. 232 Ga. App. at 69, 500 S.E.2d at 921. "Genuine issues of material fact remain for resolution by a jury on [plaintiff's] nuisance claim." Id. at 70, 500 S.E.2d at 921. A majority of the court rejected arguments of "premises liability" and "mantrap," on grounds that the city was neither the owner nor occupier of the premises on which the accident occurred. Id. at 70-71, 500 S.E.2d at 922. Three judges dissented to the majority's action in rejecting those arguments. Id. at 72-73, 500 S.E.2d at 922-23.


145. Id. at 20, 508 S.E.2d at 244-45. To assist plaintiff with water runoff from a resurfaced state highway, city employees had installed a storm sewer. Plaintiff alleged that his residence and garage "sustained significant damage from the surface water runoff that discharged from that storm sewer onto his property." Id.

146. "Municipal responsibility for creating or maintaining a nuisance which constitutes a danger to life and health . . . is an established historic principle in Georgia." Id. at 21, 508 S.E.2d at 245.

147. "It is undisputed that the City built a storm sewer and installed some plastic pipe to attempt to alleviate the water runoff problem apparently created by a state highway." Id. The court held that the trial judge erred in granting summary judgment for the municipality. Id. at 22, 508 S.E.2d at 245.

City of Atlanta v. St. Paul Fire & Marine Insurance Co., 231 Ga. App. 206, 498 S.E.2d 782 (1998) also involved an alleged instance of municipal damage to property but in a completely different context. Id. at 206, 498 S.E.2d at 783. There, the court denied the city's effort to force an insurance company to defend it against a claim for property damage caused by a city contractor. Id. at 208, 498 S.E.2d at 785. The alleged intentional wrong by the city in directing the contractor to clear land it did not own was not an "event" within coverage of the contractor's insurance policy. Id.

Continuing the theme of different context, Ralston v. City of Dahlonega, 236 Ga. App. 386, 512 S.E.2d 300 (1999) featured an effort by a municipality and the State Department of Transportation to vacate an arbitrator's award of damages to a property owner under O.C.G.A. § 51-12-6, which provides tort actions for injury to the peace, happiness, or feelings. Id. at 386, 512 S.E.2d at 301. Rejecting defendants' argument that the award was one of punitive damages and thus violative of public policy, the court reasoned that damages under the above statute are in part punitive but also serve to compensate for the extent of the injury. Id. at 389, 512 S.E.2d at 303. Thus, the court refused to vacate the arbitrator's award to plaintiff. Id. at 391, 512 S.E.2d at 304.
Contrarily, the court rejected the nuisance complaint in Roberts v. City of Macon,\textsuperscript{148} that a malfunctioning traffic light caused an intersection collision.\textsuperscript{149} Although plaintiff showed municipal knowledge of the problem some forty-five minutes prior to her accident, “it is undisputed that the City repaired the light approximately three hours after the first alleged report of its malfunction.”\textsuperscript{150} The court affirmed summary judgment for the municipality.\textsuperscript{151}

Claimants were largely unsuccessful in their “constitutional tort” endeavors of the period.\textsuperscript{152} Whipple v. City of Cordele\textsuperscript{153} featured plaintiff’s campaign against a municipal ordinance prohibiting the keeping of horses inside the city.\textsuperscript{154} Rejecting the claim of unconstitutional retroactivity,\textsuperscript{155} the court of appeals found no “deprivation of a vested right.”\textsuperscript{156} “It follows,” the court held, “that this deprivation did not entitle [plaintiff] to bring an action under 42 U.S.C. § 1983.”\textsuperscript{157}

Suffering a similar fate, an inmate in Merritt v. Athens Clarke County\textsuperscript{158} tendered an Eighth Amendment claim for inadequate medical care.\textsuperscript{159} Reviewing the paucity of plaintiff’s admissible

\textsuperscript{149} Id. at 290, 506 S.E.2d at 653. Plaintiff claimed that the traffic light produced a continuous green light for both streets, resulting in the collision. Id. at 288, 506 S.E.2d at 651.
\textsuperscript{150} Id. at 290, 506 S.E.2d at 653.
\textsuperscript{151} Id. “Thus, evidence that [a witness] notified the City approximately 45 minutes before [plaintiff’s] accident does not preclude summary judgment in favor of the City.” Id.
\textsuperscript{152} The “constitutional tort” derives from the Civil Rights Act of 1871, 42 U.S.C. § 1983, providing a civil action for government violations of constitutional protections. For treatment of this statute by both federal and state courts in respect to Georgia local governments, see R. Perry Sentell, Jr., Georgia Local Government Law’s Assimilation of Monell: Section 1983 and the New “Persons” (1984). For an exclusive focus upon the statute in the Georgia appellate courts, see R. Perry Sentell, Jr., Local Government and Constitutional Torts: In the Georgia Courts, 49 Mercer L. Rev. 1 (1997).
\textsuperscript{154} Id. at 274, 499 S.E.2d at 115. The municipality enacted the ordinance one year after plaintiff made the investment of moving her horses into the city. Id.
\textsuperscript{155} The court said that keeping horses is not a “fundamental right,” and that retroactive application presented no problem unless plaintiff had acquired a vested right. Id. at 276, 499 S.E.2d at 116.
\textsuperscript{156} Id. at 277, 499 S.E.2d at 117. “The passage of an ordinance that applied in general to all city residents certainly created no such ‘vested right.’” Id., 499 S.E.2d at 116.
\textsuperscript{157} Id., 499 S.E.2d at 117. The court sustained the grant of summary judgment favoring the municipality. Id. at 278, 499 S.E.2d at 117.
\textsuperscript{159} Id. at 203, 504 S.E.2d at 43. Plaintiff alleged that with knowledge of a doctor’s statement that plaintiff would lose his injured finger without prompt surgery, the local government was deliberately indifferent in providing the necessary medical care. Id., 504
evidence," the court found no showing "that defendant's agents or employees had with knowledge of the serious medical need of the plaintiff to have surgery in order to avoid permanent injury; failed to provide surgery to the plaintiff; and such failure was the cause of plaintiff's permanent injury."161

On occasion, claimants sought recovery from individual municipal officers and employees, efforts promptly met by defensive pleas of "official immunity."162 In that setting, the court of appeals held in Smith v. Little,163 the pivotal issue is whether the officer's acts "were committed 'with actual malice or with actual intent to cause injury."

Because the trial court had employed a "wilful or wanton" standard in assessing defendant police officer's conduct,165 reversal was in order.166

The defendant in Sommerfield v. Blue Cross & Blue Shield of Georgia167 was an off-duty police officer directing traffic in a public

S.E.2d at 41.
160. "At most, the evidence in the record established the objective, deliberate indifference through policy but not the subjective, causative act through carrying out such policy." Id. at 207, 504 S.E.2d at 46.
161. Id. at 208, 504 S.E.2d at 47. The court thus affirmed summary judgment for the municipality. Id.

In Franklin v. Consolidated Government of Columbus, 236 Ga. App. 468, 512 S.E.2d 352 (1999), the court rejected plaintiff's section 1983 claim for an invalid arrest and continued imprisonment. Id. at 472, 512 S.E.2d at 356. The court determined the evidence to show facts sufficient to warrant the police officer's belief that plaintiff had committed the robbery in issue. Id. Thus, plaintiff "has not introduced sufficient evidence tending to show a constitutional violation under Section 1983 in connection with his arrest." Id., 512 S.E.2d at 357.


164. Id. at 330, 506 S.E.2d at 676 (quoting GA. CONST. art. I, § 2, para. 9). "Actual malice in this context is 'express malice or malice in fact.'" Id. (quoting Merrow v. Hawkins, 266 Ga. 390, 392, 467 S.E.2d 336, 338 (1996)).
165. "The trial court should have determined whether [the officer's] actions during the traffic investigation met the actual malice standard." Id.
166. Id. "When a trial court rests its denial of summary judgment on the wrong legal theory, such denial constitutes reversible error." Id.
roadway for a private employer. Characterizing traffic direction as "always a police function," the court approved defendant's assertion of official immunity to a claim of negligence. "We find that [the officer] is immune from suit because he was acting in his official capacity and performing a discretionary function."

The court similarly found for school district childcare workers in Dollar v. Dalton Public Schools. Rejecting a mother's claim for her child's injury on playground equipment, the court held defendants engaged in discretionary (rather than ministerial) acts when supervising students. Accordingly, the workers enjoyed the protection of official immunity.

II. COUNTIES

A. Home Rule

Within specified limitations, the Georgia Constitution's home rule provision empowers the county governing authority to adopt "clearly

168. Id. at 375, 509 S.E.2d at 101. Defendant testified that his superior officer arranged for him to fill in for other officers who worked regularly for the employer. Id. at 376, 509 S.E.2d at 101.
169. Id. at 377, 509 S.E.2d at 102.
170. Id. at 375, 509 S.E.2d at 101. The activity of directing traffic is thus distinguished from other activities engaged in by police officers, such as security work, for which a question may exist as to whether an off-duty police officer is acting in his capacity as a police officer or as a private individual on behalf of his off-duty employer while performing specific tasks.
171. Id. Plaintiff driver charged defendant with negligently signaling plaintiff to enter a lane of traffic only to be struck by another car. Id. at 376, 509 S.E.2d at 102.
173. The child fell from playground equipment while attending an after-school childcare program on school district premises. Id. at 827, 505 S.E.2d at 790. The court declared such a program "clearly a governmental activity serving an educational purpose." Id. at 828, 505 S.E.2d at 790.
174. Id. at 829, 505 S.E.2d at 791.
175. Id. The court thus affirmed the trial judge's grant of summary judgment to defendants. Id. at 830, 505 S.E.2d at 792. Additionally, the court rejected plaintiff's various arguments of unconstitutionality, specifically the argument that the Georgia Tort Claims Act (O.C.G.A. § 50-21-20 et seq.) was unconstitutional in providing only a selective waiver of governmental immunity. Id., 505 S.E.2d at 791. For consideration of the Georgia Tort Claims Act, its legislative and judicial treatment, and its actual operation, see R. Perry Sentell, Jr., Tort Claims Against the State: Georgia's Compensation System, 32 Ga. L. REV. 1103 (1998).
reasonable ordinances, resolutions, or regulations relating to its
property, affairs, and local government for which no provision has been
made by general law and which is not inconsistent with this Constitu-
tion or any local law." Specified limitations upon those delegations
include actions affecting "elective county office" as well as the "form" of
the "governing authority."

In Krieger v. Walton County Board of Commissioners, the Georgia
Supreme Court held the commissioners unimpeded by the home rule
limitations when they subtracted from the powers of the board chair-
man. In assuming power to hire, supervise, and fire county employ-
ees, to prepare the agenda for meetings, and to obtain copies of
the chairman's correspondence, the commissioners had affected
neither "the office of chairperson" nor "the form of county govern-
ment." Accordingly, "neither the constitution nor general laws
prohibits the board from assuming authority over county personnel
matters."

Nevertheless, the supreme court delineated, the commissioners were
subject to local statutes as long as they did not change those stat-
utes. Under existing local statutes, the chairman possessed power

176. GA. CONST. art. IX, § 2, para. 1(a). Such local statutes shall remain effective until
amended or repealed by the governing authority or by voter petition. Id. For extensive
treatment of local government home rule in Georgia, see R. Perry Sentell, Jr., The Georgia
177. GA. CONST. art. IX, § 2, para. 1(c).
179. Id. at 680, 506 S.E.2d at 368. "This appeal involves a conflict between the Board
of Commissioners . . . and its chairperson, . . . concerning the scope of their respective
powers and duties." Id. at 678, 506 S.E.2d at 367.
180. The commissioners acted by resolution to transfer the authority to appoint and
discharge civil service employees, by a vote to transfer the supervision of department
heads, and by a contract hiring an administrative assistant to the board. Id. at 679, 506
S.E.2d at 367.
181. By resolution, the commissioners directed the county clerk to prepare the agenda
for commission meetings. Id.
182. By resolution, the commissioners directed the chairman to provide copies of his
mail to the clerk. Id. The court held this resolution not to require copies of correspondence
unrelated to county business. Id. at 684, 506 S.E.2d at 370.
183. Id. at 680, 506 S.E.2d at 368.
184. Id. at 684, 506 S.E.2d at 370.
185. Id.
to hire, supervise, and fire county employees. In the controverted resolutions and votes withdrawing that power, the commissioners did not amend the local statutes. Accordingly, the court invalidated the board's actions "in designating itself as an appointing authority and immediate supervisor of county department heads."

B. Contracts

The contractual status of county handbooks and manuals confronted the court of appeals on several occasions. In *International Brotherhood of Police v. Chatham County*, plaintiffs sought the county's payment of salary increases as specified in its personnel handbook. Affirming summary judgment for the county, the court adumbrated Georgia's historic "binding contracts" prohibition: "One council may not, by an

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186. *Id.* at 682-83, 506 S.E.2d at 369. The court read the local statutes to expressly delegate to the chairman the power to supervise county employees. *Id.* The court then construed the local statutes and personnel policies together to impliedly empower the chairman to hire and fire employees. *Id.*

187. *Id.* at 682, 506 S.E.2d at 369. The court reasoned that the commissioners might have, but did not, amend or repeal the local statutes "by local legislation or a home rule ordinance." *Id.*

188. *Id.*

We hold only that the local acts and county personnel policies prevent the . . . board from assuming the power to hire, supervise, and fire county employees without amending the local acts. Therefore, we reverse the portions of the trial court's order that upheld the board's actions in designating itself as an appointing authority and immediate supervisor of county department heads, but affirm the two 1997 resolutions concerning the board's agenda and chairperson's correspondence. *Id.* at 684, 506 S.E.2d at 370. Chief Justice Benham dissented only on interpreting the local statutes—the Chief Justice read those statutes as vesting power to hire and fire in the commissioners. *Id.* at 685, 506 S.E.2d at 371 (Benham, C.J., dissenting).

*Board of Commissioners v. Levetan*, 270 Ga. 544, 512 S.E.2d 627 (1999), also featured an intragovernmental dispute (between the board of commissioners and the county CEO) but it turned upon the provisions of the particular county's "organizational act." *Id.* at 544, 512 S.E.2d at 629. The supreme court read the act to invalidate the board's ordinance retaining a program manager to oversee and manage projects funded with specified anticipated tax revenues. *Id.* at 546, 512 S.E.2d at 630. The ordinance encroached upon the CEO's day-to-day management powers. *Id.* However, the court upheld the validity of a second ordinance detailing procedures to be followed in appropriating the revenues. *Id.* at 547, 512 S.E.2d at 631. Those procedures found authorization in the organization act. *Id.*


190. *Id.* at 507, 502 S.E.2d at 341. The county handbook provided "that county employees who perform to certain standards will receive specified salary increases." *Id.* The commissioners had funded the increases in earlier years, but not recently. *Id.* The court assumed that the county was bound to follow the provisions and that the handbook did not condition the increases on funding approval. *Id.* at 508, 502 S.E.2d at 341.
ordinance, bind itself or its successors so as to prevent free legislation in matters of municipal government. Characterizing the "appropriating process" as a "legislative function," the court held the commissioners "free each year to fund or not to fund salary increases for the employees."

A similar controversy received similar treatment in Johnson v. Fulton County, an employees' action founded upon a county handbook's provision of four percent annual pay raises. First, the court held that this provision, when read with discretionary personnel regulations, afforded county employees no contractual right. Even assuming otherwise, the court continued, "the handbook . . . cannot prevent free legislation by binding future county authorities to approve annual salary increases."

Ellison v. DeKalb County featured a conflict between provisions of a settlement agreement and the county employee manual in respect to qualifications for police promotions. Holding the manual devoid

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193. Id. "Any contrary language in the handbook could not legally bind the board to approve or fund increases in the future." Id.
195. Id. at 277, 509 S.E.2d at 356. The handbook provided as follows: "A multi-step salary range is established for each class and position. These steps or increments provide for regular annual increases of one step (4%) each year." Id. Plaintiffs alleged county failure to pay the increases for the past several years. Id.
196. The court noted that the handbook referred the employee to personnel regulations and those regulations only "provide for the possibility of such increases at the discretion of county authorities." Id. at 279, 509 S.E.2d at 357.
197. Id. "[T]he employees' claim that the county had a contractual obligation to give annual raises is without basis in fact or law." Id.
198. Id., 509 S.E.2d at 358 (quoting O.C.G.A. § 36-30-3(a)). The court also rejected plaintiffs' position that the county was estopped from denying the salary raises. Id. at 280, 509 S.E.2d at 358. For treatment of the doctrine of estoppel as it operates in Georgia local government law, see R. Perry Sentell, Jr., The Doctrine of Estoppel in Georgia Local Government Law (1985).
200. Id. at 185, 511 S.E.2d at 284. The county had entered into the settlement agreement with law enforcement officers in 1987, and the agreement was modified in 1996 so as to require three years in rank before consideration for promotion. The amendment,
of contractual status, the court emphasized the manual's own express indication that "the selection process will be governed by the settlement agreement." Because plaintiff’s promotion claim was "predicated solely upon the employee manual," the court affirmed summary judgment to the county.

Finally, the issue of *Faulk v. Twiggs County* went to yet another historic county contract requirement: the agreement "shall be in writing and entered on [the governing authority's] minutes." In *Faulk* the county retained plaintiff's services, at a specified unit-price rate per yard, "for those non-priority paving projects for which funding might be obtained in the future." The county entered its acceptance of plaintiff's bid on the minutes and, after verification of work periodically done, entered on the minutes the amount payable for the job. Although no separate written contract was negotiated (and entered) for each individual paving project, the supreme court rejected an attack upon the procedure. "Such a contract for the performance of an indefinite amount of services is sufficient where the key for the determination of the sum to be paid or the service to be rendered is contained within the contract."

however, was not placed in the county employee manual which continued to state the prior requirement of only two years in rank. *Id.*, 511 S.E.2d at 284-85. Plaintiff "contends that the employee manual amounted to a binding contract and gave him the right to be considered for promotion after only two years experience as a sergeant." *Id.* at 186, 511 S.E.2d at 285.

201. *Id.* at 187, 511 S.E.2d at 286. The manual only set forth policies and information concerning employment, the court reasoned, and was not to be viewed as a contract. *Id.*

202. *Id.* “To the extent that any document gave plaintiff a contractual right to be considered for promotion, it was the settlement agreement, and not the employee manual.” *Id.*

203. *Id.*


206. 269 Ga. at 810, 504 S.E.2d at 669. The case arose when plaintiff paver sued the county for payment for a job and county taxpayers intervened as defendants contending that the contract was ultra vires. They sought an interlocutory injunction against the settlement of the case by plaintiff and the county. *Id.* at 809-10, 504 S.E.2d at 669.

207. *Id.*

208. The court said “there was only one contract between the County and [plaintiff], encompassing all of the separate off-priority paving projects which the County requested that [plaintiff] perform.” *Id.* at 810, 504 S.E.2d at 669-70.

209. *Id.* at 811, 502 S.E.2d at 670. “When the paving project contemplated by the County’s promise of payment was completed by [plaintiff], that promise became valid and binding on the County.” *Id.*

210. *Id.* “Because the evidence did not demand a finding that the contract was ultra vires, the trial court, in the exercise of its discretion, was authorized to deny the temporary
C. Legislation

The interface between general and local statutes constitutes an issue of vast historical complexity in Georgia local government law. Context for the issue found apt illustration in the facts of *Randolph County v. Bantz*, a controversy over a county magistrate's right to additional compensation for also serving as clerk of the magistrate court. Although a general statute expressly required compensation, that statute also deferred to any local statute providing for a clerk. Because a local statute authorized the county to select and pay a clerk and the county had failed to do so, the county contended there was no salaried clerk to compensate. Rejecting the county's "literal" position as "neither equitable nor just," a unanimous supreme court approved plaintiff's prayer for mandamus. Under the general statute, the county could not, "simply by withholding the exercise of its discretionary authority under the local act, . . . obtain the benefit of [plaintiff's] additional service as clerk . . ., but incur no obligation to pay her any additional compensation."

The period's far more noteworthy "legislation" issue arose in *Franklin County v. Fieldale Farms Corp.* the test for invalidating local

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213. Plaintiff was chief magistrate of the county magistrate court. Id. at 66, 508 S.E.2d at 170.


215. Id. § 15-10-105(a).


217. 270 Ga. at 67, 508 S.E.2d at 170. The court reasoned that "[i]t is this failure of [the county] to exercise the discretionary authority granted under the local act which compels [plaintiff's] performance of the additional duties of clerk of the court." Id.

218. Id., 508 S.E.2d at 170-71.

219. Id. at 68, 508 S.E.2d at 171. Plaintiff "was entitled to additional compensation for serving as clerk and the trial court did not err in issuing the writ of mandamus." Id. For in depth discussion of the proliferating role of mandamus in Georgia local government law, see R. PERRY SENTELL, JR., MISCASTING MANDAMUS IN GEORGIA LOCAL GOVERNMENT LAW (1989).

220. Id. at 67, 508 S.E.2d at 171. "No county can benefit from a clerk's performance of administrative duties on behalf of the magistrate court without being responsible for compensating the individual who performs those duties." Id. at 68, 508 S.E.2d at 171.

those statutes (or ordinances) because of existing general statutes. The necessity for such a test arises from the traditional constitutional admonition: "[N]o local or special law shall be enacted in any case for which provision has been made by an existing general law."\(^{222}\) Over many years, Georgia's appellate courts employed an assortment of formulae for deciding when this provision invalidated local measures.\(^{223}\) In 1978 the supreme court finally conceded its prior decisions to be "irreconcilable" and announced as its future test "whether there is a genuine conflict between the special and general law."\(^{224}\)

The Constitution of 1983 perpetuated the traditional prohibition but with an additional phrase: "[N]o local or special law shall be enacted in any case for which provision has been made by an existing general law, except that the General Assembly may by general law authorize local governments by local ordinance or resolution to exercise police powers which do not conflict with general laws."\(^{225}\) Did this italicized exception augur for a change in judicial approach as well?\(^{226}\)

In Franklin County v. Fieldale Farms Corp.,\(^{227}\) plaintiff sued the county for acting under its land disposal ordinance to deny plaintiff's application to apply sludge on specified farm land.\(^{228}\) Plaintiff possessed EPA approval for the operation under a general statute regulating sludge application and permitting local governments to assess

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226. For caution of such a potential, some fifteen years before its confirmation by the Georgia Supreme Court, and assuredly not referred to by the Court, see Local Government Law and the Constitution of 1983: Selected Shorts, R. PERRY SENTELL, JR., ADDITIONAL STUDIES IN GEORGIA LOCAL GOVERNMENT LAW 565, 578-82 (1983).
228. Plaintiff proposed removing the sludge from the wastewater in its chicken rendering plant and applying it to sixty-two acres of agricultural land in the county. After obtaining a state permit, plaintiff applied to the county for the one-time application of the sludge to the land. Upon the county's denial of its application, under the county land disposal ordinance, plaintiff sought a declaratory judgment, injunction, and mandamus. Id. at 273, 507 S.E.2d at 461.
reasonable monitoring fees. Plaintiff maintained that the general statute's existence invalidated the county's land disposal ordinance.

The supreme court first reviewed the 1983 Constitution's change in the local statute prohibition. The original prohibition, the court reasoned, now precludes local statutes and ordinances which are "preempted" by general statutes. Moreover, the "preemption may be express or implied." Under that approach, the general statute in Fieldale Farms clearly preempted the county land disposal ordinance, an ordinance seeking "to establish a duplicate permit system." As for the constitution's "new" addition, the court viewed it to provide an "exception to the general rule of preemption when general law authorizes the local government to act and the local ordinance does not conflict with general law." This exception could not save the county ordinance because the general statute authorized only county monitoring fees, not substantive regulations. Accordingly, the court declared the county ordinance invalid and affirmed summary judgment for the plaintiff.

230. 270 Ga. at 273, 507 S.E.2d at 461. "The trial court granted [plaintiff] summary judgment on several grounds, including that state law preempted the county from enacting any ordinance dealing with water quality control." Id.
231. The court stated:
To resolve the confusion in our case law, the drafters of the 1983 Constitution revised the uniformity clause . . . . [T]he committee recommended adopting an exception to the general rule of preemption to permit local governments to have concurrent jurisdiction with the state to exercise certain police powers in areas of concern to both. The Legislative Oversight Committee adopted the exception, and voters ratified it.
Id. at 274-75, 507 S.E.2d at 462. For discussion of the Georgia courts' use of legislative history in construing both statutes and provisions of the constitution, see R. Perry Sentell, Jr., Georgia Statutory Construction: The Use of Legislative History, 33 GA. ST. B.J. 30 (1996), reprinted in R. PERRY SENTELL, JR., STUDIES IN GEORGIA STATUTORY LAW 169 (1997).
232. 270 Ga. at 275, 507 S.E.2d at 462-63. "The clause's first provision follows the preemption rule of previous constitutions by precluding local or special laws when general laws exist on the same subject." Id.
233. Id.
234. Id. at 278, 507 S.E.2d at 464. "By this ordinance, the county has enacted a local ordinance dealing with the same subject as general law. As a result, the general preemption rule controls unless the county ordinance falls within the exception to the uniformity clause." Id. at 276, 507 S.E.2d at 463.
235. Id. at 275, 507 S.E.2d at 463.
236. Id. at 278, 507 S.E.2d at 464. "Based on the language and legislative history of the state statute, we conclude that the General Assembly has failed to authorize local governments to regulate the application of sludge to land except in the specific area of monitoring." Id.
237. Id.
In reverting from its 1978 "genuine conflict" test to a test of "express or implied preemption," the supreme court has expanded the scope for invalidating local statutes, as well as the ordinances and resolutions of local governments. Only the future will reveal the extent to which the court will employ its self-construed tactic.

D. Power

The issue of county power emerged from an effort to assimilate authority with obligation. *Smith v. Pulaski County*\(^2\) featured plaintiff's action to mandamus county preservation of an abandoned cemetery.\(^3\) Because the material general statute only authorizes counties to care for abandoned cemeteries and burial grounds,\(^4\) the supreme court held there is "no mandatory duty on the part of [the county] to take any affirmative action to protect [plaintiff's] family cemetery."\(^5\) Accordingly, the court sustained the trial judge's dismissal of plaintiff's action.\(^6\)

E. Regulation

County regulation gone awry led to *Gantt v. Bennett*,\(^7\) an action for fraud in the county health inspector's issuance of plaintiffs' septic system permit.\(^8\) Holding the evidence sufficient for submission to the jury, the court of appeals emphasized the inspector's admission that he breached county regulations in issuing the permit without a visual

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239. *Id.* at 688, 501 S.E.2d at 214.
240. O.C.G.A. § 36-72-3 (1993). "Counties . . . are authorized . . . to preserve and protect any abandoned cemetery or any burial ground which the county . . . determines has been abandoned or is not being maintained by the person who is legally responsible for its upkeep." *Id.*
241. 269 Ga. at 689, 501 S.E.2d at 214.
242. *Id.* "In view of the clearly permissive language of the statute, we agree with the trial court that O.C.G.A. § 36-72-3 authorizes but does not compel a county to preserve and protect abandoned cemeteries." *Id.* For a perspective on the large number of unsuccessful efforts to mandamus local government actions, see R. Perry Sentell, Jr., *Miscoasting Mandamus in Local Government Law* (1989).
244. Plaintiff home buyers sued the seller, the county, and its health inspector, for a malfunctioning septic system. The jury found for plaintiffs in fraud, and defendants appealed on grounds that the evidence did not support the fraud verdict. 231 Ga. App. at 240, 499 S.E.2d at 78.
Indeed, his supervisor testified that the inspector was reprimanded for "falsification of documents."246

A permissible instance of regulation unfolded in Smith v. Gwinnett County,247 an appeal from a trial court’s receivership appointment for the owners’ property. Reviewing the scenario, the supreme court found that when the owners began developing their property without requisite county permits, the trial judge issued an injunction, subsequently took control of the property, and ordered the county to restore it with costs assessed to owners.248 Upon the owners’ failure to pay those costs, the court concluded, the judge’s levy on the property validly satisfied the county’s personal judgment against them.249

Chu v. Augusta-Richmond County250 featured an unsuccessful appeal from county denial of a license for the off-premises retail sale of beer and wine.251 Preliminarily, the court reviewed general statutes vesting local governments with discretionary powers over sales of alcoholic beverages, but requiring “ascertainable standards” for licensing ordinances.252 Proceeding to an examination of the county’s ordinances,253 the court found “sufficient objective standards” regarding schools, churches, traffic, neighborhoods, congregation of minors, and number of other licenses granted.254 The commissioners relied on those "specific,
ascertainable criteria” and “articulated those standards on the minutes of the meetings” at which they denied the application.\(^{255}\)

Governmental discretion also controlled \textit{Gwinnett County v. Ehler Enterprises, Inc.},\(^{256}\) a challenged denial of a special use permit for a tire store and service center. Emphasizing its limited role of “any evidence” review,\(^{257}\) the supreme court examined county guidelines for permits\(^{258}\) as well as the county’s articulated reasons for denial.\(^{259}\) Rejecting plaintiff’s petition for mandamus, the court found the record to show that “each of [the county’s] reasons is supported by evidence presented to the board.”\(^{260}\)

\textbf{F. Property}

County roads carried at least two cases to the supreme court. In \textit{Chandler v. Robinson},\(^{261}\) the court held that an owner’s occasional request for county work on a private road did not implicitly dedicate the road for public use.\(^{262}\) Implied dedication likewise did not result from

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\(^{255}\) 269 Ga. at 825, 504 S.E.2d at 696. “We hold that the . . . ordinance provides an applicant with adequate notice of the criteria that will be applied in consideration of an application for an alcohol license, and that the Commission in this case exercised its discretion within those plain, ascertainable standards.” \textit{Id.} See R. Perry Sentell, Jr., "Ascertainable Standards" vs "Unbridled Discretion" in Georgia Local Government Law, GA. COUNTY GOVT MAG. 19 (Dec. 1989).

\(^{256}\) 270 Ga. 570, 512 S.E.2d 239 (1999).

\(^{257}\) \textit{Id.} at 570, 512 S.E.2d at 241.

\(^{258}\) In the appellate court, the standard of review is whether any evidence supports the board’s decision, not whether any evidence supports the trial court’s decision. This is an important distinction. By focusing on whether the board’s decision is supported by any evidence, we recognize that zoning is a legislative and not judicial function. \textit{Id.}

\(^{259}\) \textit{Id.} The county board articulated twelve reasons for its denial including the neighborhood, noise, odors, and visual blight. \textit{Id.}

\(^{260}\) \textit{Id.} The court thus reversed the trial judge’s grant of a mandamus. \textit{Id.} For emphasis upon the unsuccessful use of mandamus in Georgia local government law, see R. PERRY SENTELL, JR., MISCASTING MANDAMUS IN LOCAL GOVERNMENT LAW (1989).

\(^{261}\) 269 Ga. 881, 506 S.E.2d 121 (1998). The case featured an effort by plaintiffs to use a private road providing access between their property and a county road. Defendant owners of the private road denied plaintiffs its use. \textit{Id.} at 881, 506 S.E.2d at 122.

\(^{262}\) \textit{Id.} at 882-83, 506 S.E.2d at 123. “It is established that by permitting public authorities to occasionally scrape and grade a private road, a property owner does not manifest an intention to dedicate the roadway.” \textit{Id.}
a DOT road map’s depiction of the road.\textsuperscript{263} Finally, plaintiffs’ prescriptive acquisition argument failed because of no “continuous use of [the private road] by anyone for the requisite seven years.”\textsuperscript{264}

\textit{Ketchum v. Whitfield County},\textsuperscript{265} presented the reverse scenario: property owners sought to prevent the opening of a public road.\textsuperscript{266} First, the court held that a deed by plaintiffs’ grantors, although “not a perfect legal description,” contained “numerous keys to the intended location of [the road].”\textsuperscript{267} That deed expressly dedicated the property to the county, which the county accepted by maintaining a part of the existing roadway.\textsuperscript{268} Although plaintiffs had used the remaining part of the property for their own purposes, “prescription does not run against the State or one of its subdivisions.”\textsuperscript{269}

The county’s freedom from prescription also controlled \textit{Williams v. Fayette County},\textsuperscript{270} an action to enjoin county construction of a water tower on land claimed by the plaintiff.\textsuperscript{271} In response, the court deemed conclusive an undisputed 1894 grant of county title.\textsuperscript{272} “In view of the doctrine that adverse possession does not run against a

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\item \textsuperscript{263} \textit{Id.} at 883, 506 S.E.2d at 123. The court said that a road’s placement on an official highway map is an “administrative” act and does not “fix the status of the public right of use of every road in Georgia.” \textit{Id.} (quoting Jordan v. Way, 235 Ga. 496, 498, 220 S.E.2d 258, 261 (1975)).
\item \textsuperscript{264} \textit{Id.} at 884, 506 S.E.2d at 124. The court relied upon evidence that the private road “was both blocked and impassable for approximately ten years prior to the [defendants’] acquisition of their property and clearance of the roadway.” \textit{Id.} at 883-84, 506 S.E.2d at 124. Accordingly, the court affirmed a summary judgment for defendants. \textit{Id.} at 884, 506 S.E.2d at 124.
\item \textsuperscript{265} 270 Ga. 180, 508 S.E.2d 639 (1998).
\item \textsuperscript{266} \textit{Id.} at 180, 508 S.E.2d at 639. The roadway which the county proposed to open divided plaintiffs’ properties. Plaintiffs contended they held prescriptive title to the property; the county responded with a plea of express dedication. \textit{Id.}, 508 S.E.2d at 640.
\item \textsuperscript{267} \textit{Id.} at 181-82, 508 S.E.2d at 641. The court noted the contents of the deed, its description and starting points, as well as extrinsic evidence supporting the description. \textit{Id.}
\item \textsuperscript{268} \textit{Id.} at 182, 508 S.E.2d at 641. The court noted that “in the case of an express, rather than an implied, dedication by the landowner, ‘it is not necessary that the public authorities should work the entire street within the confines of the grant, to make effectual the act of acceptance.’” \textit{Id.} (quoting Hobbs v. Ware County, 247 Ga. 385, 386, 276 S.E.2d 575, 576 (1981)).
\item \textsuperscript{269} \textit{Id.} Accordingly, the court affirmed the trial judge’s denial of plaintiffs’ petition for an injunction. \textit{Id.}
\item \textsuperscript{270} 270 Ga. 528, 510 S.E.2d 825 (1999).
\item \textsuperscript{271} \textit{Id.} at 528, 510 S.E.2d at 825. Plaintiff charged the county with trespass. \textit{Id.} at 528-29, 510 S.E.2d at 825.
\item \textsuperscript{272} \textit{Id.} “As it is undisputed that the 1894 deed served to place fee simple title to the property in [the county] and the County cannot therefore be liable for trespass upon property which it owns, we affirm [summary judgment to county].” \textit{Id.}
\end{itemize}
county, . . . the trial court was correct in its ruling that the property deeded to [the county] in 1894 was not subject to [plaintiff’s] claim of ownership by . . . prescription.\textsuperscript{273}

\textbf{G. Liability}

County liability litigation showed little signs of slowing.\textsuperscript{274} Success in such litigation generally assumes plaintiff’s compliance with the ante litem notice statute: “All claims against counties must be presented within twelve months after they accrue or become payable or the same are barred.”\textsuperscript{275} The court of appeals applied that statute in \textit{Board of Regents v. Putnam County},\textsuperscript{276} against a hospital’s effort to recover from the county for medical services provided to a county inmate.\textsuperscript{277} Rejecting plaintiff’s position that its claim did not arise from contract (but was fixed by law and thus within an exception to the notice mandate), the court held that neither the right to payment nor its amount was “fixed by law.”\textsuperscript{278} Moreover, the statute’s twelve-month

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\textsuperscript{273} \textit{Id.} at 529, 510 S.E.2d at 826. The court also rejected plaintiff’s request for reformation of the 1894 deed and likewise the argument “that the County somehow divested itself of title to the property when the . . . Board of Commissioners passed a resolution to condemn the property which the County already owned.” \textit{Id.}


\textsuperscript{277} \textit{Id.} at 428, 506 S.E.2d at 924. The inmate was injured in a fight at the prison and was not discharged from the hospital until several months later. \textit{Id.}

\textsuperscript{278} \textit{Id.} at 428-29, 506 S.E.2d at 924. O.C.G.A. § 42-5-2 provides that the county must furnish its prisoners “any needed medical and hospital attention.” Plaintiff relied upon \textit{Terrell County v. Albany/Dougherty Hospital Authority}, 256 Ga. 627, 352 S.E.2d 378 (1987), holding that ante litem notice applied to claims arising from contract and not to a claim when the right to and amount of the claim are fixed by law. 234 Ga. App. at 428, 506 S.E.2d at 924 (citing 256 Ga. at 630, 352 S.E.2d at 381). The court distinguished \textit{Terrell}: “While the law does provide that the prisoner has a right to any needed hospital attention, there is no law providing that the county must pay the hospital, as was the case in \textit{Terrell}.” \textit{Id.} at 428, 506 S.E.2d at 924.

The court reached a similar conclusion in \textit{Macon-Bibb County Hospital Authority v. Reece}, 236 Ga. App. 669, 513 S.E.2d 243 (1999), sustaining a jury decision favoring a county and its sheriff against a hospital’s attempt to collect for services provided county detainees. \textit{Id.} at 669-70, 513 S.E.2d at 244. The court affirmed the trial judge’s refusal to charge that the detainees were under county arrest when the services were provided. \textit{Id.} at 672, 513 S.E.2d at 246.
\end{footnotesize}
period began running on the day the hospital released the inmate rather than following the thirty days allowed for payment of hospital bills.\(^\text{279}\)

Primary ploys at avoiding county tort immunity sounded in inverse condemnation and constitutional tort. The inverse condemnation venture succeeded in *Columbia County v. Doolittle*,\(^\text{280}\) an action for surface water damage to plaintiff's pond from county drainage systems in upstream subdivisions.\(^\text{281}\) Reviewing the record, the supreme court found "substantial evidence" of the county's responsibility\(^\text{282}\) and its allowing excessive sedimentation onto plaintiff's land.\(^\text{283}\)

The constitutional tort assertion, an alleged violation of 42 U.S.C. § 1983\(^\text{284}\) surfaced in several contexts. Plaintiff prison inmate in *Cantrell v. Thurman*\(^\text{285}\) employed the statute against county officers for inadequate medical attention.\(^\text{286}\) Emphasizing plaintiff's thirteen visits to the jail's independent contractor physician, however, the court of appeals concluded that "any deprivation was caused by someone for

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279. 234 Ga. App. at 429, 506 S.E.2d at 925. "The trial court did not err in dismissing [plaintiff's] claim for failure to comply with the ante litem notice requirement of O.C.G.A. § 36-11-1." *Id.*

The supreme court was equally adamant in *Dolinger v. Driver*, 269 Ga. 141, 498 S.E.2d 252 (1998): "The issue for decision . . . is whether high school students who lack the required course credits to graduate can resort to a court of equity and obtain an injunction that would allow the students to march in a graduation ceremony. The answer is 'no.'" *Id.* at 141, 498 S.E.2d at 253.


281. *Id.* at 491, 512 S.E.2d at 237. "We have interpreted [the constitution's eminent domain] provision as waiving sovereign immunity in an inverse condemnation action and permitting the county to be sued for damages and enjoined for creating or maintaining a continuing nuisance." *Id.*

282. *Id.* at 492, 512 S.E.2d at 238. Plaintiff "presented evidence that the county had accepted control of the streets, sanitary sewage systems, and storm drainage systems in four subdivisions built upstream and was responsible for maintaining the systems." *Id.*

283. *Id.* Plaintiff's "expert witnesses, including civil engineers and a real estate appraiser, testified that the county was using the pond as a sediment retention pond for a public purpose." *Id.* The court thus upheld both damage awards and injunctive relief against the county. *Id.* at 494, 512 S.E.2d at 239.


286. *Id.* at 511, 499 S.E.2d at 419. Plaintiff injured his foot while in jail, saw the jail's physician on thirteen occasions, and eventually suffered permanent disability. *Id.* at 510-11, 499 S.E.2d at 418-19.
whom the defendants were not responsible." Plaintiff fared no better in Darnell v. Houston County Board of Education, a basketball referee's action for alleged abuses by school officials. Affirming summary judgment for defendants, the court found no "nexus between a policy of the Board and the alleged violation of [plaintiff's] federally protected rights." Indeed, plaintiff "offered no evidence that the Board intentionally or deliberately promulgated or tolerated any impermissible policy."

Increasingly, plaintiffs also direct their claims against county officers and employees. Those suits typically evoke the response of "official immunity," an immunity turning upon whether the offending conduct is "ministerial" (liability for negligence) or "discretionary" (liability for willfulness).

Declaring operation of a police department "discretionary," the court of appeals awarded official immunity to the county sheriff in Lowe v. Jones County. There, a third party struck and killed the decedent who was being arrested by a deputy. Rejecting the claim of wrongful

287. Id. at 513, 499 S.E.2d at 420. "Plaintiff failed to show a causal connection between the deprivation of his constitutional rights and his untreated infection, because the defendants provided and arranged repeated medical attention over 13 times through [the physician]. The trial court did not err in granting summary judgment to the defendants." Id. Similarly, Epps v. Gwinnett County, 231 Ga. App. 664, 499 S.E.2d 657 (1998), featured a wrongful death claim against the county and its sheriff for an inmate's inadequate medical care. Id. at 664-65, 499 S.E.2d at 659. In affirming summary judgment for defendants, the court reasoned that "the fact that [the county] contracted with PHS [Prison Health Service] to provide medical care at the detention center, and that it relied on PHS to provide such care, does not amount to an intentionally corrupt or impermissible policy which would violate any citizen's Eighth Amendment rights." Id. at 669, 499 S.E.2d at 662.


289. Id. at 489, 506 S.E.2d at 387. Plaintiff alleged both emotional and physical abuses when school officials became dissatisfied with his officiating of a middle school basketball game. Id.

290. "Nor could [plaintiff] prevail against the Board on his claims asserted under 42 U.S.C. § 1983 for alleged deprivation of federal rights under color of state law." Id.

291. Id.

292. Id.


294. GA. CONST. art. I, § 2, para. 9(d).


296. Id. at 372, 499 S.E.2d at 350. "As the two officers had [decedent] on the pavement in a traffic lane and were attempting to handcuff him, a car struck all three." Id.
death, the court saw "no showing of any conduct by [the sheriff] . . . which would amount to wilfulness, malice or corruption." \(^{297}\)

The court reached the same conclusion in *Parrish v. Akins*\(^{298}\) regarding a county correctional officer sued by the victim of an escaped prisoner.\(^{299}\) It was "clear," the court reasoned, "that an officer supervising inmates on a work detail has many responsibilities beyond simply watching inmates."\(^{300}\) Defendant's decision as to where prisoners would work "was fully within his judgment"\(^{301}\) and "discretionary;"\(^{302}\) any error constituted "at most" only negligence.\(^{303}\)

*Stone v. Taylor*\(^{304}\) featured a motorist's action against a county commission chairman who failed to level the shoulders of a resurfaced road.\(^{305}\) The court held that when defendant examined the road and decided against leveling the shoulders, he exercised a discretionary function and was entitled to official immunity.\(^{306}\)

\(^{297}\) *Id.* at 373, 499 S.E.2d at 350. "Liability may be imposed as a result of the exercise of such a discretionary function only when the acts complained of are done within the scope of the officer's authority and with wilfulness, malice or corruption." *Id.*


\(^{299}\) *Id.* at 422, 504 S.E.2d at 277. While supervising six inmates working at the courthouse annex, defendant allowed four of the inmates to work out of his view for some fifty minutes while he worked with two inmates on the other side of the building. Two of the inmates beyond defendant's view escaped and later attacked plaintiff and stole her car. *Id.*

\(^{300}\) *Id.* at 443-44, 504 S.E.2d at 278. "Contrary to [plaintiff's] claim, the mere fact that supervising the prisoners is a mandatory function does not render the actual carrying out of the supervision a ministerial function unprotected by official immunity." *Id.* at 443, 504 S.E.2d at 278.

\(^{301}\) *Id.* at 444, 504 S.E.2d at 278.

\(^{302}\) *Id.*, 504 S.E.2d at 279. "[W]e find that the task given to [defendant] to supervise inmates working outside [the prison] was a discretionary, as opposed to a ministerial, function." *Id.*

\(^{303}\) *Id.*. "Because [defendant's] supervision of inmates working outside the prison was a discretionary duty executed without malice, the trial court correctly granted summary judgment to him on the basis of his official immunity." *Id.* at 444-45, 504 S.E.2d at 279.


\(^{305}\) *Id.* at 887, 506 S.E.2d at 162-63. The county had contracted with the DOT to resurface the road, and the contract called for the county to later level the shoulders of the road "when applicable." *Id.*, 506 S.E.2d at 163. Plaintiff was later injured when her car veered off the road, allegedly as a result of a steep drop-off which prevented her from steering back onto the road. *Id.*

\(^{306}\) *Id.* at 889, 506 S.E.2d at 164. "[The chairman's] act in this case when he inspected the shoulders of County Road 280 and decided not to modify them or post warning signs was . . . discretionary." *Id.* As for the county's obligation under the contract with DOT, "[t]he words 'when applicable' allowed [the chairman] the discretion to decide whether leveling the shoulders was warranted under the circumstances." *Id.* at 890, 506 S.E.2d at 164. The court thus affirmed the trial judge's award of summary judgment to defendant. *Id.*, 506 S.E.2d at 165.
The supreme court administered the test in *Harry v. Glynn County*[^307] to a county paramedic who unsuccessfully attended plaintiff's stricken wife.[^308] On grounds that defendant's emergency duties "were clearly discretionary,"[^309] and that plaintiff alleged neither "malice [nor] intent to injure,"[^310] the paramedic enjoyed official immunity.[^311]

County school operations supplied context in several settings. *Payne v. Twiggs County School District*[^312] presented claims against an assistant principal and school bus driver for injuries inflicted by one student upon another while on the bus.[^313] On grounds that "disciplinary and supervisory tasks of school officials" were consistently classified as discretionary functions,[^314] the court of appeals affirmed defendants' protection by official immunity.[^315] The court reached the same conclusions in *Daniels v. Gordon,*[^316] involving a teacher who "grasped [a student's] face to get his attention" in the classroom,[^317] and in *Caldwell v. Griffin Spalding County Board of Education,*[^318] involving hazing injuries to a student at football camp.[^319]

[^308]: *Id.* at 503, 501 S.E.2d at 198. Plaintiff's wife collapsed in a restaurant where defendant treated her and transported her to the hospital. *Id.*
[^309]: *Id.* at 505, 501 S.E.2d at 199. Those duties were "first to ascertain the condition of the patient, [and] then to provide the treatment appropriate to that condition while transporting the patient to the hospital." *Id.*
[^310]: *Id.*
[^311]: *Id.* The court thus affirmed the trial judge's grant of summary judgment to the defendant. *Id.* at 506, 501 S.E.2d at 200.
[^313]: *Id.* at 175-76, 501 S.E.2d at 551. Plaintiff alleged that defendants knew that the student had previously threatened plaintiff with a knife "but negligently failed to carry out the 'ministerial' act of enforcing the school's weapons policy." *Id.* at 177, 501 S.E.2d at 552.
[^314]: *Id.* at 178, 501 S.E.2d at 552. The court reasoned that the school's weapons policy required the defendants to assess the credibility of the previous report and "make a judgment call as to whether those allegations merited immediate investigation of [the student]." *Id.* These facts, the court said, "demonstrate the discretionary nature of the school officials' disciplinary duties." *Id.*
[^315]: *Id.*, 501 S.E.2d at 553. The court affirmed summary judgment for defendants. *Id.*
[^317]: *Id.* at 813, 503 S.E.2d at 75. First, the court held the teacher's conduct not to amount to corporal punishment; second, the teacher "was simply fulfilling her discretionary tasks of monitoring, supervising and controlling the students in her class when she grasped [plaintiff's] face to get his attention," and "there [was] no evidence whatsoever of actual malice." *Id.* The court affirmed summary judgements for the teacher and the school principal. *Id.*
[^319]: *Id.* at 892, 503 S.E.2d at 43-44. Again, the court held supervision of student safety to be a discretionary function. *Id.* at 894, 503 S.E.2d at 44. Here, [even assuming that the beating in this case amounted to criminal hazing, it is undisputed that this activity was unknown to [the school principal and football
Plaintiffs enjoyed more success in actions against county officers for allegedly defective roads. In *Ross v. Taylor County*, the court of appeals distinguished between "a decision to build a road" and "the actual work of constructing it." It was clear from the defendant road superintendent's testimony "that his work consisted solely of ministerial acts." Reversing summary judgment for defendant, therefore, the court reiterated that "the duties of a road supervisor in carrying out the physical details of the work are ... ministerial in nature."

The court employed a similar approach to *Lincoln County v. Edmund*, a motorist's action for injuries from a tree blocking a county road. Plaintiff charged the road superintendent with negligently failing to act for a period of two hours after learning of the downed tree. The court was adamant that any discretion enjoyed by defendant as to the manner of moving the tree "did not change the fact that..."
the tree must be removed.”\textsuperscript{328} Removal “was the performance of a ministerial duty, not a discretionary one, regardless of the elements of ‘discretion’ that may be present during the execution of the mandatory job.”\textsuperscript{329} Accordingly, the court held the road superintendent unprotected by official immunity.\textsuperscript{330}

\textit{Seay v. Cleveland}\textsuperscript{331} shifted to the issue of a county sheriff’s “sovereign immunity.” There, purchasers at a sheriff’s sale sued the sheriff for failure to use sale proceeds to satisfy superior liens on the property purchased.\textsuperscript{332} Because statutes left the sheriff no discretion in conducting the sale,\textsuperscript{333} the court of appeals declared the sheriff negligent in performing “an official ministerial function,”\textsuperscript{334} thereby “forfeit[ing] the protections of sovereign immunity.”\textsuperscript{335} Taking the case on certiorari, a unanimous supreme court reversed.\textsuperscript{336} “Sovereign immunity,” the court declared, “applies equally to ministerial and discretionary acts,”\textsuperscript{337} and the sheriff “may be held liable in his official capacity for . . . negligence only to the extent the county has waived such sovereign immunity.”\textsuperscript{338} The sheriff would be liable for negligently performing a “ministerial function,” the court delineated, only “had he been sued in his personal capacity.”\textsuperscript{339} Thus, the lower courts had erred in refusing to apply sovereign immunity to plaintiffs’ claim.\textsuperscript{340}

\begin{itemize}
  \item \textsuperscript{328} Id.
  \item \textsuperscript{329} Id., 501 S.E.2d at 42.
  \item \textsuperscript{330} Id. Whether defendant had acted negligently in performing this ministerial function, the court held, was one for the jury. Id. at 875, 501 S.E.2d at 42.
  \item \textsuperscript{331} 270 Ga. 64, 508 S.E.2d 159 (1998).
  \item \textsuperscript{332} Id. at 64, 508 S.E.2d at 159. Plaintiffs were thus “required to pay off the superior mortgages or risk losing the property and the monies paid for the property.” Id.
  \item \textsuperscript{333} O.C.G.A. § 9-13-60 (1993).
  \item \textsuperscript{334} Seay v. Cleveland, 228 Ga. App. 836, 839, 493 S.E.2d 30, 32 (1997).
  \item \textsuperscript{335} Id.
  \item \textsuperscript{336} Seay v. Cleveland, 270 Ga. 64, 66, 508 S.E.2d 159, 161 (1998).
  \item \textsuperscript{337} Id. at 65, 508 S.E.2d at 160. “The holding of the Court of Appeals ignores the clear language of Gilbert [v. Richardson, 264 Ga. 744, 452 S.E.2d 476 (1994)] finding that sovereign immunity applies equally to ministerial and discretionary acts and improperly limits the sovereign immunity to which the county and, therefore, [the sheriff] is entitled under the Georgia Constitution.” Id.
  \item \textsuperscript{338} Id., 508 S.E.2d at 160-61.
  \item \textsuperscript{339} Id., 508 S.E.2d at 161. “Although [the sheriff] might be held liable for negligent supervision had he been sued in his personal capacity, . . . sovereign immunity acts as a bar to such claims against a sheriff in his official capacity unless sovereign immunity has been waived.” Id.
  \item \textsuperscript{340} Id., 508 S.E.2d at 160-61. “[W]e find that the [plaintiffs'] claims against [the sheriff] in his official capacity are precluded under the doctrine of sovereign immunity and it has not been established . . . that such immunity has been waived.” Id., 508 S.E.2d at 160.
\end{itemize}

“For the benefit of both the bench and bar,” the court reiterated the proper approach:
H. Zoning

In *Harrell v. Little Pup Development & Construction, Inc.*[^341] the supreme court emphasized the binding nature of conditions attached to rezoning approvals. When the county’s rezoning ordinance restricted the owner to an exit upon a specified road, the owner could create no temporary exit on another road.[^342] In the absence of exceptions entered upon the county minutes,[^343] the court reasoned, “the public is entitled to rely upon the four corners of the [rezoning] ordinance.”[^344]

The court was equally adamant in *Lacy v. State*[^345] in applying a single family zoning ordinance to a minister who rented a portion of his home to a financially impoverished family.[^346] The defendant’s “claim a sheriff sued in his official capacity may be held liable for the negligent performance of ministerial or discretionary acts of his employees only to the extent the county has waived sovereign immunity because he can only be sued in his official capacity under respondeat superior... As to acts or omissions personal to the sheriff, however, he may be sued in his personal capacity and will be protected from such suits only to the extent official or qualified immunity applies. Id. at 65 n.1, 508 S.E.2d at 161 n.1.

Obviously, the concepts in issue are confusing and semantics appear to carry inordinate weight. Thus, in *Seay* the supreme court reasoned that a sheriff enjoys “official immunity” only when sued in his “personal capacity.” *Id.* (emphasis added). Subsequently, the court of appeals considered *Hazelwood v. Adams*, 235 Ga. App. 607, 510 S.E.2d 147 (1998), a high school student’s action against a football coach for injuries allegedly suffered while working off a discipline violation under the coach’s supervision. *Id.* at 608, 510 S.E.2d at 148. There, the court was explicit that “the defense of official immunity... applies to government officials and employees sued in their official capacities,” *Id.*, 510 S.E.2d at 149 (emphasis supplied), and proceeded to find sufficient evidence for a jury trial on whether the coach’s “discretionary” acts were done with “actual malice.” *Id.* at 608-09, 510 S.E.2d at 150.

[^342]: *Id.* at 143-44, 498 S.E.2d at 251. The county had rezoned property to single-family use and modified the developer’s plans for an entrance. Defendant, the present owner of the property, had created a temporary entrance to its subdivision from another road. *Id.*
[^343]: *Id.* at 144-45, 498 S.E.2d at 252. Defendant maintained that the county had represented that the road specified by the condition would soon be paved and that it was entitled to the temporary entrance until the paving was done. Said the court: “The official minutes of the Board show no vote that the rezoning condition was to take effect only after [the road in the condition] [was] paved.” *Id.* at 144, 498 S.E.2d at 252.
[^344]: *Id.* at 145, 498 S.E.2d at 252 (quoting Martin v. Hatfield, 251 Ga. 638, 639, 308 S.E.2d 833, 835 (1983)). The court thus reversed the trial judge’s refusal to enforce the condition. *Id.*
[^346]: *Id.* at 37, 507 S.E.2d at 442. Defendant, “who is a minister, contends that he was practicing his religion by sharing his home, for a monthly rental, with a family which, due to bankruptcy, was encountering difficulty finding a suitable place to rent.” *Id.* Defendant had been convicted of violating the zoning order in the trial court. *Id.*
of religious liberty," the court asserted, "cannot constitute a defense against enforcement of valid police regulations or penal laws." 

Defendant's "religious motivation" did not render the zoning ordinance underlying his conviction a violation of his free exercise of religion.

In Beugnot v. Coweta County, the court of appeals focused upon a plaintiff whose sixty-six acre mobile home park, containing thirteen homes at the time of the county's zoning ordinance, had been treated for many years as a nonconforming use. Upon the county's later refusal to issue a building permit for yet another home, the court held the nonconforming use to extend to the entire park and not simply the portion containing the thirteen homes. "With full knowledge of [plaintiff's] intentions and the ordinance provisions, the county allowed [plaintiff] to continue development of the entire parcel for 25 years." Accordingly, the court declared a "vested right" in plaintiff's nonconforming use and reversed the trial judge's refusal to mandamus a permit.

III. LEGISLATION

The 1999 General Assembly acted upon an assortment of local government facets; a few examples illustrate range of coverage.

347. Id. at 38, 507 S.E.2d at 443. "In his capacity as a landlord," the court said, defendant "did not act on behalf of a church." Id. at 37, 507 S.E.2d at 442.
348. Id. at 38, 507 S.E.2d at 443. The court thus affirmed defendant's conviction. Id. Reaffirming a procedural principle, in DeKalb County v. Druid Hills Civic Ass'n, 269 Ga. 619, 502 S.E.2d 719 (1998), the supreme court asserted that "[c]ivic associations do not have standing to file suit to challenge zoning decisions." Id. at 619, 502 S.E.2d at 720. Accordingly, plaintiff association, displeased with the county governing authority's tie vote on the association's appeal from the grant of a variance by the zoning board, was without standing to compel the county governing authority to "act" on the appeal. Id. "That the remedy sought in this case was mandamus does not relax the standing requirement." Id.
350. Id. at 716, 500 S.E.2d at 30. Plaintiff purchased the property in 1963 and the county adopted its first material zoning ordinance in 1969. From 1970 to 1980 plaintiff continued to add at least one mobile home to the park every two years as required by ordinance, and in 1980 he began making major annual improvements to the property. The county contended that plaintiff had abandoned his nonconforming use by failing to seek permits for homes between 1994 and 1995. Id. at 716-17, 500 S.E.2d at 30-31.
351. Id. at 722, 500 S.E.2d at 34. "Moreover, the county's zoning ordinance does not prohibit categorizing the proposed use of the entire 66 acres for a mobile home park as a nonconforming use." Id. at 720, 500 S.E.2d at 33.
352. Id. at 721, 500 S.E.2d at 33.
353. Id. The court noted the circumstances for issuance of a mandamus and asserted that "[t]he first circumstance has been met in this case, as [plaintiff] has a clear legal right to relief given his vested right in the nonconforming use which he has not abandoned." Id. at 722, 500 S.E.2d at 34. See R. Perry SenteLL, Jr., MisCASTING MANdAMUS IN GEORGIA LOCAL GOVERNMENT LAW (1989).
Among the most heralded of its actions, the legislature barred local governments from bringing lawsuits against firearms or ammunition manufacturers, trade associations, or dealers for damages resulting from the lawful design, manufacture, or sale of firearms or ammunition to the public.\textsuperscript{354} Such suits may be brought only by the state.\textsuperscript{355}

The legislature also treated the high-profile matters of open meetings and open records. As for meetings, the statute expanded the types of covered gatherings and required, within a period of two weeks prior to the meeting, the posting of agenda items.\textsuperscript{356} When a meeting is closed, the chairperson must file a notarized affidavit identifying the subject as one excepted from the open meetings requirement.\textsuperscript{357} As for records, the covered entity must provide requested records within three days or specify the date of availability, and computer records must be made available without charge.\textsuperscript{358} The records custodian must explain any denial of a requested record, and failure to comply with the statute is a criminal offense.\textsuperscript{359}

In respect to law enforcement, officers may establish "guard lines" around jails within which no person may pass while possessing a weapon or under the influence of drugs.\textsuperscript{360} Local governments were authorized to sell vehicles used in prostitution or to petition for use of the vehicle in law enforcement,\textsuperscript{361} and city and county attorneys may abate as public nuisances places used for unlawful sexual purposes.\textsuperscript{362} Local governments were empowered to approve the designation and equipping of police volunteers to assist in traffic control in the event of emergencies.\textsuperscript{363} Finally, municipal court jurisdiction, for the offense of shoplifting, increased from $100 to $300 for the value of the property involved.\textsuperscript{364}

The General Assembly dealt with various officials in several ways. For instance, notary publics may not sign as an elector, or circulate a nomination petition, a recall petition, or an application for a recall petition.\textsuperscript{365} Contrarily, county commissioners and members of city

\textsuperscript{355} Id.
\textsuperscript{356} 1999 Ga. Laws 549 (codified at O.C.G.A. §§ 50-14-1, -4).
\textsuperscript{357} Id.
\textsuperscript{359} Id.
\textsuperscript{360} 1999 Ga. Laws 648 (codified at O.C.G.A. § 42-4-13).
\textsuperscript{361} 1999 Ga. Laws 472 (codified at O.C.G.A. § 16-6-13.2).
\textsuperscript{362} 1999 Ga. Laws 467 (codified at O.C.G.A. §§ 41-2-2, -3-1.1, -3-2).
\textsuperscript{363} 1999 Ga. Laws 654 (codified at O.C.G.A. §§ 35-1-11, 40-6-2).
\textsuperscript{365} 1999 Ga. Laws 23 (codified at O.C.G.A. §§ 21-2-132, -2-170, -4-5, -4-8).
councils may now serve as volunteer firefighters without violating prohibitions on holding two positions. 366

The legislature refined several aspects of the "service delivery strategies" mandate. 367 For example, it made clear that every county and each municipality within a county must possess a process to resolve land use classification disputes resulting from annexations. 368 However, the statute also extended the deadline for filing such processes to July 1, 1999. 369

Local governments received additional public welfare powers; they also encountered additional power restrictions. On the one hand, a statute authorized cities and counties to contract with private firms, not in excess of twenty years, for the operation and maintenance of wastewater treatment systems, stormwater systems, water systems, and sewer systems. 370 On the other hand, a statute required local governments to conduct environmental tests on property intended for parks or recreational areas, and prohibited the property's acquisition until any discovered contaminants were eliminated. 371 Additionally, the legislature established new standards for designating a newspaper the county legal organ and required that once so designated, the paper must maintain those qualifications. 372

In the realm of taxation, the General Assembly authorized the use of proceeds from special purpose local option sales taxes for the purchase of major capital equipment. 373 In respect to ad valorem property taxes, a "Taxpayer Bill of Rights" required millage rate rollbacks upon major property revaluations. 374 The statute also required counties to disclose additional information to taxpayers when tax assessments are increased, and purported to facilitate taxpayer appeals. 375 Finally, the legislature provided a phase-in increase of the taxpayer homestead exemption to eventually equal up to $20,000 of assessed value. 376 The measure specified the fashion in which the state will reimburse counties for the revenue losses occasioned by the homestead exemption increase. 377

369. Id.
375. Id.
377. Id.
IV. CONCLUSION

Like the prominence of the humbled citizen in recorder's court, developments in local government law this year, both by volume and by substance, render highly inordinate a responsive plea of "low profile."