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Local Government Law

by R. Perry Sentell, Jr.*

In a year defined by global realignment, juristic unions that were are no more. As flags fell from legal fortresses previously deemed impregnable, precepts formerly unthinkable coalesced into startling staples of litigational performance. In sharp contrast to this panorama of pandemonium, the banner of local government law never dipped; indeed, its proud and uninterrupted summitry gave classic illustration to the diplomatic art of staying the course. Its judicial decisions marked the domains of boundary conundrums, and its statutes sought settlement of analytical quandaries. In cold war’s wake, law’s universe hailed one clear winner: the law of local government.

I. Municipalities

A. Officers and Employees

Municipal officers and employees attain their positions via the processes of appointment and election. Each of those processes attracted litigation during the survey period.

Focusing upon appointment, Columbus, Georgia v. Board of Water Commissioners featured a quo warranto challenge against appointment of a council member to the municipal water board. A unanimous supreme court invalidated the appointment, wielding a general statute that prohibited council members from holding other municipal offices. The

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2. Id. at 219, 403 S.E.2d at 792. For treatment of this popular action in the local government context, see R. PERRY SENTELL, JR., THE WRIT OF QUO WARRANTO IN GEORGIA LOCAL GOVERNMENT LAW (1987).
court expressly rejected reliance upon a charter amendment authorizing the council to "'redefine the manner'" of water board appointments. The power to redefine, the court held, could not bear construction as "specifically authorizing the council to appoint its members to the board." In the absence of the requisite express authority, therefore, the court approved issuance of the writ of quo warranto.

The court was also unanimous in Mayor & Council of Wadley v. Hall, in turning back a proceeding to contest the election of a municipal council member. The contestants had failed (by one day) to file their petition within five days following declaration of the election results. That failure, the court asserted, precluded the trial judge's jurisdiction of the contest. Moreover, the contestants' failure to utilize adequate legal remedies, the court held, rendered erroneous the trial judge's employment of equity to invalidate the election.

Over time, the local government official has played a pivotal role in evolving the modern law of defamation. Illustrative of context, Eidson v. Berry encompassed a city attorney's libel action for published statements concerning his official conduct. Appraising defendant's charges that plaintiff had delivered recordings to a newspaper and had violated

4. 261 Ga. at 220, 403 S.E.2d at 792.
5. Id. This was true, the court emphasized, even "[p]assing over the question of whether a charter provision that specifically authorizes self-appointment would be valid if it were contrary to the general law codified in O.C.G.A. § 36-30-4." 261 Ga. at 220, 403 S.E.2d at 792.
6. Id. The court also rejected the consolidated government's argument that if it were treated as a county, the appointment would be valid. Id. at 221, 403 S.E.2d at 792. "The council clearly serves a supervisory and/or appellate function in relation to the board which would be inconsistent to board membership." Id.
8. Id. at 682, 410 S.E.2d at 106.
10. 261 Ga. at 681, 410 S.E.2d at 105-06. The court held the record insufficient to sustain contestants' contention that defendants' fraud had tolled the five-day limit. Id., 410 S.E.2d at 106.
11. Id. at 682, 410 S.E.2d at 106. Justice Bell employed a concurring opinion "to make clear to prospective contest petitioners exactly how strictly this Court is applying the five-day period of O.C.G.A. § 21-3-420." 261 Ga. at 682, 410 S.E.2d at 106. He noted that contestants' delay in filing the petition was the result of defendants' delay in supplying a document identifying electors who voted in the election. Id. at 683-84, 410 S.E.2d at 107. "The result of the Court's holding is that the election at issue in this case will be allowed to stand, despite having been tainted by undisputed, serious, and pervasive irregularities." Id. at 685, 410 S.E.2d at 108.
14. Id. at 587, 415 S.E.2d at 16-17. Defendant's statements were published in a letter to the editor of a local newspaper. Id., 415 S.E.2d at 17.
federal law, the trial judge deemed those charges unactionable as constituting mere opinions. Reversing, the court of appeals directed inquiry to whether the "statements can reasonably be interpreted as stating or implying defamatory facts about plaintiff and, if so, whether the defamatory assertions are capable of being proved false." Answering both questions in the affirmative, the court then confronted plaintiff's status as a "public figure" by emphasizing defendant's testimony that he only assumed the truth of his charges. "This evidence alone is sufficient," the court concluded, "to authorize any reasonable jury's finding that defendant . . . acted with reckless disregard . . . in accusing [plaintiff] of violating federal law."

B. Openness

The call for public disclosure of public business rings insistently and incessantly in local government law. The General Assembly has answered the call for both open records and open meetings by providing procedures for exposure. On at least two recent occasions, the procedures provided by the Open Records Act brought municipalities to litigation.

In Dortch v. Atlanta Journal & Atlanta Constitution, the supreme court held the Act to require disclosure of all municipal cellular telephone bills, including numbers called from those phones and the numbers of the phones themselves. The court rejected a personal privacy contention regarding calls to unlisted numbers. Disclosure, the court maintained, had not been shown "so offensive or objectionable to a reasonable man as to

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15. Id.
16. Id. at 588, 415 S.E.2d at 17. The court observed that some expressions of opinion are capable of implying an assertion of fact. Id. at 587, 415 S.E.2d at 17.
17. Id. at 588, 415 S.E.2d at 17. The court reasoned that "the accusation that plaintiff is guilty of a crime punishable by law is susceptible of being proved false." Id.
18. Id. Thus, the necessity of proving "actual malice" on the part of the defendant. Id.
19. Id. at 588-89, 415 S.E.2d at 18. Defendant testified that he only assumed plaintiff delivered the tapes, and that he assumed that a federal law prohibited such tape recorded private conversations. Id.
20. Id. at 589, 415 S.E.2d at 18.
25. Id. at 352, 405 S.E.2d at 45.
26. Id. at 351-52, 405 S.E.2d at 44-45.
constitute the tort of invasion of privacy."27 Acknowledging that exposure of cellular phone numbers might increase municipal telephone expenses, the court nevertheless insisted that "there is presently no exemption for such records under the act."28

The court of appeals broached the disclosure issue in McBride v. Wetherington.29 A prison inmate sought compensatory and punitive damages from a municipal police chief, charging the chief's failure to provide plaintiff's investigatory records.30 Reviewing the evidence, the court traced the chief's original refusal to disclose, based upon the Act's exemption for records of an ongoing investigation.31 Subsequently, however, the chief had relinquished, agreeing to provide the records upon plaintiff's payment of the copying fee.32 The evidence failed to indicate that the chief's actions were inappropriate, the court concluded, and the Act authorized recovery of neither compensatory nor punitive damages.33

C. Regulation

Municipal regulatory power enjoys a rich and controversial history in Georgia local government law.34 No facet of that history looms larger than

27. Id. at 352, 405 S.E.2d at 45. The court emphasized also that the municipality had made no showing that any of the numbers in issue were in fact unlisted numbers. Id.
28. Id. The court said that "[a]ny such remedy must come from the General Assembly." Id. Justices Smith and Benham wrote dissenting opinions. Id. Justice Smith was concerned that "[t]he real result of today's opinion is that any member of the general public, including convicted felons, may access the personal unlisted telephone numbers of our citizens, including police officers and their families . . . . [This] effectively denies these officers, and others, their right to privacy and frustrates their attempts to shield their families and homes from intrusion." Id. at 354, 405 S.E.2d at 46-47. Justice Benham disagreed with the court's refusal to hear an issue simply because the municipality did not raise in the court below the issue of whether some of the numbers may be exempt from disclosure under O.C.G.A. § 50-18-72(a)(3). 261 Ga. at 355-56, 405 S.E.2d at 47.
30. Id. at 7, 403 S.E.2d at 874.
32. 199 Ga. App. at 8, 403 S.E.2d at 875. O.C.G.A. § 50-18-71(c) expressly provides for a copying fee of 25 cents per page. The statute does not provide for excusal of payment when a pauper's affidavit is filed. 199 Ga. App. at 8, 403 S.E.2d at 875.
33. 199 Ga. App. at 8, 403 S.E.2d at 875. "In any event, OCGA § 50-18-73(b) only authorizes an award of attorney fees and expenses of litigation in actions brought to enforce the statute if the court determines that the action constituting a violation of the statute was completely without merit as to law or fact." Id.
the subject of this year's contribution to the mosaic. The facts in *City of LaGrange v. Troup County Electric Membership Corp.*

unfolded a municipality's effort to collect a fee from a "secondary supplier" of electricity within the corporate limits. Brandishing a 1975 ordinance purporting to impose the fee, the municipality claimed amounts allegedly due for a period of some eight years. The court of appeals approached the controversy via the avenues of both "franchise" and "license"; the court concluded that neither avenue provided support for the exaction.

The court characterized a franchise as a contract; a franchise fee, in turn, required both a contractual relationship and a statutory grant of authority. Although both the municipal charter and the Georgia Territorial Electric Service Act authorized a franchise fee for the use of municipal streets, authority alone "does not mean that there is a franchise agreement." Because the municipality conceded the absence of an express agreement, the court inquired whether the parties had created an implied franchise contract. Two points preponderated in the negative: the supplier gave the municipality no reason to anticipate compensation, and the municipality made no effort to enjoin use of its streets while resolving the dispute. The municipality could not unilaterally create an implied franchise agreement, the court declared, simply by adopting a fee ordinance.

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36. The municipality itself was the "primary supplier" of electricity. *Id.* at 418, 408 S.E.2d at 709.
37. The ordinance classified businesses and imposed a fee upon "electric services" equal to four percent of gross sales. *Id.*
38. The municipality adopted the ordinance in 1975 and demanded payment from defendant in 1976. Defendant refused to pay, and the municipality here claimed fees allegedly due for 1979 through 1987. *Id.* at 419, 408 S.E.2d at 710.
39. *Id.*
40. *Id.* at 419-20, 408 S.E.2d at 710. The court said that "the terms 'franchise' and 'license' are not synonymous" and that "in order for a city to collect a franchise fee there must be a contractual relationship between the city and the party from whom the fee is sought . . . ." *Id.*
42. 200 Ga. App. at 420, 408 S.E.2d at 711.
43. *Id.* "The City does not contend that it has an express agreement with Troup EMC, but only that there is an implied franchise agreement between the City and Troup EMC resulting from Troup EMC's acceptance of the privilege of using the City's streets after the enactment of the ordinance." *Id.*
44. *Id.* at 421, 408 S.E.2d at 711. "Troup EMC at all pertinent times disputed the City's right to collect such a fee from it." *Id.*
45. *Id.* Short of that effort, the court said, defendant supplier could reasonably have assumed that plaintiff acquiesced in defendant's continued use of the streets and did not expect payment. *Id.*
46. *Id.* at 422, 408 S.E.2d at 712.
The court then turned to the municipality’s alternative justification for the fee: the authority to license.77 Stressing the necessity for a “plain and unmistakable” grant of power, the court located the controlling charter provision.78 That provision, however, confined municipal licensing authority to businesses “‘pursued for the purpose of personal gain or profit.’”79 The “nonprofit characteristics” of the electric membership corporation, the court held, fell beyond the reach of the authorization, and the municipality was doomed to an adverse summary judgment.80

D. Contracts

Possessed of unique defenses to contractual responsibility,81 a municipality may also employ tort law’s assistance in seeking secondary liability. It was the trial court’s denial of that assistance that brought Mayor of Savannah v. Southern Bulk Industries, Inc.82 to the court of appeals.

Having been sued in contract for interruption of a customer’s water supply, the municipality filed a third-party complaint, in tort, against defendant. Defendant had actually caused the interruption, the municipality maintained, by damaging a pipeline.83 Reversing the dismissal, the court refused to view the municipal “complaint as an attempt . . . to enforce the right of contribution from a joint tortfeasor.”84 Rather, the complaint branded defendant a tortfeasor “only as to the City,”85 and in that capacity “secondarily liable for any contractual damages that the City may ultimately be obligated to pay [its customer].”86 Whether or not de-

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47. Id.
48. Id. at 423, 408 S.E.2d at 712. “The trial court closely and correctly examined the authorizing charter provisions to determine if the City’s right to collect the fee in question is conferred on the City in ‘plain and unmistakable terms.’” Id.
49. Id. (quoting LaGRANGE, GA., CHARTER § 5.20 (1968)).
50. Id. at 424, 408 S.E.2d at 713. “The trial court also properly found that the nonprofit characteristics of Troup EMC exempted it from the licensing power of the City pursuant to Section 5.20 of the City Charter.” Id.
53. Id. at 867, 403 S.E.2d at 448. The court noted that the customer’s claim “against the City is for damages allegedly caused by a breach of the City’s contract to supply water. The City’s third-party complaint, on the other hand, alleges that [defendant] . . . precipitated any breach of contract by negligently damaging the City’s pipeline.” Id.
54. Id. at 868, 403 S.E.2d at 488. “There are no allegations by the City that [defendant] is a joint tortfeasor.” Id., 403 S.E.2d at 448-49.
55. Id., 403 S.E.2d at 449.
56. Id.
fendant possessed tort defenses to the claim, the municipality could not
be denied "the right to seek to enforce that claim through resort to the
third-party procedure." \(^7\)

E. Finances

The supreme court rendered at least three noteworthy decisions con-
cerning municipal finance. \(^8\) The decision in *Collins v. City of Dalton* \(^9\)
focused upon local government's dynamic duo of revenue bonds and ad
valorem taxation. Essentially, *Collins* subjected the former to the latter.
Thus, the court held that the Constitution of 1983 \(^10\) subjected to ad
valorem taxation gas or electric generating systems financed by a munici-
pality (via revenue bonds) and located outside the county. "The purpose
. . . was to treat, on the same basis as private utilities, those municipal
utilities that finance generating or distribution facilities through bonded
indebtedness—as to such facilities that are located outside their home
counties." \(^11\) Employing a construction that frowns upon tax exemptions, \(^12\)
the court applied its decision even to municipal bonds issued prior to the
constitution's ratification. \(^13\)

*Macon-Bibb County Board of Tax Assessors v. Atlantic Southeast Air-
lines, Inc.* \(^14\) featured another familiar exemption quandary of ad valorem
taxation. \(^15\) In that case, an airline denied tax liability upon the interest in
an airport maintenance facility that it had acquired under a thirty-year
sublease from a municipal-county industrial authority. \(^16\) Acknowledging

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57. *Id.*
58. See *Collins v. City of Dalton*, 261 Ga. 584, 408 S.E.2d 106 (1991); *Macon-Bibb
County Bd. of Tax Assessors v. Atlantic S.E. Airlines, Inc.*, 262 Ga. 119, 414 S.E.2d 635
61. 261 Ga. at 585, 408 S.E.2d at 107. The municipality had issued the bonds in 1977,
and the Revenue Commissioner first issued notices of ad valorem taxes on the facilities in
1984. *Id.* at 584, 408 S.E.2d at 107.
62. *Id.* at 586, 408 S.E.2d at 108. "[T]his is a rational attempt to create some parity
between competitors, one set of which enjoys an exemption from ad valorem taxation." *Id.*
63. "The policy of the law always has looked with disfavor upon tax exemptions." *Id.*
64. *Id.*, 408 S.E.2d at 109. The court reasoned that "the state may not grant tax exemp-
tions, whether statutory or constitutional, that cannot be revoked." *Id.*
66. For treatment of that quandary, see R. Perry Sentell, Jr., *Caesar Confronts Caesar:
293 (1979).
67. The municipality had leased land to the municipal-county industrial authority which
then entered into a thirty-year sublease with the airline for an airport maintenance facility.
Construction of the facility was completed in 1989, and the municipal-county tax assessors
levied taxes upon the airline for 1990. 262 Ga. at 119, 414 S.E.2d at 635-36.
the analytical tension between a taxable “estate for years” and a non-taxable “usufruct,” the court scrutinized the provisions of the sublease. Those provisions included restrictions upon subletting, erecting signs, and uses of the premises, as well as the authority’s power to retake portions of the premises. Such restrictions characterized the airline’s interest as a mere usufruct, the court held, and “successfully rebutted the presumption that the 30-year lease was an estate for years.”

The other staple of municipal finance, the sales tax, claimed the court’s attention in City of Roswell v. City of Atlanta. Specifically, the court formulated the issue to be “the effective date for a new distribution formula for the local option sales tax when a minority municipality requests treatment as an absent municipality.” That date, the court concluded, whether the new formula resulted from a negotiated certificate or from an order of the revenue commissioner, was January 1 of the next calendar year.

F. Liability

The litigational tide of municipal liability virtually overflowed its analytical banks this year. The issues ranged the gamut, beginning with the tort “basics” of McPherson v. City of Fort Oglethorpe. That action was for the death of a pedestrian struck at the intersection of a city street and

68. O.C.G.A. § 44-6-103 (1991). The court conceded that “there is a rebuttable presumption that a lease for five years or more is a taxable estate for years.” 262 Ga. at 119, 414 S.E.2d at 636.
70. 262 Ga. at 119-20, 414 S.E.2d at 636.
71. Id. at 120, 414 S.E.2d at 636.
72. Id. at 121, 414 S.E.2d at 637. “That among these restrictions are some that may be reasonable and appropriate under the circumstances does not make them compatible with an estate for years as defined by Georgia law.” Id. at 121, 414 S.E.2d at 637.
73. Id. The court thus affirmed the trial judge’s decision that the airline’s interest in the premises was not subject to ad valorem taxation. Id. Justice Fletcher dissented, and Chief Justice Clarke did not participate. Id. at 122, 414 S.E.2d at 637.
76. 261 Ga. 658, 410 S.E.2d at 29. The court reasoned that “[r]eallocating tax procedures at the beginning of the calendar, and often fiscal, year honors the legislature’s intent to encourage negotiation and assist local governments in planning their budgets.” Id.
a state highway. Charging that the traffic signal operated on a defective timing sequence, plaintiff relied upon various commitments contained in the municipality's permit application for the signal.\textsuperscript{79} Discounting those application statements,\textsuperscript{80} and hoisting a general statute on state highways lying within municipal limits,\textsuperscript{81} the court of appeals was adamant: "Because plaintiffs did not establish any duty of the City to maintain the traffic signal, an essential element of negligence is missing . . . , and there can be no liability on the part of the City."\textsuperscript{82}

A second negligence action of the period, \textit{Haire v. City of Macon},\textsuperscript{83} sought damages for injuries incurred when plaintiff slipped on a ramp while attending a hog show at a municipal barn.\textsuperscript{84} Balancing expert testimony of the ramp's obviously defective condition\textsuperscript{85} against undisputed evidence of no prior accidents,\textsuperscript{86} the court reversed summary judgment for the municipality.\textsuperscript{87} "[A] question of fact exists here whether the ramp was a defective condition which appellee, in the exercise of ordinary care in keeping its premises safe in the more than 30 years it had owned the premises, knew or should have known would cause injury to an invitee."\textsuperscript{88}

The period witnessed a number of efforts by claimants to pursue the "nuisance" route to municipal responsibility.\textsuperscript{89} Three decisions by the

\begin{itemize}
\item \textsuperscript{79} Id. at 130, 407 S.E.2d at 100. This was the municipality's application for the signal to the State Department of Transportation; the DOT subsequently issued the permit. \textit{Id.}
\item \textsuperscript{80} Id., 407 S.E.2d at 101. "The application for a permit is merely the means by which the City agreed to install and operate the traffic signal in accordance with DOT's regulations." \textit{Id.}
\item \textsuperscript{81} See O.C.G.A. § 32-4-93(b) (1991). This statute, in the absence of municipal agreement otherwise, expressly relieves municipalities from liability for such highways. \textit{Id.}
\item \textsuperscript{82} 200 Ga. App. at 131, 407 S.E.2d at 101. "[T]here is uncontested evidence that DOT had complete control and authority regarding the timing and sequence of the traffic signal, and plaintiffs failed to show any agreement by the City to maintain the traffic signal." \textit{Id.} The court thus affirmed summary judgment for the municipality. \textit{Id.}
\item \textsuperscript{84} Id. at 744, 409 S.E.2d at 670.
\item \textsuperscript{85} "In his opinion the ramp was so bad that he could easily see it as a cause of an accident and was 'very surprised' when told there had been no other accidents." \textit{Id.} at 745, 409 S.E.2d at 671.
\item \textsuperscript{86} "It is uncontested that prior to appellant's accident, the City had received no notification that anyone had fallen or been injured in any way while using the ramp." \textit{Id.}
\item \textsuperscript{87} Id. at 744, 409 S.E.2d at 670.
\item \textsuperscript{88} Id. at 747, 409 S.E.2d at 672. Judge Andrews, joined by Presiding Judge Birdsong, dissented on grounds that plaintiff had failed to show his own ordinary care in respect to the patent defect. \textit{Id.} at 748, 409 S.E.2d at 672 (Andrews, J., dissenting). Judge Beasley also dissented. 200 Ga. App. at 747, 409 S.E.2d at 672.
\end{itemize}
court of appeals aptly illustrated the search inherent in that pursuit for the requisite municipal "knowledge."90 Grier v. City of Atlanta91 encompassed an action for injuries to a child who jumped from a train that he had boarded as it passed through a municipal park.92 Reversing summary judgment for the municipality, the court emphasized railroad employee testimony that children played on or around trains in the park on many occasions.93 Additionally, a municipal agent acknowledged the frequent presence of maintenance crews at the park.94 The court reasoned as follows: "Although there was no evidence of actual knowledge, we find that the evidence presented by appellant was sufficient to raise a question of fact as to whether the City had constructive notice of the dangerous condition."95

The court responded in similar fashion in Carter v. Mayor & Aldermen of Savannah,96 an action for injuries sustained in an intersection collision allegedly caused by a missing stop sign.97 The court canvassed evidence of reoccurring vandalizing of signs, this particular sign's replacement some four months earlier, and its absence for at least one week prior to the collision.98 Emphasizing that municipal employees were required to report missing signs, as well as the continuous presence of municipal agents in the area during the week in question,99 the court announced the following conclusion: "[W]e cannot say, as a matter of law, that one week was too short a period of time for the City to have learned about the missing stop sign and to have initiated action to remedy the dangerous situation."100

Yet another intersection collision case, Denson v. City of Atlanta,101 instanced the opposite conclusion. Denson featured a complaint that the
"conflicts monitor" on a traffic light had "malfunctioned," causing the light to shift from the normal "stop and go" pattern to a "flashing mode." Affirming the trial judge's decision for the municipality, the court explained that "under the circumstances, we hold that the occurrence of a single prior accident at the intersection during the previous night was insufficient as a matter of law to place the city on notice that a nuisance existed."

An unsuccessful reach for the "civil rights" alternative to municipal tort liability unfolded in Green v. Moreland, an action for the death of a contractor's employee while working on a bridge replacement inside municipal limits. Focusing upon failure "to enact any safety methods or procedures for construction projects," plaintiff charged local government violation of due process under Section 1983 of the Civil Rights Act. In appraising the claim, the court expressed conceptual difficulty in fitting facts to theory: "[The] purpose [of the Due Process Clause of the Fourteenth Amendment] was to protect the people from the State, not to ensure that the State protected them from each other."

Given "the state's enactment of safeguards against contact with high-voltage lines," the court could find no municipal or county default so obvious as to rise to the necessary level of deliberate indifference to the need.

102. Plaintiffs' expert testified that the intersection was dangerous when the signals were flashing. Id. at 327, 414 S.E.2d at 314.
103. That is, the trial court had granted the municipality's motion for judgment notwithstanding the verdict. Id. at 326, 414 S.E.2d at 314.
104. Id. at 328, 414 S.E.2d at 315. The court observed:

[j]in a sense the lights were not malfunctioning, in that they were not giving conflicting or inappropriate signals but were operating in the intended back-up mode. Thus, this was not a situation in which any reasonable person would necessarily have realized by mere observation that a dangerous condition existed.

Id.
107. The county had contracted with plaintiff's employer to replace the bridge located inside the municipality, and plaintiff was killed when a crane came in contact with overhead high-voltage wires. Id. at 167, 407 S.E.2d at 120.
108. Id. at 169, 407 S.E.2d at 122.
111. Id. at 170, 407 S.E.2d at 122. The court cited O.C.G.A. §§ 46-3-30 to -40.
112. 200 Ga. App. at 170, 407 S.E.2d at 122. The court cited City of Canton v. Harris, 489 U.S. 378 (1989), to require "a deliberate choice to follow a course of action . . . from among various alternatives by city [or county] policymakers." Id. The court affirmed the trial judge's summary judgment for the municipality and county. Id., 407 S.E.2d at 123.
The official immunity of the municipal officer or employee drew the court of appeals attention on three interesting occasions. In each, the court purported to follow the supreme court’s 1990 approach in Logue v. Wright: For “mere negligence” (as opposed to malice, corruption, or wilfulness) in his “official capacity” (as opposed to personal or individual capacity), the officer enjoys sovereign immunity for “discretionary” acts (as opposed to ministerial acts), unless the government has waived that immunity. Moreover, the court in Logue proceeded to classify as a “discretionary act” the officer’s decision to rush to the scene of an emergency. This year the court of appeals reached similar conclusions in Adams v. Perdue (immunity for police officer who damaged plaintiff’s car while investigating a fight); in Sinkfield v. Pike (immunity for fire fighter who injured plaintiff while responding to a fire alarm); and in Banks v. Patton (immunity for police officer who injured plaintiff while responding to an emergency). In each case, even conceding the negligence of the municipal officials, the court affirmed summary judgments in favor of the officials.

As for immunity of the municipality itself, specifically the issue of immunity waiver, the survey period encompassed important developments. Background necessary for fully appreciating those developments consists of two earlier supreme court decisions. First, in 1985, in Toombs

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116. 260 Ga. at 208, 392 S.E.2d at 237.


118. The officer backed his car into plaintiff’s car while attempting to get to the scene of the altercation. Id. at 477, 405 S.E.2d at 306.


120. The officer struck plaintiff while proceeding through an intersection. Id. at 652, 411 S.E.2d at 889.


122. The court held that failure to use the siren constituted only negligence and not willful or reckless disregard for the safety of others. Id. at 170, 413 S.E.2d at 746. Judge Beasley dissented, urging the issue to be one for the jury. Id. at 171, 413 S.E.2d at 746-47 (Beasley, J., dissenting).

123. See supra notes 100, 102, 104 and accompanying text.

County v. O'Neal, the court held counties to be among the state’s “departments and agencies” that, under Article I, Section II, Paragraph IX, of the Constitution of 1983, waived sovereign immunity by obtaining liability insurance. Second, in 1990, in Logue v. Wright, the court held that a county’s unauthorized self-insurance plan for compensating claims against its employees was not the liability insurance necessary to trigger immunity waiver. Those decisions raised two further issues: Were municipalities, like counties, included within the Article I provision on waiver; if so, what kind of “insurance” would trigger the waiver?

In the survey period case of Adams v. Perdue, the court of appeals appeared to assume that the presence of liability insurance would waive municipal immunity. The court then turned to the municipality’s participation in the Georgia Interlocal Risk Management Agency (“GIRMA”). Under that statutory plan, member municipalities pool their risks and jointly purchase liability coverage. The GIRMA statute expressly declares, however, that participation “shall not constitute the obtaining of liability insurance and no sovereign immunity shall be waived on account of such participation.” Accordingly, the court in Adams held “the City’s participation in GIRMA [did] not waive sovereign immunity, by the express terms of the statutes.”

126. Id. at 391, 330 S.E.2d at 97.
128. Id. at 209, 392 S.E.2d at 238.
129. 199 Ga. App. 476, 405 S.E.2d 305 (1991). Plaintiff sued both the municipality and its police officer for damages to his car, which was struck by the officer as he went to the scene of an altercation. Id. at 477, 405 S.E.2d at 306.
130. Id. at 478, 405 S.E.2d at 306.
133. Id. § 36-85-20.

In the period case of Allstate Ins. Co. v. City of Atlanta, 202 Ga. App. 692, 415 S.E.2d 308 (1992), the court passed upon the effect of an indemnification agreement. Id. at 692, 415 S.E.2d at 308. There, claimant was injured by a municipal truck and received payment from his insurer. The municipality then paid to the insurer as subrogation the limit of its self-insurance and received from the insurer an indemnification agreement. Later, the claimant sued municipality in negligence and nuisance, and municipality cross-claimed against insurer, arguing that the indemnification agreement completely discharged the municipality. Id. at 692-93, 415 S.E.2d at 309. The court held that absent clear and specific language to do so, the agreement did not indemnify the municipality for its own negligence. Id. at 694, 415 S.E.2d at 310.
Later in the period, the same two issues confronted the supreme court.135 *Hiers v. City of Barwick*136 featured an action against a municipality and its police chief for plaintiff’s injuries incurred when struck by a speeding car being pursued by the chief. Asserting immunity, defendants contended that the constitution’s Article I “waiver” provision did not apply to municipalities.137 Alternatively, defendants maintained, municipal participation in GIRMA did not constitute “insurance” within the meaning of the waiver provision.138 Of the supreme court’s response to those defenses, one observation can be safely tendered: utter, and unsettling, dissention prevailed.

A bare majority of the court, consisting of three justices and one superior court judge,139 held first that the Article I provision did apply to municipalities.140 Like counties, municipalities too were among the state’s “departments and agencies” that waived their immunity by obtaining liability insurance.141 “[T]he reasoning of the *Toombs* case,” the court asserted, “applies with equal force to municipalities.”142 Second, the court turned to the effect of municipal participation in GIRMA.143 Although conceding the GIRMA statute clearly to reserve the municipality’s immunity, the court viewed that reservation to run counter to Article I:144 “[W]e hold that O.C.G.A § 36-85-20 conflicts with the Constitution of Georgia and is therefore void.”145 Expressly disapproving the court of ap-

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139. Chief Justice Clarke wrote the majority opinion. Presiding Justice Weltner disqualified, and the superior court judge sat in his place. 262 Ga. at 132, 414 S.E.2d at 649.
140. Id. at 131, 414 S.E.2d at 648. Preliminarily, the court indicated that under its decision in Donaldson v. DOT, 262 Ga. 49, 414 S.E.2d 638 (1992), discussed infra note 299 and accompanying text, the 1991 amendment to Article I will control in cases filed against municipalities after January 1, 1991. *Hiers*, 262 Ga. at 130, 414 S.E.2d at 648. The action in *Hiers* accrued before, and was filed before, that date, and the 1983 version of Article I thus applied. Id. (After the survey period had closed, the supreme court decided *Curtis v. Board of Regents*, 262 Ga. 226, 416 S.E.2d 510 (1992), holding that the 1991 amendment did not apply to actions accruing before, but filed after, January 1, 1991. *Id.* at 262, 416 S.E.2d at 511.)
141. 262 Ga. at 130, 414 S.E.2d at 648.
142. *Id.* at 131, 414 S.E.2d at 648. “We now hold that the constitutional provision which waives immunity to the extent of insurance applies to municipalities.” *Id.*, 414 S.E.2d at 649.
143. *Id.*
144. “In light of the constitutional provision, a statute seeking to reserve sovereign immunity despite the existence of liability insurance cannot stand.” *Id.*
145. *Id.* at 132, 414 S.E.2d at 649. The court analogized to its decision in *Litterilla v. Hospital Authority*, 262 Ga. 34, 413 S.E.2d 718 (1992), discussed *infra* note 336 and accompanying text.
peals' approach in *Adams*, the court declared that "provision of liability insurance under GIRMA constitutes a waiver of sovereign immunity to the extent of available coverage."  

G. Zoning

Typically, the zoning controversy of *Harrison v. City of Clayton* manifested itself in the context of a citizen's action in mandamus. Plaintiff sought a municipal permit to locate, in a prohibited zone, a structure perceived by the municipality as a "mobile home." Reversing the trial judge's refusal to issue the mandamus, a unanimous supreme court applied the "strict construction" approach to municipal zoning ordinances. The ordinance in issue defined "mobile home" as a structure possessing "its own chassis," the court reasoned, a feature not encompassed by plaintiff's proposed structure. Accordingly, plaintiff's proposal fell outside the ordinance's prohibition, and a building permit was in order.

H. Authorities

Municipal authorities are, of course, statutory creations; the statute, in turn, assumes linchpin significance in determining its creation's power and responsibility. On occasion, however, the authorizing statute's language may imperil the supreme court's perception of Georgia's "public
policy." The survey period encompassed such an occasion in Metropolitan Atlanta Rapid Transit Authority v. Boswell. Plaintiff in Boswell sought compensatory and punitive damages for injuries suffered in a criminal attack on authority premises. Relying upon statutory language subjecting the authority to the same tort liability "as any private corporation," the court of appeals upheld plaintiff's claim to punitive damages.

On review, the Georgia Supreme Court adopted as exclusive rationale an opinion of the United States Supreme Court assessing the responsibility of "governmental entities" for punitive damages. Under that assessment, "such awards would burden the very taxpayers and citizens for whose benefit the wrongdoer was being chastised." Further, the governmental entity "can have no malice independent of the malice of its officials," and "[d]amages awarded for punitive purposes, therefore, are not sensibly assessed against the governmental entity itself." Expressly adopting those articulations as "the public policy of Georgia," the supreme court reversed the court of appeals and declared punitive damages against the authority "impermissible as a matter of law."

155. Id. at 427, 405 S.E.2d at 869.
156. 1965 Ga. Laws 2275 (sec. 22). "The Authority shall not enjoy governmental immunity from tort liability, but shall be liable therefor as any private corporation . . . ." Id.
158. Id.
160. 261 Ga. at 428, 405 S.E.2d at 870 (quoting City of Newport v. Fact Concerts, 453 U.S. 247, 263 (1981)).
161. Id., 405 S.E.2d at 869 (quoting City of Newport v. Fact Concerts, 453 U.S. 247, 267 (1981)). The federal court distinguished the actor himself: "If a government official acts knowingly and maliciously to [injure others], he may become the appropriate object of the community's vindictive sentiments." Id., 405 S.E.2d at 870; City of Newport v. Fact Concerts, 453 U.S. 247; 267 (1981).
162. 261 Ga. at 428, 405 S.E.2d at 870. "The expression of public policy articulated in City of Newport is in accordance with the public policy of Georgia." Id.
163. Id. Presiding Justice Smith dissented, charging the court with "nullifying" the express language of the creating statute, with "blindly" ignoring the "plain words of the statute," and with "the most blatant example of judicial legislating that I have ever seen." Id. at 430, 405 S.E.2d at 871 (Smith, J., dissenting). Moreover, "this Court has never condoned using a federal court case to set Georgia public policy when no United States Constitutional question is involved." Id.

In the subsequent survey period case of Ballard v. Metropolitan Atlanta Rapid Transit Auth., 200 Ga. App. 880, 410 S.E.2d 49 (1991), the Georgia Court of Appeals, denying punitive damages to yet another authority victim, held the issue foreclosed by the supreme court's decision in Boswell. Id. at 880-81, 410 S.E.2d at 50.
II. Counties

A. Powers

Again this year, the term “powers” refers to intracounty disputes over the reach of authority possessed by various county officials. Typically, the controversies pit the county commissioners’ overall governing power against the particular conduct of another officer. In all likelihood, the supreme court eventually will be required to examine the issue—particularly the issue of judiciary vs. executive—in some depth. For the moment, however, the court continued its narrow resolution of the focused face-off. Sufficient unto the day, it appears, is the evil thereof.

The face-off presented by *Stephenson v. Board of Commissioners* was one between the county commissioners and the clerk of the superior court. Specifically, the clerk sought to compel the commissioners to pay an attorney hired by the clerk in defending himself against an inmate’s lawsuit. The supreme court initiated its approach to the conflict by examining the clerk’s hiring authority. The search uncovered no express, implied, or inherent power in the clerk to contract for the services of an attorney. As for the commissioners, they likewise were found devoid of express power; the court’s search for implied authority, however, was more fruitful. “Because the board has the exclusive authority to control the fiscal affairs of the county and has the power to defend county officers, we conclude the board has the implicit power to employ counsel for county officers.” Power thus in place, the court then rejected plaintiff’s secondary contention that its exercise would unconstitutionally “affect”

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166. The attorney hired by the clerk was not one of those employed by the commissioners to do county work. *Id.* at 399, 405 S.E.2d at 489.
167. The parties agreed that the clerk must have counsel to defend actions against his office, but each claimed the exclusive authority to hire. *Id.* at 399-400, 405 S.E.2d at 489.
168. *Id.* at 400, 405 S.E.2d at 489. The court adhered to the general rule that “neither the counties of this state nor their officers have the power to do any act . . . not expressly authorized by a legislative grant of power or necessarily implied from an express legislative grant of power.” *Id.*
169. *Id.* “Inherent judicial power is vested in the courts of this state and not in the clerk’s offices thereof.” *Id.*
170. *Id.* at 401, 405 S.E.2d at 490. The court said that “a county governing authority does not have the express power to hire attorneys” under either the constitution or statutes. *Id.*
171. *Id.* For exclusive power over fiscal affairs, the court relied upon the local statutes creating the board. For the power to defend officers, the court relied upon O.C.G.A. § 45-9-21. O.C.G.A. § 45-9-21 (1990 & Supp. 1992); 261 Ga. at 401, 405 S.E.2d at 490.
judicial personnel. "The board's employment of counsel does not by itself negatively impact on the ability of [the clerk] or his personnel to carry out their duties." Accordingly, the clerk's effort to mandamus payment of his attorney's fees came to naught.

The case of *Cramer v. Spalding County* pitted the commissioners against the county's state court judge. Specifically, the commissioners challenged the judge's indefinite appointments of a second judge and assistant solicitor, and his financing those appointments from court funds. Again, the supreme court sided with the commissioners. In failing to "specify either the scope or length" of his appointees' services, the judge exceeded both legislatively established procedures and any inherent judicial power. Indeed, the appointments "usurped both legislative and executive functions of government," the court elaborated, and "[s]tate court judges do not have the inherent power to order a county to pay for judicial positions." With local statutes specifying the salaries of judicial officials, the court simply could not abide the judge's effort to reestablish a version of the infamous "fee system." Accordingly, the court reversed dismissal of the commissioners' challenge.

**B. Officers and Employees**

County personnel controversies of the period turned primarily on such typical concerns as position vacancies, discipline procedures, and conflicts of interest. Of these, the supreme court's resolution of *Fulton v. Baker* constituted by far the most intriguing exercise. That scenario encompassed a vacancy on the county commission, with the remaining commissioners, on February 11, appointing plaintiff to the unexpired term as
then provided by law. Taking effect on February 25, a local statute required that commission vacancies be filled by special election and declared itself retroactive to any vacancies occurring after the preceding first day of January.184 Reviewing the trial judge's rejection of plaintiff's challenge to the statute, the supreme court assayed the measure as meeting the two prerequisites of an unconstitutional "bill of attainder."188 First, "the provision applies to a limited class of easily identifiable individuals;"188 and second, "the act inflicts punishment in a 'trial by legislature.'"187 The court thus declared the statute's retroactive provision violative of both the Georgia and federal constitutions.188

A deputy sheriff's demotion and suspension gave rise to a due process complaint against both the sheriff and county in *Floyd v. Chaffin.*188 The court of appeals responded that because the county had never adopted an ordinance to the contrary,190 sheriff's department employees were not county employees and thus were not entitled to county disciplinary procedures.191 As for the sheriff, the court relied upon uncontroverted evidence that plaintiff received notice and "a full predeprivation hearing."192 Finally, the court discounted the fact that a chief detective had served both as chief investigator of the matter and as chairman of the disciplinary review board.193 That fact, the court held, failed to constitute a denial of plaintiff's due process.194

184. *Id.* at 711, 410 S.E.2d at 736. The statute was introduced in the General Assembly one day following plaintiff's appointment to the vacancy; it specifically stated that any appointee after January 1 would serve only temporarily until an election. *See 1991 Ga. Laws 3501.*

185. 261 Ga. at 712, 410 S.E.2d at 737.

186. *Id.* "It affects exclusively persons that the . . . commissioners appoint between January 1, 1991 and February 25, 1991." *Id.*

187. *Id.* "The local act, not a court of law, mandates that [plaintiff] forfeit her office. When the General Assembly passed this act, [plaintiff] was the only person who could be punished by removal from office." *Id.*

188. *Id.* at 713, 410 S.E.2d at 737; GA. CONST. art. I, § 1, para. 10 (1983); U.S. CONST. art. I, § 9.

189. 201 Ga. App. 597, 411 S.E.2d 570 (1991). The cause for the disciplinary action was plaintiff's entry of a home without a search warrant. *Id.* at 598, 411 S.E.2d at 572.


191. 201 Ga. App. at 597-98, 411 S.E.2d at 571. The county therefore was not a proper party and was not required to respond to plaintiff's discovery motions. *Id.* at 598, 411 S.E.2d at 571.

192. *Id.*, 411 S.E.2d at 572.

193. *Id.* at 599, 411 S.E.2d at 572-73. It was uncontroverted that the detective chief did not participate in the board's vote, and plaintiff had presented no evidence of the chief's unfairness. *Id.* at 599-600, 411 S.E.2d at 573.

194. *Id.* at 600, 411 S.E.2d at 573. The court thus affirmed summary judgments for defendants. *Id.*
In *Victoria’s Secret Stores, Inc. v. West*, the issue was whether an attorney, also a county commissioner, should be disqualified from representing one private party against another in the county’s state court. Argument for disqualification rested upon the fact that county commissioners voted on salary supplements for state court judges. The commissioner-attorney’s practice before the judge, it was contended, gave the appearance of “professional impropriety.” Rejecting that argument, the court of appeals relied upon the points that the commissioners possessed no power to remove state court judges, and that this commissioner never voted on the judges’ salary supplements. Accordingly, the court held no “employer-employee relationship” to be present, and no disqualification was necessary.

The “impropriety-disqualification” contention in *Otwell v. Floyd County Board of Commissioners* operated from another perspective. There plaintiff citizen sued to enjoin the county’s construction of a government complex and sought to disqualify the county attorney from the case. Plaintiff asserted that the attorney owned land surrounding the proposed complex—land that would increase in value upon the complex’s construction. That ownership, plaintiff maintained, afforded the attorney a self-interest in the case and required his disqualification. Once again, the court of appeals proved unreceptive: “The record is devoid of any evidence presented by [plaintiff] that [defendants’] attorneys did in fact have an interest in the litigation or how [plaintiff] and the other citizens she purported to represent would be harmed by the attorneys’ representation of [defendants].”

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196. The suit was one for personal injury. *Id.* at 402, 408 S.E.2d at 181.
199. The commissioner had testified that this would continue to be his policy. 200 Ga. App. at 402, 408 S.E.2d at 181.
200. *Id.* at 403, 408 S.E.2d at 182. The court thus affirmed the state court judge’s denial of disqualification. *Id.*
202. Plaintiff’s petition was one pro se. *Id.* at 596, 408 S.E.2d at 799.
203. *Id.*, 408 S.E.2d at 799-800.
204. *Id.* at 596-97, 408 S.E.2d at 800. The court thus affirmed the trial judge’s refusal to disqualify. *Id.* at 597, 408 S.E.2d at 800.
C. Openness

Openness in local government comes, of course, at a monetary cost. Although citizens are entitled to records of government business, the costs of providing those records threaten the general public with a considerable economic burden. Georgia's Open Records Act seeks to strike a balance by authorizing the government to charge copying fees for requested public records. Trammell v. Martin encompassed a county's effort to collect such fees following compliance with plaintiff's request for a "detailed statement" of all bills for legal services from a named law firm, as well as "any other billing to the County by any other person or firm for fiscal year ending June 30, 1990." The court of appeals rejected plaintiff's argument that he should not be liable for the costs of copying indigent defense bills. First, the court stressed the "clear and unambiguous language" of plaintiff's request; and second, the court noted plaintiff's decision to order copies prior to making an inspection. "Because plaintiff requested the documents to be copied, the trial court did not err in ordering him to pay those copying costs authorized" by the Act.

The mandate of the Open Meetings Act also projects balanced perspectives. As for basic applicability, the court in Kilgore v. R.W. Page Corp. held the Act to stymie a county coroner's effort at closing an inquest. Characterizing an inquest as a "meeting" within the meaning of the Act, the supreme court turned to possible exceptions. Emphasizing the absence of an express exception for "pending criminal investi-

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208. Id. at 435, 408 S.E.2d at 478. The county had supplied copies of over 5,500 pages of bills, including bills for indigent defense fees, at a copying cost of over $2,000. Id.
209. Id. at 436, 408 S.E.2d at 479. Plaintiff argued that the county should have known he did not desire the indigent defense bills. Id. at 436-36, 408 S.E.2d at 478.
210. Id. at 436, 408 S.E.2d at 478.
211. Id., 408 S.E.2d at 479. The court noted the Act's provision of a right of inspection and the usual practice of first inspecting and then selecting only the desired records. Id.
212. Id. The court did reverse and remand in respect to that part of the bill for adult indigent cases, to make certain that the county had used the most economical manner of providing that information to plaintiff. Id. The court noted that the county regularly prepared a summary of those bills every six months and that these summaries might have more economically provided plaintiff with information as to these particular charges. Id.
215. Id. at 411, 405 S.E.2d at 656.
217. 261 Ga. at 411, 405 S.E.2d at 657.
gations.” On grounds that a coroner possesses no enforcement authority, however, and that a coroner’s verdict does not constitute an indictment, the court concluded that “a coroner should not be considered a ‘law enforcement agency’ for purposes” of the exception.

As for violation consequences, the court employed the decision in Steele v. Honea to address the following issue: “Whether a claimed violation of the Open Meetings Act is a ground for recall of a public officer under the 1989 Recall Act.” On grounds that the Open Meetings Act requires that “every meeting of the county commission be open to the public” (unless expressly excepted), the court announced that a commissioner’s participation in a closed meeting “can become a ‘ground for recall’ under the Recall Act.”

D. Regulation

County regulatory activities during the survey period were synonymous with the licensing of beer. The case of Thomas v. Madison County Board of Commissioners featured old brew, but in a somewhat different container. Plaintiff applicants for a license, following county denial, sought to excuse their failure to pursue a hearing before the county com-

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218. *Id.*, 405 S.E.2d at 656. The court examined O.C.G.A. § 50-14-3, found no “criminal investigation” exception, and no grant of authority for the court “to fashion a public-interest test for determining whether meetings required to be open by the Act should nevertheless be closed.” 261 Ga. at 411, 405 S.E.2d at 656-57.


220. 261 Ga. at 412, 405 S.E.2d at 657. The court thus affirmed the trial judge’s order that the inquest be open. *Id.*


222. *Id.* at 644, 409 S.E.2d at 653. Recall petitions had been filed under O.C.G.A. § 21-4-3 against county commissioners charging them with malfeasance and misconduct for allegedly participating in closed meetings of the commission. 261 Ga. at 644, 409 S.E.2d at 653. For treatment of local government recall, see generally R. Perry Sentell, Jr., *Remembering Recall in Local Government Law*, 10 Ga. L. Rev. 883 (1976).

223. 261 Ga. at 645, 409 S.E.2d at 654 (footnote omitted).

224. *Id.* In this particular case, however, the court was unable to hold that the trial judge’s findings of fact were clearly erroneous, and thus affirmed the decision that the petitions for recall were insufficient. *Id.* at 646, 409 S.E.2d at 654. Justice Fletcher concurred to emphasize the “extremely limited nature of the judicial review” afforded by the Recall Act. *Id.* at 647, 409 S.E.2d at 654-55 (Fletcher, J., concurring).


missioners. Their reason for filing a mandamus action, plaintiffs proffered, was that a county representative told them "it would be useless to seek a hearing before the board concerning the denial because the board’s decision would not change." Rejecting that excuse, the supreme court affirmed denial of the mandamus for the reason that "all administrative remedies had not been exhausted."

The court in Groverstein v. Effingham County then focused upon the actual conduct of a required license revocation hearing. The supreme court recounted the transpiring procedures: a charged violation of the county ordinance by selling beer to a minor, a county hearing on revocation, a detective’s testimony on the violation but no identification of the purchaser, and a vote to revoke. Relying upon a deficiency of due process, the court asserted that "the only direct evidence that appellants actually violated [the county ordinance] by selling beer to the purchaser, was the equivocal hearsay testimony of the detective, based upon what the purchaser told him." On grounds that the hearing thus "did not comport with the fundamental requirements of due process," the court reversed the license revocation.

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227. Id. at 266, 404 S.E.2d at 272. Plaintiffs maintained that the county’s denial was based upon a ground not included in the county ordinance. That ordinance specifically provided for license hearings before the board. Id. See also O.C.G.A. § 3-3-2 (1990).

228. 261 Ga. at 266, 404 S.E.2d at 272 (footnote omitted).

229. Id. For treatment of the popularity of the mandamus action in local government law, and its frequent failure, see R. Perry Sentell, Jr., Miscasting Mandamus in Georgia Local Government Law (1989).

230. 261 Ga. at 266, 404 S.E.2d at 272. For a period context in which the court was far less concerned with statutory procedures, see Gwinnett County v. Bolin, 262 Ga. 67, 414 S.E.2d 225 (1992), an attack upon a county sales tax election on grounds that the board of elections had failed to properly call the election. Bolin, 262 Ga. at 67-68, 414 S.E.2d at 225. Conceding technical violation of the county ordinance, the court refused to void the election: "The failure on the part of a public officer to perform an incidental function that is purely mechanistic should not invalidate an expression of the will of the people that is regular in other respects." Id. at 69, 414 S.E.2d at 226.


232. Id. at 45, 414 S.E.2d at 208-09.

233. The court noted O.C.G.A. § 3-3-2. The statute requires local government due process, including an opportunity to cross-examine opposing witnesses. See O.C.G.A. § 3-3-2 (1990).

234. 262 Ga. at 48-49, 414 S.E.2d at 211.

235. Id. Although the court said that cross examining "opposing witnesses" did not include the purchaser not present at the hearing, "[n]evertheless, appellants were entitled to a fair hearing." Id. at 48, 414 S.E.2d at 211.
E. Legislation

Local legislation constitutes a legendary fixture in Georgia local government law. Of the issues traditionally surrounding such legislation, none is more perplexing than its relationship to general statutes. The period under survey presented the supreme court with two instances of the perplexity.

_Glynn County Board of Education v. Lane_ involved a contention of conflict between general and local legislative provisions on county school audits. General statutes require the State Department of Audits to conduct an annual audit of all state school systems, and authorize local school boards to have an additional audit. In _Lane_ the county school board argued those statutes to invalidate a local statute requiring a school audit by independent certified public accountants. The court summarily rejected that argument, denying the existence of a conflict: "The local act which provides for an independent audit . . . does not conflict with the general act but simply requires [the local school board] to do that which the general act says it may do."

The conflict contention elicited constitutional support in _Groverstein v. Effingham County_, and received more (but to no avail) solicitude from the supreme court. The challenged local legislation was a county ordinance prohibiting the sale of beer or wine to a minor. Challengers characterized that ordinance as a special law constitutionally preempted by a general statute prohibiting the furnishing of alcoholic beverages to a minor. In an analysis of two-pronged significance, the supreme court

236. For treatment of various facets of this fixture, see R. Perry Sentell, Jr., _Local Legislation in Georgia: The Notice Requirement_, 7 GA. L. REV. 22 (1972); R. Perry Sentell, Jr., _Selected Oddities in Georgia Local Government Law_, 9 GA. L. REV. 783 (1975); R. Perry Sentell, Jr., _When is a Special Law Unlawfully Special?_, 27 MERCER L. REV. 1167 (1976); R. Perry Sentell, Jr., _Unlawful Special Laws: A Postscript on the Proscription_, 30 MERCER L. REV. 319 (1978).


239. _Id._ at 546, 407 S.E.2d at 756.


242. _Id._ The court thus upheld the trial judge’s mandate of an independent audit. _Id._

243. _Id._ "We do not view this as a conflict." _Id._ Justice Bell dissented without opinion. _Id._


245. _Id._ at 45, 414 S.E.2d at 208.

246. O.C.G.A. § 3-3-23 (1990). The Georgia Constitution (presently Art. III, § 6, para. 4(a)) has long declared that "[l]aws of a general nature shall have uniform operation throughout this state and no local or special law shall be enacted in any case for which
turned back the challenge.\textsuperscript{247} First, there simply was no prohibited conflict. The effect of the ordinance, the court insisted, was “to prohibit sales to minors under more specific circumstances than does [the general statute’s] general prohibition against furnishing alcoholic beverages to minors.”\textsuperscript{248} Adopting the test earlier evolved in \textit{City of Atlanta v. Associated Builders & Contractors of Georgia},\textsuperscript{249} the court viewed the ordinance to “only augment and strengthen” the general statute, rather than to “detract” from it.\textsuperscript{250} Second, the court highlighted the following modification of the constitution’s prohibition against special laws “in any case” provided for by general laws: “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.”\textsuperscript{251} On grounds that the general statute gave local governments “discretionary powers” in regulating alcoholic beverages,\textsuperscript{252} the court declared an “express authorization” by the general statute for the county ordinance.\textsuperscript{253}

\textbf{F. Liability}

Actions against county school systems made their mark upon the period under study. Initially, \textit{Cook v. Colquitt County Board of Education}\textsuperscript{254} reaffirmed the rule that “a county board of education, unlike the school district which it manages, is not a body corporate and does not have the capacity to sue or be sued.”\textsuperscript{255} This rule’s only exception occurs

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247. 262 Ga. at 46, 414 S.E.2d at 210-11.
248. \textit{Id.} at 47, 414 S.E.2d at 210.
250. 262 Ga. at 47, 414 S.E.2d at 210.
252. “Each such local governing authority is given discretionary powers within the guidelines of due process set forth in this Code section as to the granting or refusal, suspension, or revocation of the permits or licenses.” \textsc{O.C.G.A.} § 3-3-2(a) (1990).
253. 262 Ga. at 47, 414 S.E.2d at 210. Still, the court noted, the ordinance could not be in conflict with the general statute. \textit{Id.}
255. \textit{Id.} at 841, 412 S.E.2d at 828.
when the statute creating the board so provides, the supreme court declared, and the Constitution of 1983 made no change in the matter.\textsuperscript{256} The court of appeals was equally unreceptive to a student's action in \textit{Wayne County Board of Education v. Tyre},\textsuperscript{257} alleging due process violations in plaintiff's three day disciplinary suspension.\textsuperscript{256} The court recounted evidence that plaintiff was made aware of the charge against him shortly after the incident\textsuperscript{256} and was then given an opportunity to answer that charge.\textsuperscript{256} "This," the court asserted, "eliminated all genuine issues of material fact regarding plaintiff's claim that [he] was not afforded procedural due process."\textsuperscript{256}

Alleged county " takings" accounted for several instances of litigation; none were successful.\textsuperscript{262} \textit{Amos Plumbing & Electric Co. v. Bennett}\textsuperscript{263} featured an action by the owner of a private water system for the county's installation of a competing system.\textsuperscript{264} Canvassing possibilities, the supreme court alluded to whether the county's actions had physically damaged plaintiff's property, or whether plaintiff held either an exclusive franchise or a "no-compete contract."\textsuperscript{266} Answering in the negative, the court found plaintiff's only damage to be the loss of "its business with customers who chose to tap on to the county system."\textsuperscript{266} That damage, the court held, was insufficient to trigger county responsibility "under the taking clause of the Georgia Constitution."\textsuperscript{267}

\textsuperscript{256} Id., 412 S.E.2d at 828-29. Specifically, the court held that neither Ga. Const. art. I, § 2, para. 9 (1983), nor its amendment "create any new entities or bodies corporate, nor destroy any old ones." 261 Ga. at 842, 412 S.E.2d at 829. Chief Justice Clarke and Presiding Justice Weltner dissented without opinions. \textit{Id.}


\textsuperscript{258} Id. at 384, 404 S.E.2d at 810.

\textsuperscript{259} The incident occurred during a Saturday outdoor band competition, and the band director then told plaintiff that he must appear before the assistant principal on Monday in respect to a disciplinary suspension. \textit{Id.} at 384-85, 404 S.E.2d at 810.

\textsuperscript{260} \textit{Id.} at 385, 404 S.E.2d at 811. Plaintiff went before the assistant principal on Monday, was told of the charge, and, upon failure to explain, was suspended for three days. \textit{Id.}, 404 S.E.2d at 810.

\textsuperscript{261} \textit{Id.} at 386, 404 S.E.2d at 811. The court reversed the trial judge's refusal to grant defendants' motion for summary judgment. \textit{Id.}


\textsuperscript{263} 261 Ga. 810, 411 S.E.2d 490 (1992).

\textsuperscript{264} \textit{Id.} at 810, 411 S.E.2d at 490. Plaintiff had acquired the water system from a subdivision's developer and had distributed water to the subdivision since 1987. \textit{Id.}

\textsuperscript{265} \textit{Id.} at 811, 411 S.E.2d at 490-91. "Thus, the developer's contractual grant to [plaintiff] cannot be construed to prevent the county from constructing and maintaining a competing water system." \textit{Id.}, 411 S.E.2d at 491.

\textsuperscript{266} \textit{Id.}

The court of appeals reached a similar conclusion in *Provost v. Gwinnett County*,
concerning land damage due to increased water run-off from county-approved upstream
construction. Acknowledging prior impositions of liability for takings that created nuisances,
the court viewed those cases to require both county approval of the upstream
development and failure to maintain a culvert. Drawing the line, the
court construed the evidence to show only the county's approval of the
upstream project and "an increase in water, sediment and debris flowing freely
through a culvert onto [plaintiffs'] property." Absent the defective
drainage, the court sustained a directed verdict for the county.

*Puckett v. Gwinnett County* concerned land taken from plaintiff by a county's road realignment some fourteen years earlier. On grounds
that plaintiff had not submitted a written claim to the county within
twelve months of accrual, as required by statute, the court rejected the complaint. It was immaterial that for a period of thirteen years, county
officials had assured plaintiff he would receive compensation and had promised that the situation would be "looked into." Those verbal commitments were insufficient, the court concluded, to toll the running of the
notice requirement.

In actions against counties for personal injury and wrongful death, cases of the period cautioned claimants not to forget the standard de-
defenses of traditional tort law. For instance, *Welch v. Douglas County* featured a claim for injury sustained when plaintiff stepped on a nail in a

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269. Id. at 713, 405 S.E.2d at 755.
272. 199 Ga. App. at 714, 405 S.E.2d at 756.
273. Id. at 715, 405 S.E.2d at 757.
275. Id. at 53, 406 S.E.2d at 561. Subsequently, plaintiff's construction company had paved the road and over the years plaintiff had sold lots by deeds referring to the new road as the boundary line. Id.
278. Id. at 53, 406 S.E.2d at 562.
279. Id. at 54, 406 S.E.2d at 562. The court thus affirmed the trial judge's grant of summary judgment for the county. Id.
board at the county's ball field. Affirming summary judgment for the county, the court of appeals relied squarely upon the Georgia Recreational Property Act. Under that statute, land owners (both private and public) are freed from the duty of care for the safety of those who use the premises for recreational purposes without payment of a fee. The court rejected plaintiff's contentions that the county had waived statutory immunity by maintaining the property and by purchasing liability insurance. The only available waiver, the court posited, was wilful and malicious conduct, and plaintiff offered no evidence of such conduct on the county's part.

Making essentially the same point, Turner v. Walker County presented an action for the wrongful death of plaintiff's husband. Decedent was killed while performing a misdemeanor sentence of community service by operating the county's front-end loader at the county landfill. Spurning plaintiff's arguments of defective equipment and county liability insurance, the court seized upon the exculpation agreement signed by the decedent. That agreement established a "complete defense" to the action, the court asserted, and, because it would have barred decedent had he lived, was good against decedent's representatives in a wrongful death action.

281. Id. at 269, 404 S.E.2d at 451. Plaintiff attended a baseball game at the field where her brother played. Id.
284. 199 Ga. App. at 270, 404 S.E.2d at 451. "Under plaintiff's construction, a landowner would enjoy immunity only if he essentially abandoned the property and did nothing to maintain it." Id.
285. Id. "Plaintiff confuses sovereign immunity with the specific limitation of duty granted to any landowner, public or private, by the Recreational Property Act." Id., 404 S.E.2d at 451-52.
286. Id., 404 S.E.2d at 452. The court reasoned that this exception required wilful failure to guard or warn which, in turn, required the county's actual knowledge of the hazard. Id.
288. Id. at 565, 408 S.E.2d at 819.
289. Id. Plaintiff's decedent had represented he was an experienced heavy equipment operator and had requested to do work of that nature. He was killed when the loader overturned. Id.
290. I.e., the absence of roll bars. Id.
291. I.e., a liability policy covering both the loader and the landfill premises. Id.
292. Id. The agreement expressly assumed liability for any injury sustained and promised not to institute proceedings against the entity involved. Id.
293. Id.
294. Id. at 566, 408 S.E.2d at 819. The court held that the only exception to the agreement would be wilful or wanton conduct, and remanded for a determination on whether the county's liability insurance covered such conduct in which event the county's sovereign immunity would be waived to that extent. Id., 408 S.E.2d at 820.
As recounted earlier, the supreme court's 1985 decision in *Toombs County v. O'Neal* included counties among the state's "departments and agencies" that, under Article I, Section II, Paragraph IX, of the Constitution of 1983, waived sovereign immunity by obtaining liability insurance. In 1990, the voters ratified an amendment to the Article I provision that operated to extend sovereign immunity to all state departments and agencies, regardless of insurance. A long-festering controversy over the validity of that amendment, centered upon the nebulous wording of the 1990 ballot, came to a head in the survey period case of *Donaldson v. Department of Transportation*. In *Donaldson* the supreme court held valid ratification to depend not upon the voters understanding the amendment, but simply upon whether the ballot language "was sufficient to indicate which amendment was being voted on." Applying that test, the court held the amendment valid against challengers' attacks, but only prospective in its effect. Accordingly, the amendment "does not

In Battallia v. City of Columbus, 199 Ga. App. 897, 406 S.E.2d 290 (1991), the court employed a presumption that the General Assembly obtained federal preclearance in consolidating local governments, as required by the Voting Rights Act of 1965 (42 U.S.C. § 1973c (1981)), and held that the defendant consolidated government enjoyed county immunity to an action for injuries sustained by plaintiff from a fall in the street. *Id.* at 898, 406 S.E.2d at 291. For background on the preclearance issue, see R. Perry Sentell, Jr., *Federalizing Through the Franchise: The Supreme Court and Local Government*, 6 Ga. L. Rev. 34 (1971).


297. *Id.* at 391, 330 S.E.2d at 96. See also Hiers v. City of Barwick, 262 Ga. 129, 414 S.E.2d 647 (1992), discussed in text accompanying supra note 196, extending the Article I provision to municipalities as well.

298. 1990 Ga. Laws 2435. This amendment provides that sovereign immunity of the state and its departments and agencies can be waived only by the General Assembly's enactment of a State Tort Claims Act. *Id.*

299. 262 Ga. 49, 414 S.E.2d 638 (1992). Challengers argued that the language of the ballot was affirmatively misleading in causing voters to think they were voting for less governmental immunity when the amendment actually provided for more immunity. *Id.* at 50, 414 S.E.2d at 639.

300. *Id.* at 51, 414 S.E.2d at 640.

301. *Id.*, 414 S.E.2d at 641. The court viewed the ballot language as incomplete but not affirmatively misleading, and denied the certainty that the amendment would increase government immunity: "It may indeed stimulate the passage of a tort claims act." *Id.* at 52, 414 S.E.2d at 641. Presiding Justice Weltner, joined by Justice Benham, dissented with the position that the ballot language was affirmatively misleading and that the amendment should be held invalid. *Id.* at 53, 414 S.E.2d at 644 (Weltner, J., dissenting).

302. 262 Ga. at 53, 414 S.E.2d at 641. "The amendment ... is silent on the issue of retroactive application. We conclude therefore that the legislature intended prospective application only." *Id.*
act to withdraw any waiver of sovereign immunity for actions pending on January 1, 1991, the amendment's effective date."\textsuperscript{303}

Two days later, in Papp v. Hall County,\textsuperscript{304} the supreme court applied Donaldson directly to counties. Papp presented a wrongful death action against a county, filed in 1988. The trial judge dismissed the action, despite the existence of county liability insurance, in reliance upon the 1991 amendment to the Article I provision.\textsuperscript{305} Reversing, the supreme court simply hoisted Donaldson's declaration "that the amendment at issue is not to be retroactively applied."\textsuperscript{306}

G. Zoning

The supreme court took yet another step\textsuperscript{307} in evolving the construction of general statutes comprising the "Zoning Procedures Law."\textsuperscript{308} Specifically, the court in Atlanta Bio-Med, Inc. v. DeKalb County\textsuperscript{309} focused upon a text amendment to a county zoning ordinance, an amendment allowing medical waste incinerators in commercial and heavy industrial zoned districts.\textsuperscript{310} One of the issues presented by the case was whether the amendment constituted a "rezoning decision" subject to the Procedures Law's requirements that the involved property's location be published and the property posted with a sign.\textsuperscript{311} Reversing the trial judge, the supreme court held those requirements inapplicable to the county's "enactment of a zoning ordinance text amendment that allows a new permitted use."\textsuperscript{312} The court's analysis restricted the requirements to zoning decisions affecting "a single parcel or a limited number of parcels of prop-

\textsuperscript{303} Id. at 54, 414 S.E.2d at 642. Because this action was filed on June 3, 1988, the court thus reversed the trial judge's dismissal of the action against the Department of Transportation. Id.

\textsuperscript{304} 262 Ga. 72, 414 S.E.2d 655 (1992).

\textsuperscript{305} Id. at 72, 414 S.E.2d at 655.

\textsuperscript{306} Id. It should be noted that after the close of the survey period, the supreme court decided Curtis v. Board of Regents, 262 Ga. 226, 416 S.E.2d 510 (1992), holding that the 1991 amendment also did not apply even to actions filed after January 1, 1991, but which accrued prior to that date. Id. at 228, 416 S.E.2d at 511. For such actions, the 1983 Article I immunity waiver provision applies.


\textsuperscript{309} 261 Ga. 594, 408 S.E.2d 100 (1991).

\textsuperscript{310} Id. at 594, 408 S.E.2d at 101. The local governing authority had adopted the amendment and then attempted to rescind it; the court eventually held the amendment valid and the attempted recision invalid. Id. at 596, 408 S.E.2d at 102.

\textsuperscript{311} Id. at 596; 408 S.E.2d at 102; O.C.G.A. § 36-66-4(b) (1987).

\textsuperscript{312} 261 Ga. at 595, 408 S.E.2d at 102.
they did not apply to ordinance text amendments that "would affect all property in the county zoned for heavy industrial use."314

Featuring a distinctly different concern, the decision in Michiels v. Fulton County318 posited a point on the graph of local government zoning arguably intersected by the law of estoppel.319 Specifically, plaintiff property owners hoisted the concept of equitable estoppel against the county’s recission (roughly one year after issuance) of a permit for a driveway curb cut.321 Initially assessing the permit to violate the county’s zoning ordinance,318 the supreme court termed the permit’s issuance “clearly an unauthorized act.”319 Said the court: “the clerk who performed that ministerial function had neither the authority to waive any of the conditions of the zoning ordinance nor the authority to issue a curb cut permit which violated any of those conditions.”320 Because zoning is an undeniable “governmental function,” the court embraced the precept that “equitable estoppel will not apply so as to frustrate or contravene a governmental function of a governmental unit.” 321 Accordingly, the court sustained the county’s recission of the permit.322

H. Authorities

The survey period proved to be an important one for county hospital authorities. The nebulous issue of calculating punitive damages recaptured the supreme court’s attention in Hospital Authority v. Jones,323 an earlier decision324 remanded by the United States Supreme Court for re-

313. Id.
314. Id. The court said that the fact that proponents of the amendment “had a specific parcel of property in mind for the development of their medical waste incinerator does not change the character of the zoning decision.” Id.
316. For treatment of that intersection in context see R. Perry Sentell, Jr., THE DOCTRINE OF ESTOPPEL IN GEORGIA LOCAL GOVERNMENT LAW (1985).
317. 261 Ga. at 397, 405 S.E.2d at 42.
318. Id. “It is also clear that in approving the petition for rezoning, the commissioners, as a condition of the rezoning, intended that there was to be no access from the subdivision lots directly onto Riverside Drive.” Id.
319. Id.
320. Id.
321. Id. (quoting Corey Outdoor Advertising, Inc. v. Board of Zoning, 254 Ga. 221, 327 S.E.2d 178 (1985)).
322. Id. at 397-98, 405 S.E.2d at 42. Presiding Justice Smith dissented without opinion. Id. at 398, 405 S.E.2d at 42.
323. 261 Ga. 613, 409 S.E.2d 501 (1991). The case raised neither the issue of immunity nor the appropriateness per se of punitive damages against a hospital authority.
324. Hospital Auth. v. Jones, 259 Ga. 759, 386 S.E.2d 120 (1989). The case involved physical injury to a patient being airlifted to the authority’s hospital when the helicopter crashed. The theory of liability rested upon an alleged authority policy of diverting patients...
Having originally upheld a sizeable jury award of punitive damages against the hospital authority, the court had "rejected the notion that punitive damages must necessarily bear some relationship to the actual damages awarded by the jury." On this second presentation of the issue, the court found nothing in the federal point of reference to demand a different resolution. The deterrence purpose of punitive damages remained unaffected by the happenstance that plaintiff received only slight actual harm. The "potential harm to other patients" warranted the punitive award. "Society's interest would seem better served by deterring objectionable conduct at the first opportunity so that the potentially greater injury which might otherwise be caused by such conduct might be avoided."

The supreme court's most noteworthy pronouncement on hospital authorities came essentially as a follow-up to its 1989 decision in Self v. City of Atlanta. In Self the court dramatically reversed its field and held that legislative "sue and be sued" language appearing in enabling statutes would no longer constitute a waiver of sovereign immunity. In 1991, the court of appeals applied Self to conclude that hospital authorities "are entitled to the defense of governmental immunity except to the extent there has been a waiver under the constitutional provision." Further, the court held that the new rule of Self applied retroactively to cases already filed prior to that decision. Finally, the court of appeals to the authority's own hospital. The jury awarded $5,001 in actual damages and $1,300,000 in punitive damages. Id. at 760, 386 S.E.2d at 502.


Id. at 614, 409 S.E.2d at 503.

Id. at 615, 409 S.E.2d at 503. "While the Supreme Court in Haslip analyzed the punitive damages award by comparing it to the actual award, nothing in the opinion mandates such a comparison." Id.

Id. "Surely the process is not rendered unconstitutional by permitting the deterrence of potentially dangerous conduct at a point in time when the injury is slight and when only nominal damages may be involved." Id.

Id.

Id. The court observed that O.C.G.A. § 51-12-5.1(g), enacted in 1987 after this occurrence, would have limited the punitive damages to $250,000. 261 Ga. at 616 n.6, 409 S.E.2d at 504 n.6.


259 Ga. at 80, 377 S.E.2d at 676. Although the language in Self appeared in a municipal charter, the court was clear that its decision extended across the board to all authorizing enactments. Id.


Id. at 349, 404 S.E.2d at 800. "Accordingly, we find the equities do not demand an exception to the general rule of retroactive application of court decisions, and thus we will
concluded, the hospital authority did not waive its immunity by maintaining a "liability trust" to self-insure against its first three million dollars of liability.338

It was solely this final conclusion that attracted the supreme court's grant of certiorari in Litterilla v. Hospital Authority.338 Elaborating upon its practices, the court observed that the hospital maintained the "liability trust" for claims under two million dollars and purchased an "Umbrella Liability Policy" for excessive claims.337 Nothing in the constitution's provision for immunity waiver338 the court insisted, required that the authority's "insurance program must include exclusively commercial insurance."339 Disagreeing with the court of appeals, therefore, the supreme court declared "that the Umbrella Liability Policy together with the trust fund created by the Hospital . . . constitutes 'liability insurance protection' within the meaning of the constitutional provision and therefore acts as a waiver of sovereign immunity."340

apply Self retroactively." Id. Judge Carley dissented on the point of retroactive application; he was joined by Judge Pope. Id. at 352, 404 S.E.2d at 801 (Carley, J., dissenting).

335. Id. at 350, 404 S.E.2d at 800 (Carley, J., dissenting).

Since we determined . . . that the Authority is a county entity or instrumentality, we are constrained to conclude that under Logue the Authority is not authorized to establish a self-insurance fund, and thus the liability trust maintained by the Authority is not a self-insurance fund and its existence does not constitute a waiver of the Authority's governmental immunity.


336. 262 Ga. 34, 413 S.E.2d 718 (1992). "We limit our review here to that issue." Id. at 35, 413 S.E.2d at 719.

337. Id. at 36, 413 S.E.2d at 719.


339. 262 Ga. at 36, 413 S.E.2d at 720. "To do so would inhibit any governmental entity that elects to waive its immunity from pursuing the most cost-effective means of covering its liability." Id.

340. Id. The supreme court's most difficult analytical challenge came in distinguishing its decision here from that it had reached two years earlier in Logue v. Wright, 260 Ga. 206, 392 S.E.2d 235 (1990), and upon which the court of appeals had relied here in Litterilla. In Logue the court had held that although the county budgeted its "department of risk management" to compensate claims against its employees, that program was devoid of statutory authorization. Thus, the court declared the program "not a self-insurance plan which will waive sovereign immunity." Logue, 260 Ga. at 209, 392 S.E.2d at 238. Here in Litterilla the court said that Logue "involved a self-insurance program which provided liability insurance to cover governmental employees for their acts of negligence committed in the scope of their official duties." Litterilla, 262 Ga. at 36, 413 S.E.2d at 719-20. Such programs are subject to legislative regulation, the court said, and no program of self-insurance to cover official immunity was authorized. However, "[i]n this case, the entity that attempts to assert sovereign immunity has, itself, purchased an Umbrella Liability Policy and provided self-insurance to
III. Legislation

Space limitations again render impossible meaningful description of 1992 statutes affecting local government. The following highly selected sketches (all general statutes) merely hint at the range of concerns attracting legislative attention this year.

A municipality must provide the county with advance notice of proposed annexations, and, subsequently, a map of the annexed area; annexations become effective on the last day of a calendar quarter; certain county facilities and roads in the annexed area become municipal responsibilities; and a municipality need wait only three years after an area’s de-annexation before considering re-annexation. For “60% annexations,” signatures must be collected within one year; a municipal service plan must be submitted prior to the public hearing; petition signatures may be withdrawn within three days after the hearing. A municipality may annex its unincorporated “island” areas of less than fifty acres by passage of an ordinance, and is prohibited from annexing additional unincorporated areas.

Local government notices of emergency meetings must include anticipated subjects and governing authority meetings on filling vacancies must be open. Open meeting and open record violations result in attorney fees to complainants only if the violative actions were without substantial justification; criminal penalties are eliminated. Local governments must release as public documents information on up to three finalists in searches for management employees. Public records need not be provided for commercial solicitation purposes, and local governments may charge for the cost of disks or tapes used in supplying public records.

cover its own potential liability. Under the language of the constitutional provision [Art. I, § 2, para. 9], that insurance serves as a waiver of sovereign immunity.” Id., 413 S.E.2d at 720.

342. Id. § 36-36-2(a).
343. Id. § 36-36-7.
344. Id. § 36-35-2(b).
345. Id. § 36-36-32(g).
346. Id. § 36-36-35(a).
347. Id. § 36-36-36(c).
348. Id. §§ 36-36-90(3), -92(b).
349. Id.
350. Id. § 50-14-1(d) (Supp. 1992).
351. Id. § 50-14-3(6).
352. Id. § 50-14-5(b).
353. Id. § 50-18-72(a)(7).
354. Id. § 50-18-71(f).
Local government elected officials were covered by some of the requirements of new ethics legislation, including a limitation of $1,000 per contributor on campaign contributions to persons seeking local offices. Additionally, the employees and board members of regional development centers became the subjects of new standards and limitations regarding their doing business with the centers.

The municipal interest in redeveloping and reinvigorating former “downtown” areas attracted legislative assistance in the form of criteria for determining the area involved. In an effort at evolving a comprehensive approach to the matter, the legislature granted municipalities various powers for effecting revival through their respective downtown development authorities.

Local government peace officers must now complete their basic training courses within six months of employment. Additionally, local governments are to be reimbursed for the training costs of peace officers who are hired away by other agencies within a period of fifteen months.

County governing authorities are empowered to contract with in-county municipalities to furnish municipal court services through the county state court. Municipal courts, in counties where there are no state courts, are invested with jurisdiction over criminal trespass offenses. Municipalities may contract with any county governing authority for jail services.

Local governments seeking extraterritorial condemnation for airport projects must receive approval of the condemnation from the local government of the property’s location.

Local governments are prohibited from regulating the use, distribution, transportation, disposal, or registration of pesticides. The government may, however, continue to issue business licenses for the sale or application of pesticides, and may seek a variance from the above prohibitions (from the Commissioner of Agriculture) in order to implement stormwater management programs.

355. Id. §§ 21-5-41(a.1), -42(b), -43(b), 43.1(b) (Supp. 1992).
356. Id. § 21-5-43.
357. Id. § 36-42-3(3).
358. Id. § 36-42-4.
359. Id. § 35-8-9(a) (Supp. 1992).
360. Id. § 35-8-22(a).
361. Id. § 15-7-80 (Supp. 1992).
362. Id. § 36-32-10.1(a).
363. Id. § 15-21-94(a).
364. Id. § 6-3-22 (Supp. 1992).
365. Id. § 2-7-113.1(a) (Supp. 1992).
366. Id. § 2-7-113.1(b).
IV. Conclusion

Local government law's dynamic drive to dominance dramatically dwarfed by contrast the dissipating descent toward disaster documented for some domains this year. The natural temptation to savor the moment must be tempered by the resounding realization of the inevitable: Of the analytical discipline to which much is justifiably accorded, much is likewise expected. Next year's survey will undoubtedly record the results of those expectations.