Local Government Law

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

It was the law's year for public preoccupation. Whether the criminal trial of famous figures or the investigation of terrorism's unspeakable evils, law levied an unprecedented hold upon public attention. That same intensity of exposure ran its course in local government law as well. Whether judicial or legislative, a scrutiny of dominating proportions suffused Georgia's municipalities and counties in the spotlight of public concern. This survey offers an account of that scrutiny.

I. MUNICIPALITIES

A. Annexation

Over time, the general assembly has authorized municipal annexation by ordinance in a number of contexts. The most recent authorization applied to "unincorporated islands" within the municipality, areas "consisting of 50 acres or less with . . . aggregate external boundaries abutting the annexing municipality." A municipal effort at employing that authorization culminated in Culpepper v. City of Cordele. The

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3. 212 Ga. App. 890, 443 S.E.2d 642 (1994). The challenged annexations were but a part of the municipality's attempt to identify and annex numerous separate areas of unincorporated land "in a comprehensive effort to incorporate 'unincorporated islands' contiguous to the existing corporate limits at the time of the annexation." Id. at 890, 443 S.E.2d at 643.
case featured two unincorporated areas, each consisting of more than fifty acres and traversed by a railroad right-of-way. Invalidating the annexations, the court of appeals rejected the municipal position that the right-of-way constituted a strip of municipal territory dividing the two areas into four areas of less than fifty acres. Rather, the court found no evidence that the right-of-way had ever been incorporated; thus, "the railroad right-of-way, along with the areas it traversed, formed two unincorporated areas in excess of fifty acres, which the municipality could not annex under the legislative authorization."

The general assembly has been far less generous with its power of municipal de-annexation; historically, the legislature itself exercised that power through the passage of local statutes. Lee v. City of Villa Rica illustrated the technique, as well as the striking results it can entail. Lee presented a municipal mayor's challenge to a statute de-annexing the area including the mayor's residence and thereby disqualifying him for the office of mayor. Rejecting the challenger's arguments that the statute constituted a bill of attainder and that it

4. Id. at 892-93, 443 S.E.2d at 644-45.
[T]he city's position is that the railroad right-of-way was an incorporated strip of land providing a municipal boundary which divided the two unincorporated areas exceeding fifty acres into four unincorporated areas, each containing less than fifty acres, each contiguous to the existing corporate limits, and each qualifying for annexation as an "unincorporated island" under Article 6.

5. Id. at 891, 443 S.E.2d at 643.

6. Id. at 890, 443 S.E.2d at 645. The court rejected the municipal argument that a "de-facto annexation" of the right-of-way had occurred by way of "city police investigation of incidents at public street crossings along the right-of-way, and limited city police and fire protection provided along the right-of-way as it abutted the city." Id. at 893, 443 S.E.2d at 644-45.

7. Id. at 893, 443 S.E.2d at 645. Accordingly, the court reversed the trial judge's decision validating the annexation. Id.


11. Id. at 606, 449 S.E.2d at 296. The municipal charter required that the mayor reside in the city and "be registered and qualified to vote in city elections during his period of service." Id., 449 S.E.2d at 297.

12. Id. at 607, 449 S.E.2d at 297. The court reasoned that "the de-annexation legislation is not a bill of attainder because it neither singles out [the mayor] nor punishes
unlawfully shortened his term of office, a unanimous supreme court ordered the mayor to vacate the position.

B. Officers and Employees

Litigation by and involving municipal officers and employees ranged the spectrum during the survey period. The officer's oath of office constituted the focal point of State v. Tullis, a police officer's indictment for violation of his oath (a felony) by his committing the misdemeanor theft of shoplifting. Affirming the indictment's dismissal, the court of appeals refused to interpret the oath violation statute to "render any commission of a misdemeanor by a police officer a felony." Rather, the court observed, "previous decisions uniformly require some connection between the offense and the public officer's official duties."

A former police officer himself mounted the offensive in Terrell v. Georgia Television Co., an action in defamation for a television broadcast on the occasion of plaintiff's resignation. The action charged defendant's reporter with quoting the municipal mayor's characterization of certain funds as "unaccounted for" at a time when the
auditor had found the funds properly documented. Emphasizing the "high standard of proof" required of public officials in suing the media, the court held the reporter's reliance upon the mayor's statement, as well as her failure to consult the city clerk, to fall short of "actual malice."

Other employee dissatisfactions materialized in contests over employment contracts. In Guthrie v. Dalton City School District, for instance, plaintiff teacher sought breach-of-contract damages from the municipal school board for its attempted rescission of a settlement agreement. Refusing to permit the board to brandish its violation of the Open Meetings Law as a means of voiding the agreement, the court found no action contesting the violation within ninety days. In the absence of such action, the alleged violation became immaterial,

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22. 215 Ga. App. at 150-51, 449 S.E.2d at 898. Plaintiff also charged that a purported retraction falsely indicated that the auditor's report came after the mayor's statement to the reporter. Id. at 151, 449 S.E.2d at 898.

23. Id. at 151, 449 S.E.2d at 899. "[T]here must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." Id. "A public official in a defamation action must show actual malice with 'convincing clarity,' even on motion for summary judgment." Id. at 152, 449 S.E.2d at 899.

24. Id. "Even given the reporter's supposed knowledge of the mayor's alleged fear of [the police officer], her reliance on the mayor's statement as authoritative and her mere failure to investigate his statement by consulting the city clerk do not establish bad faith, much less 'actual malice,' even if a reasonably prudent person would have investigated." Id. Accordingly, the court affirmed the trial judge's summary judgment in favor of defendant. Id. at 153, 449 S.E.2d at 900.


26. Id. at 851, 446 S.E.2d at 528. Under the agreement, plaintiff had surrendered his teaching certificate and resigned his teaching position in return for defendants' agreement to employ him in a noncertified position for the additional year required for plaintiff's retirement benefits. Id. at 850, 446 S.E.2d at 527.

27. O.C.G.A. §§ 50-14-1 to -6 (1994). The board alleged that its approval of the agreement occurred in a meeting which violated the statute and thus suffered the statute's declaration that "[a]ny resolution, rule, regulation, ordinance, or other official action of an agency adopted, taken, or made at a meeting which is not open to the public as required by this chapter shall not be binding." 213 Ga. App. at 851, 446 S.E.2d at 528 (quoting O.C.G.A. § 50-14-1(b) (1994)).

28. 213 Ga. App. at 852, 446 S.E.2d at 529. That requirement also appears in O.C.G.A. § 50-14-1(b), leading the court to conclude that "the question becomes whether '[a]ny action contesting the alleged violation, commenced within 90 days of the date such contested action was taken.'" 213 Ga. App. at 852, 446 S.E.2d at 528-29.

29. 213 Ga. App. at 852, 446 S.E.2d at 529. The court rejected defendants' position that a later board meeting, at which plaintiff's employment request was deferred, amounted to a "contesting action." Said the court: "While the Board's statement released at the meeting suggested that further action was appropriate in order to comply with the law, this did not amount to a conclusion that any violation had already taken place." Id.
and "the superior court erred in granting the movant defendants' motion for partial summary judgment."

The litigating teacher in King v. Board of Education of Buford sought to mandamus the board to honor her contract as school band director until providing her a hearing under the Georgia Fair Dismissal Law. Rejecting plaintiff's efforts, a majority of the court of appeals focused precisely upon the position of "band director." Relying upon evidence from the State Professional Standards Commission, the court determined that "the position of 'band director' is not in itself a distinct 'position' affording [plaintiff] the procedural protections of the Fair Dismissal Law."

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30. Id. The court also found the board possessed of authority to make the settlement agreement, but deemed further evidence necessary for a determination on the validity of the board's additional agreement to expunge certain records. Id. at 852-53, 446 S.E.2d at 529.


32. Id. at 325, 447 S.E.2d at 658. The court was at pains to consider the supreme court's transfer of the case as approving the mandamus procedure itself. "Therefore, we do not consider procedural matters militating against mandamus relief in particular . . . ." Id. at 326, 447 S.E.2d at 658. For extensive discussion of those "matters," see R. Perry Sentell, Jr., Miscasting Mandamus in Georgia Local Government Law (1989).


34. 214 Ga. App. at 326, 447 S.E.2d at 659. "[Plaintiff] essentially contends that the Board's decision not to reassign her as the school's 'band director' after having assigned those duties to her for the previous four years is a 'demotion' within the meaning of the Fair Dismissal Law. We are constrained to disagree." Id.

35. Id. at 327, 447 S.E.2d at 659. Refusal of the status was not one, the court explained, within the meaning of being demoted "from one position in the school system to another." Id.

36. Id. "That body has declined to establish the position of 'band director' as a cognizable tenured position. This is a matter within the Commission's lawful discretion." Id.

37. Id. The court flatly rejected plaintiff's position "that, over time, a teacher may attain a property right in any extracurricular undertaking he or she is allowed to pursue if additional compensation is received as a result." Id. Chief Judge Pope, Presiding Judge McMurray, and Judges Blackburn and Banke dissented. Id. at 328, 447 S.E.2d at 660 (McMurray, P.J., dissenting).

In the survey period decision in Dowling v. Atlanta City School Dist., 216 Ga. App. 688, 455 S.E.2d 399 (1995), the court of appeals overruled Henderson v. Sherrington, 189 Ga. App. 498, 376 S.E.2d 397 (1988), and held that at least where it takes a § 1983 action to effect a postdeprivation remedy, a plaintiff [school district employee] with the right to a predeprivation hearing does not lose her § 1983 and § 1988 claims for damages and attorney fees once a postdeprivation remedy is effectuated. It follows that plaintiff may pursue her claims for damages and attorney fees. 216 Ga. App. at 691, 455 S.E.2d at 402.
C. Power

The period's "power" controversies required the supreme court to review a variety of municipal endeavors to obtain revenue. *City of Calhoun v. North Georgia Electric Membership Corp.* featured a municipal effort to collect a street franchise fee from a "secondary supplier" of electricity. Conceding municipal authority under the Georgia Electric Service Territorial Act to impose a reasonable fee upon the supplier, the court found flaws in the city's exercise of that authority. As for an express contract, the court emphasized the municipal ordinance's requirement that the supplier provide written acceptance of the charge within ninety days. Given the supplier's steadfast refusal of acceptance, the ordinance's condition was never fulfilled, and no contract ever existed. As for quasi-contract recovery, the court could find no "implied promise" on the part of the supplier and no "reasonable expectation" on the part of the municipality. "The City cannot rely upon its own unilateral act of continuing to allow its streets to be used and occupied as evidence of an enforceable implied promise on the part of NGEMC to pay a franchise fee which NGEMC has expressly rejected." For the supplier's use of the streets to date, therefore, the municipality could recover no franchise fee.

39. *Id.* at 205, 443 S.E.2d at 470. The municipality itself was the "primary supplier."
40. *Id.,* 443 S.E.2d at 469.
41. Interpreting the statute, the court observed that "[t]he clear import of this language is that 'any secondary supplier' can be charged a 'sum of money' for a street franchise." 264 Ga. at 207, 443 S.E.2d at 471. Further, "'any secondary supplier' cannot avoid payment of a franchise fee simply because the 'municipality' pays 'itself' no franchise fee in its additional capacity as the 'primary supplier.'" *Id.*
42. *Id.* at 210, 443 S.E.2d at 473. The court said that defendant's subjection to a franchise fee "does not establish that the City is necessarily entitled to recover the 4% franchise fee that it seeks in the instant case." *Id.* at 207, 443 S.E.2d at 471.
43. *Id.* at 208, 443 S.E.2d at 471. "Thus, the City's offer contemplated the creation of an enforceable contract by NGEMC's timely 'written acceptance' which was never forthcoming. It follows that an express contract obligating NGEMC to pay the City the 4% franchise fee was never created." *Id.*
44. *Id.* at 209, 443 S.E.2d at 472. "Indeed, NGEMC has, at all times, unequivocally apprised the City that no payment of a franchise fee would ever be forthcoming." *Id.*
45. *Id.* "Under the undisputed evidence, the City has never had a reasonable expectation that any payment for street franchise rights would be received from NGEMC." *Id.*
46. *Id.*
47. *Id.* "It follows that the City cannot recover a franchise fee for the use and occupancy of its streets to date, since there is presently no enforceable contractual
The municipality reacted to the supreme court’s decision by enacting a second ordinance levying a four percent gross receipts tax upon the secondary supplier. When the supplier refused to pay, the parties again came before the court under the style of North Georgia Electric Membership Corp. v. City of Calhoun. This time, the supplier argued its exemption from the tax as a “franchise” of the Tennessee Valley Authority (“TVA”) and as an “instrumentality” of the federal government. Rejecting both characterizations, a unanimous court held that the TVA contract constituted the supplier neither a “franchise” nor a federal “instrumentality.” The court also rejected an argument of unconstitutionality: "The creation, by Ordinance No. 493, of a subclass of secondary suppliers not paying a franchise fee under Ordinance 361 cannot be said to be an unreasonable classification.

A distinctively different issue under the Georgia Electric Service Territorial Act surfaced in Athens-Clarke County v. Walton Electric Membership Corp. There, a “unified government” sought to establish its power to impose a street franchise fee upon an EMC operating in the formerly unincorporated area of the county. The supreme court approached the issue by emphasizing that the unified government’s charter expressly declared the created entity to be both a “county” and

agreement which obligates NGEMC to pay such a fee.” Id.

48. 264 Ga. 769, 450 S.E.2d 410 (1994). The ordinance imposed the tax upon secondary suppliers not otherwise paying a franchise fee. The EMC brought the action for declaratory and injunctive relief. Id. at 769, 450 S.E.2d at 411.

49. Id. at 771, 450 S.E.2d at 412. Relying upon non-Georgia decisions, the court reasoned that “the legislative history of [the TVA statute] leads to the conclusion that cooperatives, such as NGEMC, were never intended by Congress to be exempted from state and local taxation.” Id.

50. Id. at 773, 450 S.E.2d at 413. “[T]his Court is not persuaded that NGEMC’s right and privilege to distribute electric power purchased by it from the TVA pursuant to that contract renders NGEMC an instrumentality of the federal government exempted from State and local taxation.” Id.

51. Id. at 774, 450 S.E.2d at 414. Plaintiff argued that the ordinance created an arbitrary classification, thus violating the uniformity requirement of Ga. Const. art. VII, § 1, para. 3. 264 Ga. at 773, 450 S.E.2d at 413.

52. 264 Ga. at 774, 450 S.E.2d at 414. “A classification based upon the payment of another tax or franchise does not render the classification unreasonable.” Id. at 773, 450 S.E.2d at 414. The court thus affirmed the trial judge’s summary judgment for the municipality. Id. at 774, 450 S.E.2d at 414.


54. Id. at 229, 454 S.E.2d at 511. Prior to unification, the municipality could not impose fees in the county’s unincorporated areas, and the EMC refused to acknowledge the unified government’s power to enter into franchise agreements in those areas. Id.
a "municipal corporation." As such, the court deemed the entity a "municipality" as empowered by the Electric Service Act to assess franchise fees upon the EMC. Moreover, the court concluded, the government's adoption of an ordinance imposing a reasonable fee, followed by the EMC's continued use of the streets, obligated payment despite the absence of a formal "agreement."

A final "power" conflict arose in Morton v. Bell, a funeral escort service's effort to prevent municipal police officers from using municipal motorcycles in providing a private escort service. Relying exclusively upon the municipal code, a unanimous court noted a general prohibition upon the use of city vehicles for noncity business. Yet another provision prohibited use of city equipment, except for police uniforms, in outside employment. Engaging the principle of expressio unius est exclusio alterius, the court interpreted the latter prohibition to cover vehicles. Accordingly, the court reversed the trial judge's refusal to honor plaintiff's request for a mandamus.

55. Id. The court observed that the unification was sanctioned by GA. CONST. art. IX, § 3, para. 2(a), and its charter was granted in 1990 GA. LAWS § 1-101, 3560. That charter declared that the government "shall be deemed to be both a municipal corporation and a county throughout the total territory of said government." 265 Ga. at 229, 454 S.E.2d at 511.

56. 265 Ga. at 229, 454 S.E.2d at 511-12. The court termed the unified government "a hybrid," and said that although the former county continued to exist as a political subdivision, "the county's continued existence does not mean that the new hybrid form of government is a county . . . . Because the new political entity is something other than a county, it falls within the Act's definition of a 'municipality.'" Id. at 230, 454 S.E.2d at 512.

57. Id. at 232, 454 S.E.2d at 513. The court reversed the court of appeals decision in the case, 211 Ga. App. 232, 439 S.E.2d 504 (1993), holding that the unified government was not a "municipality" within the meaning of the Electric Service Act. 265 Ga. at 232, 454 S.E.2d at 413.


59. Id. at 832, 452 S.E.2d at 103. See ATLANTA, GA. CITY CODE § 5-4026(a). This section required that "vehicles must be used solely and exclusively for municipal purposes."


61. 264 Ga. at 833, 452 S.E.2d at 104. The court reasoned that express exemption of uniforms, but no exemption for vehicles, meant that the "rule does prohibit the use of City police vehicles in outside employment." Id.

62. Id. Justice Fletcher concurred specially to register doubt that a municipality could expressly authorize the challenged practice: "The use of public property for purely private gain is contrary to this interest [use of public property only for public interest] and any attempt by a municipality to authorize such use would be void as against public policy." Id. at 834, 452 S.E.2d at 104 (Fletcher, J., concurring).
D. Regulation

Municipalities manifested diverse regulatory concerns during the survey period.\(^63\) *Discotheque, Inc. v. City Council of Augusta*\(^64\) presented one of those concerns via an ordinance purporting to regulate adult entertainment on premises licensed to serve or sell alcoholic beverages. The municipality, seeking the supreme court's affirmation of a favorable summary judgment, relied upon a prior decision approving virtually the same ordinance.\(^65\) Rebuffing that analogy, the court explained that the earlier case involved only one of three mandated requirements.\(^66\) In this case, the court delineated, the municipal movant for summary judgment must clear the ordinance under all three "tests."\(^67\) Discounting the ordinance's preamble aspiration of reducing criminal activity and deterioration of neighborhoods, the court insisted upon evidence that "criminal activity and deterioration of neighborhoods were, in fact, pernicious secondary effects of adult entertainment establishments."\(^68\) The court reached the same conclusion as to the ordinance's expressed reliance upon the experience of other localities: "In the absence of probative evidence of the 'experience' of other municipalities and counties, ... summary judgment would not be appropriate."\(^69\)

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65. *Id.* at 623, 449 S.E.2d at 609 (citing S.J.T., Inc. v. Richmond County, 263 Ga. 267, 430 S.E.2d 726 (1993)).

66. *Id.* at 624, 449 S.E.2d at 609. The court extracted from Paramount Pictures Corp. v. Busbee, 250 Ga. 252, 297 S.E.2d 250 (1982), the following "tripartite test" for determining the validity of such an ordinance: "(1) if it furthers an important government interest; (2) if that government interest is unrelated to the suppression of speech; and, (3) if the incidental restriction of speech is no greater than is essential to the furtherance of that government interest." 264 Ga. at 623, 449 S.E.2d at 609. In *S.J.T., Inc.*, said the court, only the third "test" was in dispute. *Id.*

67. 264 Ga. at 623, 449 S.E.2d at 609. The municipality must show "that no genuine issue of material fact remained as to any of the three requirements in the Paramount test." *Id.* (emphasis added).

68. *Id.* at 624, 449 S.E.2d at 609. The court conceded that these "are important government interests which are unrelated to the suppression of speech." *Id.*

69. *Id.* Thus, the court reversed the summary judgment for the municipality. *Id.* at 625, 449 S.E.2d at 610.
The court tendered similar disposition to the ordinance at issue in *Quetgles v. City of Columbus*, an ordinance prohibiting modeling sessions, sexual displays, and close mingling between customers and employees in adult entertainment establishments. Reversing the grant of the municipality's motion to dismiss, the court found no city evidence showing the ordinance to further an important government interest unrelated to free speech.

Other regulatory concerns emerged in *City of Atlanta v. McKinney*, featuring municipal ordinances “that prohibit discrimination on the basis of sexual orientation, establish a domestic partnership registry for jail visitation, and extend insurance and other employee benefits to domestic partners of city employees.” The court examined each measure against the city's home rule power to enact “clearly reasonable” ordinances “relating to its property, affairs, and local government for which no provision has been made by general law and which are not inconsistent with the Constitution.” In that context, the court experienced little difficulty in sustaining the “jail registry” ordinance, “merely the mechanism by which the city can identify the residents and employees who may exercise their jail visitation rights because of their declaration as domestic partners.” Similarly, the court employed both police power and state authorization to approve the “anti-discrimi-
nation" ordinances, "prohibiting discrimination in city government."\(^7^9\)

"[T]hey are reasonable laws related to the city's affairs and local government."\(^8^0\)

The court's problem came with the third ordinance, the measure "recognizing domestic partners as 'a family relationship' and providing employee benefits to them 'in a comparable manner . . . as for a spouse.'"\(^8^1\)

Although home rule provisions authorize insurance benefits for municipal employees and their "dependents,"\(^8^2\)

the court held that "[d]omestic partners do not meet any of these [general statute] definitions of dependent."\(^8^3\)

Under the long ordained precept of strictly construing municipal power, the court declared the benefits ordinance "ultra vires under the home rule act and the Georgia Constitution."\(^8^4\)

E. Openness

Open meetings and open records, the "sunshine" companions, claim an eventful history in Georgia local government law.\(^8^6\) The survey period included a decision by the court of appeals on each component.

\(^7^9\) 265 Ga. at 165, 454 S.E.2d at 521 (citing O.C.G.A. § 36-34-2(2) (1993 & Supp. 1995)).

\(^8^0\) 265 Ga. at 165, 454 S.E.2d at 521. "The ordinances prohibit sexual orientation discrimination in city employment, artist selection, festival admission, . . . and vehicles for hire." Id. at 161-62, 454 S.E.2d at 519.

\(^8^1\) Id. at 166, 454 S.E.2d at 522.

\(^8^2\) Id. at 165, 454 S.E.2d at 521.

\(^8^3\) O.C.G.A. § 36-35-4(a) (1993). "The issue here is whether the city impermissibly expanded the definition of dependent to include domestic partners." 265 Ga. at 164, 454 S.E.2d at 521.

\(^8^4\) Id. at 164-65, 454 S.E.2d at 521. "[O]ther state statutes define a dependent either as a spouse, child, or one who relies on another for financial support." Id. at 164, 454 S.E.2d at 521.

\(^8^5\) 265 Ga. at 165, 454 S.E.2d at 521. The court relied upon GA. CONST. art. III, § 6, para. 4, prohibiting special laws on rights or status of private persons, and prohibiting special laws on matters provided for by general statutes. 265 Ga. at 164, 454 S.E.2d at 520.

Justice Carley dissented only as to the court's approval of the jail registry ordinance and the anti-discrimination ordinances: "The registry ordinance creates a parallel institution to marriage, and the sexual orientation ordinances expand the classes of people protected from discrimination by state and federal law." Thus, "the City exceeded its authority under the Georgia Constitution and under Georgia's Home Rule Act." Id. at 171, 454 S.E.2d at 525 (Carley, J., concurring & dissenting).

Justice Sears, with the concurrence of Chief Justice Hunt and Justice Hunstein, dissented only on the court's invalidation of the "employee benefits" ordinance: "There is no general law in this state establishing a uniform definition of 'dependent,' . . . and the requirements of a domestic partnership certainly indicate that a city employee's domestic partner must rely, at least in part, on the employee for financial support." 265 Ga. at 167, 454 S.E.2d at 522 (Sears, J., concurring & dissenting).

\(^8^6\) For an account, see R. Perry Sentell, Jr., The Omen of "Openness" in Local Government Law, 13 GA. L. REV. 97 (1978).
Regarding open meetings, *Jersawitz v. Fortson* \(^{86}\) presented a citizen's complaint against a municipal housing authority for exclusion from a meeting of the "Olympic Task Force Selection Committee." \(^{87}\) Although the Committee was not created by the housing authority, eight of the fifteen individuals present were authority people, \(^{88}\) and the meeting's purpose was to review bids for revitalization of an authority development. \(^{89}\) Rejecting the authority's denial of coverage by the Open Meetings Law, \(^{90}\) the court reasoned that the Committee was formed "with the knowledge and approval" of the authority and was the authority's "vehicle" for carrying out its responsibilities. \(^{91}\) Additionally, the court held, a videotape of the meeting fell short of substantial compliance with the statute. \(^{92}\)

As for open records, *City of Brunswick v. Atlanta Journal & Constitution* \(^{93}\) contested municipal refusal to honor newspaper requests for incident reports on a series of sexual assaults. Affirming the trial judge's disposition, the court found no error in requiring production of any portion of the reports after exclusion of other portions. \(^{94}\) Additionally, the court held that "incident reports can be exempted from disclosure if disclosure would reveal confidential information or endanger the lives of various individuals." \(^{95}\)

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87. *Id.* at 796, 446 S.E.2d at 207. Plaintiff complained of the authority's violation of the Open Meetings Act, O.C.G.A. §§ 50-14-1 to -6 (1994).
88. 213 Ga. App. at 797, 446 S.E.2d at 207. Three others were city employees. *Id.*
89. *Id.* The revitalization project was a part of the preparation for the 1996 Olympic Games; the housing authority maintained that the project "would enhance the quality of life of residents within that neighborhood." *Id.*, 446 S.E.2d at 207-08.
90. O.C.G.A. §§ 50-14-1 to -6 (1994).
91. 213 Ga. App. at 799, 446 S.E.2d at 208. "[T]he . . . gathering was a meeting within the purview of the Open Meetings Act." *Id.*, 446 S.E.2d at 209.
92. *Id.* The court reasoned that "viewing an edited videotape of the meeting after the fact is not the equivalent of being present and having an opportunity to provide input to decision-makers on a project such as this . . . ." *Id.* The court reversed the trial judge's summary judgment in favor of the housing authority. *Id.* at 800, 446 S.E.2d at 209.
94. 214 Ga. App. at 152, 447 S.E.2d at 43. Thus, the court rejected the city's argument that the trial judge erred in requiring any portion of the reports once he determined that portions must be excluded. *Id.*
95. *Id.* at 153, 447 S.E.2d at 44. Thus, the court rejected the newspapers' argument that incident reports could not be excluded because of their exclusion from exemption under O.C.G.A. § 50-18-72(a)(4). 214 Ga. App. at 152, 447 S.E.2d at 44. See O.C.G.A. § 50-18-72(a)(4) (1994 & Supp. 1995).
F. Property

Like most entities, municipalities lay claim to real property and may be expected to defend that claim against attack. Illustrating an unsuccessful defense, *Giddens v. Barrentine*\(^96\) pitted town against owners of property abutting an abandoned railroad right-of-way. Examining the town's claim to the right-of-way under a deed from the railroad,\(^97\) the supreme court also reviewed an 1870 deed conveying the right-of-way to the railroad.\(^98\) The latter instrument, the court held, created either an "easement" or a "determinable fee."\(^99\) If an easement, then the railroad's abandonment left it with no transferable interest. If a determinable fee, the deed's "habendum clause" employed abandonment to trigger an express reverter. In either event, the court concluded, the adjoining property owners' claim trumped the railroad's deed to the municipality.\(^100\)

G. Liability

Typically, municipal liability litigation rang most of the changes.\(^101\) The period's "function approach" illustration came in *Steinberg v. City of Atlanta*,\(^102\) an action for personal injuries to a ballet patron who fell over a rope in the civic center's parking lot.\(^103\) Affirming a verdict for the municipality, the court of appeals intoned the familiar precept of governmental immunity for facilities operated primarily for the public benefit rather than as a source of revenue. Noting plaintiff's proof of money derived from the center's commercial bookings, the court termed

\(^96\) 264 Ga. 510, 448 S.E.2d 441 (1994).
\(^97\) Id. at 510, 448 S.E.2d at 442. Upon I.C.C. approval of its abandonment, the railroad had executed a quitclaim deed to the town. Id.
\(^98\) Id. at 511, 448 S.E.2d at 442. The plaintiff abutting property owners claimed ownership as successors in title to this original grantor. Id.
\(^99\) Id., 448 S.E.2d at 443.
\(^100\) Id. at 511-12, 448 S.E.2d at 443.
\(^103\) Id. at 491, 444 S.E.2d at 873. The rope had been strung for the purpose of traffic control. Id.
that revenue "'incidental' in view of the evidence that the Civic Center operates at an annual loss and is subsidized by [the municipality]."104

The plaintiff in Brumbelow v. City of Rome105 attempted to engage the traditional exception to municipal immunity triggered by negligently defective sidewalks.106 Against plaintiff's allegations of a defect appearing "to have been there for a significant time,"107 the court balanced municipal affidavits of continuous inspections and the absence of complaints or repairs on the right-of-way. Without some evidence of actual knowledge of the time of the defect's existence, the court held, plaintiff fell victim to a motion for summary judgment.108

Liability insurance reared its countenance in McLemore v. City Council of Augusta,109 an action for plaintiff's injuries in an automobile collision with a police officer.110 Holding existing municipal insurance sufficiently authorized by the motor vehicle insurance statute,111 the court asserted that "the city can be held liable for the alleged negligence of [the police officer] to the limits of its insurance policy . . . ."112 Under that policy, however, the municipality had obtained coverage only for claims exceeding $250,000.113 Accordingly, in the absence of sufficient evidence of additional insurance coverage,114 the court held

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104. Id. at 494, 444 S.E.2d at 875. "The fact that the Civic Center is leased on occasion by commercial entities at commercial rates does not alter 'the over-all character of the [Civic Center as a facility] primarily for the benefit of the public, rather than primarily as a source of revenue for the City.'" Id. (quoting City of Atlanta v. Chambers, 205 Ga. App. 834, 836, 424 S.E.2d 19 (1992)).


106. Id. at 321, 450 S.E.2d at 346. For treatment of the street and sidewalk exception to the rule of municipal immunity, see R. Perry Sentell, Jr., THE LAW OF MUNICIPAL TORT LIABILITY IN GEORGIA 62-117 (4th ed. 1988).

107. 215 Ga. App. at 321, 450 S.E.2d at 346. The plaintiff alleged no actual knowledge of the hole in the right-of-way on the part of the city but argued that the grass surrounding the hole indicated a period of time sufficient to raise an issue of constructive knowledge. Id. at 321-22, 450 S.E.2d at 346.

108. Id. at 322, 450 S.E.2d at 346. The court said that an inference sufficient to oppose a motion for summary judgment must rest upon facts rather than mere conclusions. Id.


110. Id. at 862, 443 S.E.2d at 506. Plaintiffs also sued the officer himself. Id.

111. O.C.G.A. § 33-24-51 (1990). Although termed a "general liability policy," the court held that the policy's language was sufficient to encompass claims arising from automobile collisions. 212 Ga. App. at 863, 443 S.E.2d at 507. Said the court: "It is the nature of the insurance coverage provided by a policy rather than title of the policy which determines if it is a policy within the meaning of O.C.G.A. § 33-24-51." 212 Ga. App. at 863, 443 S.E.2d at 507.

112. 212 Ga. App. at 863, 443 S.E.2d at 507.

113. Id. The excess limits of the policy were undisputed. Id. at 864, 443 S.E.2d at 507.

114. Id. Plaintiffs had not met their burden "as they did not present evidence that the city has insurance coverage other than the policy which covers claims in excess of
the city's waiver of immunity limited to "amounts exceeding the minimum threshold of the insurance coverage of $250,000." 115

_Earnheart v. Scott_116 gave instance to the period's "nuisance" endeavor. 117 There, plaintiff alleged injuries from an accident caused by standing water on a municipal road, the result of a defective sewer-drainage system. 118 Recounting proffers of evidence on both sides of the case, 119 the court assessed plaintiff's efforts as insufficient "to controvert the City's evidence that it had no notice or knowledge of the alleged defect." 120

A more successful effort to circumvent immunity culminated in _Mayor of Savannah v. Wilson_, 121 an action under Section 1983 of the Federal Civil Rights Act. 122 There, plaintiffs charged improper municipal arrest procedures amounting to "policy or custom" violations of the statute. 123 In its review of the case, the court emphasized "uncontrovert-

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115. _Id._ at 865, 443 S.E.2d at 508. The court conceded that the excess limits policy waiver "creates an anomalous result by allowing the plaintiff to recover only damages exceeding $250,000." _Id._ at 864 n.1, 443 S.E.2d at 507 n.1.


118. 213 Ga. App. at 188, 444 S.E.2d at 129. Plaintiff alleged that the water caused her car to hydroplane and strike a vehicle in the opposite lane of traffic. _Id._

119. _Id._. Plaintiff's tender included other accidents in the vicinity, a city work order for drainage repairs in the area, and the affidavit of a nearby home owner attesting to standing water in front of his house during rains. The municipality countered with evidence of no reports of any problems at the location of plaintiff's accident. _Id._

120. _Id._ at 190, 444 S.E.2d at 130. Affirming summary judgment for the municipality, the court noted that most of the accidents reported by plaintiff occurred after plaintiff's accident, none involved standing water, and one accident occurring prior to plaintiff's accident which did involve standing water occurred in a different block. _Id._ at 189, 444 S.E.2d at 129.


123. 214 Ga. App. at 171, 447 S.E.2d at 126. The court elaborated the meaning of the statute as follows:

If a municipality's failure to train its employees demonstrates a "deliberate indifference" to the rights of its inhabitants, as where a deliberate choice is made to follow a course of action from among various alternatives, then it can be thought of as a "policy or custom" and municipal liability attaches.

_Id._
ed evidence" of no probable cause hearing within forty-eight hours of arrest.124 As well as a de facto policy of such practice on weekends.126 Second, the court also focused upon allegations that the city deliberately withheld exculpatory information from the district attorney despite plaintiffs' "Brady motion."126 This evidence and these allegations, the court held, precluded summary judgment for the municipality.127

Two decisions of the period pivoted upon the statutory "ante litem" notice mandate.128 One of those, Clark v. City of Smyrna,129 simply confirmed prior principles. The plaintiff in the case had telephoned his claim to a municipal employee at city hall and then worked with the city's insurance adjuster to whom employees referred the claim.130 Plaintiff argued both "substantial compliance" with the notice requirement and municipal estoppel.131 Rejecting those arguments, the court recounted decisions that formal written notice is a condition precedent to an action, that oral notice is no notice, and that reference to an insurer creates no estoppel.132 "It is well established that governing officials cannot waive statutory ante litem notice requirements."133

The second decision, that by the supreme court in City of Chamblee v. Maxwell,134 overruled prior principles.135 There the court reasoned

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126. Id. The court observed that "liability can be imposed under certain circumstances by a policy of failing to properly train employees about Brady material or issuing appropriate guidelines as to what constitutes Brady material," and that "the city's guidelines for its employees to 'follow the law' amounted to no guidance at all." Id. at 171-72, 447 S.E.2d at 126.
127. Id. at 172, 447 S.E.2d at 126. The court thus affirmed the trial court's action. Id.
130. Id. at 598, 442 S.E.2d at 461. The plaintiff complained of injuries allegedly suffered in a fall on a defective city sidewalk; the plaintiff completed and returned forms sent him by the insurance adjuster; and the insurer eventually notified plaintiff that his claim had been denied. Id. at 598-99, 442 S.E.2d at 461.
131. Id. at 599, 442 S.E.2d at 461.
133. 212 Ga. App. at 599, 442 S.E.2d at 462. The court thus affirmed the trial court's grant of summary judgment for the city. Id.
that "[a] claim for continuing trespass . . . is predicated upon the happening of a continuous series of 'events,'"\(^{136}\) and that "each day that the trespass continues necessarily begins another six-month period during which ante litem notice must be given."\(^{137}\) The court employed those premises to conclude that "a property owner who incurs damage as a result of a continuing nuisance or trespass maintained by a municipality is entitled, within the four-year period of limitations, to recover only those damages incurred during the six months preceding the giving of such notice."\(^{138}\)

The court of appeals took Groves v. City of Atlanta\(^ {139}\) as an occasion for reemphasizing the precise relation between municipal government and punitive damages. Specifically, the court rejected an argument that the municipality's immunity to punitive damages had been waived by its contractor's liability insurance.\(^ {140}\) Because the city's freedom from punitive damages is a decree of "public policy" and not a result of sovereign immunity,\(^ {141}\) the court explained, no waiver operated.\(^ {142}\)

In Mixon v. City of Warner Robins,\(^ {143}\) the supreme court elaborated a new "proximate cause" approach for determining municipal liability to

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136. 264 Ga. at 636, 452 S.E.2d at 490.
137. Id. "So long as ante litem notice is given to a municipal corporation within six months of the happening of any continuing trespass 'event,' an action for trespass may thereafter be brought within four years of the happening of that 'event.'" Id. at 636-37, 452 S.E.2d at 490.
138. Id. at 637, 452 S.E.2d at 491. The court then summarized the impact of its ruling upon this case:
Consequently, because appellee failed to give any written ante litem notice prior to the filing of the complaint and thus entirely failed to fulfill the condition precedent to maintaining this suit as required by O.C.G.A. § 36-33-5, summary judgment in favor of the City was proper as to appellee's claim for damages resulting from any continuing trespass "event" which occurred more than six months prior to the filing of the complaint. Any claim that appellee may have for damages resulting from a continuing trespass "event" which occurred within six months of the filing of the complaint would be subject to a plea in abatement, rather than a motion seeking substantive adjudication. 264 Ga. at 638, 452 S.E.2d at 491.
140. Id. at 458, 444 S.E.2d at 812. The plaintiffs complained of damage to their property by a contractor employed by the municipality; the court agreed with plaintiffs that a trespass had indeed occurred. Id.
141. Id. The court termed punitive damages "impermissible as a matter of law." Id.
142. Id. The court thus affirmed the trial judge's grant of the municipality's motion to dismiss plaintiffs' claim for punitive damages. Id.
motorists imperiled by suspects fleeing a police officer. Deeming the issue to call for a "policy decision" on "duty," the court viewed statutory law to subject pursuing officers to a "due regard for the safety of all persons." So armed, the court adopted the following rule: "The decision to initiate or continue pursuit may be negligent when the heightened risk of injury to third parties is unreasonable in relation to the interest in apprehending suspects." Proceeding to employ that rule, the court noted evidence that the suspect had slowly run a stop sign in a residential area and, upon the officer's immediate pursuit, had accelerated up to twice the posted speed limit. Under those circumstances, the court held, a summary judgment for the city was erroneous.

Yet another tort basic confronted the court of appeals in Girone v. City of Winder. There, plaintiff alleged several raw sewerage spills onto her property from the city's negligently maintained sewer system. Upon the last spill, plaintiff allowed the sludge to flow from her

144. Id. at 389, 444 S.E.2d at 765. Plaintiff sued for the death of his wife struck at an intersection by a driver fleeing from a pursuing police officer. Id. at 385, 444 S.E.2d at 763.
145. Id. at 386, 444 S.E.2d at 763 (quoting McAuley v. Wills, 251 Ga. 3, 303 S.E.2d 258 (1983)).
146. Id. at 387, 444 S.E.2d at 764 (citing O.C.G.A. § 40-6-6 (1994 & Supp. 1995)).
147. Id. at 389, 444 S.E.2d at 765. The court plucked this rule from a Texas case, Travis v. City of Mesquite, 830 S.W.2d 94 (Tex. 1992), and rejected the Georgia Court of Appeals' formulation below (whether the pursuit posed a higher-than-ordinary threat to public safety) as "problematic." 264 Ga. at 389, 444 S.E.2d at 765. See Mixon v. City of Warner Robins, 209 Ga. App. 414, 434 S.E.2d 71 (1993).
148. 264 Ga. at 390, 444 S.E.2d at 766.
149. Id. at 391, 444 S.E.2d at 766.
150. 264 Ga. at 391, 444 S.E.2d at 766. "It follows that the lack of 'proximate cause' in the instant case is not 'plain and undisputed' and that the Court of Appeals erred in affirming the grant of summary judgment in favor of [the officer] and the City on that basis." Id.
152. Id. at 822, 452 S.E.2d at 795. Plaintiff alleged continuous spills over a period of some two years, repeated notice to the municipality, and a steadfast failure to repair. Id.
basement onto a concrete patio where, while directing cleanup operations, she slipped and suffered injury.\textsuperscript{153} Reversing summary judgment in favor of the municipality, a majority of the court emphasized the city's wrongful trespass upon plaintiff's property\textsuperscript{154} and minimized plaintiff's contribution to her injury.\textsuperscript{155} "Whether plaintiff exercised due care for her own safety in trying to perform defendant's function herself due to its recalcitrance, is for the jury."\textsuperscript{156} Although plaintiff clearly knew of the hazard, the court concluded, her actions in confronting it were not, under the circumstances, unreasonable as a matter of law.\textsuperscript{157}

Finally, City of Buford v. Ward\textsuperscript{158} litigated the personal liability of municipal officials under the following historic statute: "Members of the council and other officers of a municipal corporation shall be personally liable to one who sustains special damages as the result of any official act of such officers if done oppressively, maliciously, corruptly, or without authority of law."\textsuperscript{159} The case encompassed an action against the city manager and his assistant for their refusal to issue a timely certificate of occupancy for plaintiff's garden center.\textsuperscript{160} Noting defendants' refusal as having turned upon their insistence that plaintiff

\textsuperscript{153} Id. Plaintiff alleged that she called a cleaning crew and, upon its arrival, she led them to the basement via the sewage-covered patio, rather than approaching through the house in the absence of her husband. \textit{Id.} at 823, 452 S.E.2d at 795.

\textsuperscript{154} \textit{Id.}, 452 S.E.2d at 796. "The policy behind the 'superior knowledge' standard (i.e., to protect proprietors from liability in cases where invitees fail to exercise ordinary care for their own safety) is not achieved in cases where a trespasser creates a dangerous condition on the property of another." \textit{Id.} at 824, 452 S.E.2d at 797.

\textsuperscript{155} Id. at 825, 452 S.E.2d at 797. "Although she knew of the hazard, her choice in confronting it rather than what she perceived as the greater hazard attendant to admitting strangers into her home when she was alone is not unreasonable as a matter of law." \textit{Id.}

\textsuperscript{156} Id. at 824, 452 S.E.2d at 797.

\textsuperscript{157} Id. at 825, 452 S.E.2d at 797. Presiding Judge Birdsong and Judge Andrews dissented: "This is a clear case where the plaintiff is barred from recovery because she knowingly and voluntarily assumed the risk of injury by choosing to walk across the slippery patio." \textit{Id.} at 828, 452 S.E.2d at 799 (Birdsong, P.J., dissenting).

\textsuperscript{158} 212 Ga. App. 752, 443 S.E.2d 279 (1994).


\textsuperscript{160} 212 Ga. App. at 753, 443 S.E.2d at 281. Plaintiff finally opened his business, went bankrupt, and then brought the present case. \textit{Id.}, 443 S.E.2d at 282.
install a longer acceleration-deceleration lane, the court also located the ordinance under which defendants acted. That ordinance was devoid of "even a listing of guidelines or factors to be considered," the court asserted, and confirmed defendants' policy of "unfettered discretion." Actions taken pursuant to this policy," reasoned the court, "were taken without authority of law," accordingly, "plaintiff established the necessary elements of a cause of action.

H. Zoning

The local government's zoning exercise teeters precariously between public good and individual harm, a delineation drawn and even redrawn by the judiciary. Typically illustrative of the process, Parking Ass'n of Georgia v. City of Atlanta presented a challenge by parking lot owners to municipal efforts at zoning their lots. Specifically, the ordinance in issue required lots with thirty or more spaces to maintain barrier curbs and landscaping areas equal to at least ten percent of paved area, ground cover, and at least one tree for every eight spaces. The ordinance did, however, cap the required reduction of parking spaces.

161. Id., 443 S.E.2d at 281. Plaintiff alleged that he constructed such a lane even longer than the State Department of Transportation required, but that defendants continued to insist upon more. Id. at 755, 443 S.E.2d at 282.
162. Id. at 754, 443 S.E.2d at 282. "At best, the authority for this policy was a zoning law which purported to incorporate unspecified DOT regulations which discussed generally the use of deceleration/acceleration lanes to facilitate traffic flow." Id.
163. Id.
164. Id. "Because the policy implemented by [defendants] gave them unfettered discretion and was not based on an ordinance setting forth guidelines or factors for consideration with sufficient specificity to apprise citizens of what to expect, actions taken pursuant to this policy were taken without authority of law." Id.
165. Id.
166. Id. at 755, 443 S.E.2d at 283. The court observed that sovereign immunity had been indisputably removed in the case due to the presence of liability insurance. Id. at 756, 443 S.E.2d at 283. The court affirmed the trial judge's denial of defendants' motion for j.n.o.v. Id.
As for an action against the official in his official capacity, see McLemore v. City Council of Augusta, 212 Ga. App. 862, 443 S.E.2d 505 (1994), where the court reasoned that a police officer would enjoy immunity if his allegedly negligent act was discretionary rather than ministerial. There, the court remanded as a jury issue the question whether, at the time the officer collided with plaintiff, he was acting in a discretionary capacity by continuing to respond to an emergency. Id. at 865, 443 S.E.2d at 508.
169. Id. at 764, 450 S.E.2d at 202. The ordinance applied in certain downtown and midtown zoning districts. Id., 450 S.E.2d at 201.
at three percent.\textsuperscript{170} A bare majority of the supreme court\textsuperscript{171} approached the face-off by noting that the ordinance did not physically "take" property, but "merely regulated" its use.\textsuperscript{172} In that context, the "balancing test" weighs public benefit against individual detriment.\textsuperscript{173} Under that test, the property owner must produce "clear and convincing" evidence that "the zoning presents a significant detriment to the landowner and is insubstantially related to the public health, safety, morality and welfare."\textsuperscript{174} Because a maximum loss of three percent of plaintiffs' parking spaces did not constitute "significant detriment,"\textsuperscript{175} and because plaintiffs failed to demonstrate "insubstantial relation" to valid goals,\textsuperscript{176} the court declared the ordinance "constitutional and valid."\textsuperscript{177}

A vigorous dissenting opinion charged the majority with applying the wrong "test."\textsuperscript{178} Instead of "significant detriment," the dissent proposed that this case required a "benefit-extraction" test.\textsuperscript{179} "Extractions for the public benefit are generally upheld if . . . two requirements are met: First, that the extraction is closely related to a particular problem generated by the owner's use of his land, . . . and second, that the extraction represents the property owner's proportion of the particular problem."\textsuperscript{180} Conceding that Georgia has not previously

\textsuperscript{170} Id., 450 S.E.2d at 202. All costs of compliance were borne by the landowners. Id.
\textsuperscript{171} Id. at 767, 450 S.E.2d at 203. Justice Thompson authored the opinion for himself and three other justices. Id.
\textsuperscript{172} Id. at 764, 450 S.E.2d at 202. "Thus, the ordinance does not constitute a per se taking entitling plaintiffs to compensation." Id.
\textsuperscript{173} Id. at 765, 450 S.E.2d at 202.
\textsuperscript{174} Id. The ordinance is presumptively valid, and the plaintiffs bear the burden of rebutting that presumption by clear and convincing evidence. Id.
\textsuperscript{175} Id. "[A] zoning ordinance does not exceed the police power simply because it restricts the use of property, diminishes the value of property, or imposes costs in connection with the property." Id.
\textsuperscript{176} Id. Stated goals included the regulation of aesthetics, crime, water run-off, temperature, and other environmental concerns. Id.
\textsuperscript{177} Id. at 766, 450 S.E.2d at 203. The court concluded that plaintiffs had failed "to meet either prong of this state's balancing test." Id. The court also rejected plaintiffs' argument of equal protection: the larger lots (30 or more spaces) had far greater impact upon the ordinance's stated goals. Id.
\textsuperscript{178} Id. at 767, 450 S.E.2d at 203 (Sears, J., dissenting). Justice Sears authored the dissent for herself and two other justices. Id. at 769, 450 S.E.2d at 204.
\textsuperscript{179} Id. at 767, 450 S.E.2d at 204. The dissent noted that some states had established an exception to the "significant detriment" test in cases where, as here, "a local government has sought to extract a benefit for the public from only a portion of a whole parcel of property." Id., 450 S.E.2d at 203.
\textsuperscript{180} Id. at 768, 450 S.E.2d at 204. Other considerations to be taken into account included the fact that the extraction was not made at the property's development stage so
employed the benefit-extraction test, the dissent proposed that the case be remanded for resolution under that analysis.\textsuperscript{181}

I. Authorities

In \textit{Parker v. Hospital Authority of Bainbridge & Decatur County},\textsuperscript{182} a medical malpractice action against a hospital authority, a nurse, and treating doctors, the court of appeals held as follows: “[O]ne’s relationship to a board member of an entity that is a party to an action does not, as a matter of law, disqualify him to serve as a juror in the case.”\textsuperscript{183} Additionally, the court held the nurse a “borrowed servant” of the doctor, and the doctor an “independent contractor.”\textsuperscript{184} Accordingly, the hospital authority bore responsibility for the acts of neither.

II. COUNTIES

A. Power

Increasingly, the county “power” issue, here surveyed each year, appears to be undergoing transition. Increasingly, the contests encompass power tug-of-wars within the county government itself. The supreme court refereed two such contests this year. \textit{Brophy v. McCranie}\textsuperscript{185} presented a stand-off between the county governing authority and the hospital authority’s board of trustees.\textsuperscript{186} The controlling issue went to board vacancy appointments: Were they governed by a resolution of the governing authority or by resolution of the trustees? In resolving that issue, the court interpreted an ambigu-

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\textsuperscript{181} \textit{Id.} at 768, 450 S.E.2d at 204. \\
\textsuperscript{182} \textit{Id.} at 114, 446 S.E.2d at 230 (1994). \\
\textsuperscript{183} \textit{Id.} at 113, 446 S.E.2d at 767. Accordingly, the trial judge did not err in refusing to exclude for cause a potential juror who was related to a member of the hospital authority board. \textit{Id.} \\
\textsuperscript{184} \textit{Id.} at 114, 446 S.E.2d at 768. The fact that the doctor was on call because of his hospital staff privileges did not change his status of independent contractor. \textit{Id.} \\
\textsuperscript{185} \textit{Id.} at 187, 442 S.E.2d at 230 (1994). \\
\textsuperscript{186} \textit{Id.} at 187, 442 S.E.2d at 230. The governing authority sought, via an action in quo warranto, to have seven of the nine trustees divested of their offices as having been invalidly appointed under a resolution of the trustees. \textit{Id.} For perspective on the historic remedy of quo warranto in the context of Georgia local government law, see R. PERRY SENTELL, JR., THE WRIT OF QUO WARRANTO IN GEORGIA LOCAL GOVERNMENT LAW (1987).
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ous provision of the Hospital Authorities Law\textsuperscript{187} to vest method-of-appointment power in the trustees.\textsuperscript{188}

The issue in \textit{In re DeKalb County Courthouse Fire Sprinkler System}\textsuperscript{189} pitted the governing authority against a judge of the superior court. The authority challenged the judge’s issuance of a “certificate of need” requiring the installation of fire sprinklers in the courthouse.\textsuperscript{190} “The essential question,” asserted the court, “is whether the issuance of the certificate of need was in furtherance of a specifically judicial function.”\textsuperscript{191} On grounds that “there is nothing inherently judicial about concerns for fire safety,”\textsuperscript{192} the court held the matter “within the purview of the county governing authority, which is charged with the maintenance and upkeep of the county’s public buildings.”\textsuperscript{193}

\begin{itemize}
  \item \textsuperscript{187} O.C.G.A. § 31-7-72(c) (1991 & Supp. 1995). According to the court, this provision was a rearrangement and consolidation of two paragraphs of the original statute which had clearly provided that vacancy appointment methods were those mandated by resolution of the board of trustees. 264 Ga. at 189, 442 S.E.2d at 231.
  \item \textsuperscript{188} 264 Ga. at 189, 442 S.E.2d at 232. The court denominated the county governing authority’s resolution “invalid as an improper exercise of home rule,” and held the seven trustees to have been validly appointed. \textit{Id.} at 190, 442 S.E.2d at 232.
  \item \textsuperscript{189} 265 Ga. 96, 454 S.E.2d 126 (1995).
  \item \textsuperscript{190} \textit{Id.} at 96, 454 S.E.2d at 126. “The Certificate of Need process contemplated by O.C.G.A. § 15-6-24 is the procedural rule pursuant to which the power of the court is exercised.” 265 Ga. at 96, 454 S.E.2d at 127.
  \item \textsuperscript{191} 265 Ga. at 97, 454 S.E.2d at 127. The court said that “the inherent [judicial] power is not a sword but a shield.” \textit{Id.}
  \item \textsuperscript{192} \textit{Id.} at 97-98, 454 S.E.2d at 127. It was clear, the court reasoned, “that the issuing court’s concern with fire safety is the same concern properly held by any governmental agency as a tenant of a government building.” \textit{Id.} at 97, 454 S.E.2d at 127.
  \item \textsuperscript{193} \textit{Id.} at 98, 454 S.E.2d at 127. Affirming judgment in favor of the county governing authority, the court suggested that the judge “could, as could any other citizen, seek a writ of mandamus requiring the governing authorities to obey the law.” \textit{Id.}

Justice Thompson, joined by Justice Hunstein, dissented on grounds that the judge had acted within his inherent judicial power in issuing the Certificate of Need. \textit{Id.} at 99, 454 S.E.2d at 128 (Thompson, J., dissenting).

In a more traditional power guise, county power to regulate, S.J.T., Inc. v. Richmond County, 215 Ga. App. 73, 449 S.E.2d 868 (1994), involved county revocation of the liquor license of an establishment providing nude dancing. The court of appeals invalidated the revocation, holding the controlling ordinance’s exception of “mainstream” performance premises to be solely dependent upon whether the establishment derived less than 20% of its gross annual income from alcohol sales. “To construe the applicability of the exception as first requiring testing for that which is ‘mainstream’ but otherwise undefined, in our view, would be to adopt a construction which would be constitutionally impermissible for vagueness and overbreadth.” \textit{Id.} at 75, 449 S.E.2d at 870.
B. Officers and Employees

Candidates for membership on the county governing authority may encounter an assortment of requirements. *Griffin v. Glynn County* featured a local statute requiring such candidates "to run for election from the district in which their legal residence lies." Upholding the validity of that statute, the supreme court held it to conflict with neither the constitution nor with general statutes.

A general statute imposed the requirement reviewed in *State Ethics Commissioner v. Moore*, a requirement that "common source" campaign contributions be revealed in financial disclosure reports. There, the common-source origins of certain contributions were known to the candidate but not to her campaign treasurer who filed the report. Under these circumstances, a majority of the court of appeals held, no penalty could be assessed against the candidate. Observing that the statute directed its disclosure mandate to "the candidate or the chairperson or treasurer of such candidate's campaign committee," the court found no statutory authority "to impose a penalty on [the candidate] for the conduct of her campaign treasurer in filing an inaccurate report."

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196. See, e.g., GA. CONST. art. IX, § 1, para. 8 (1976).
199. O.C.G.A. § 21-5-30(d): "Where separate contributions of less than $101.00 are knowingly received from a common source, such contributions shall be aggregated for reporting purposes." O.C.G.A. § 21-5-30(d) (1993 & Supp. 1995).
200. 214 Ga. App. at 237, 447 S.E.2d at 688. "There was no evidence that [the candidate] prepared or reviewed the reports, and there was no evidence that the campaign treasurer had any knowledge regarding the common source contributions." Id., 447 S.E.2d at 689.
201. Id. at 238, 447 S.E.2d at 689. The court employed a "strict construction" interpretation to the statute, noting that it was in derogation of the common law and that forfeitures and penalties are not favored. Id. at 237-38, 447 S.E.2d at 689.
202. O.C.G.A. § 21-5-34 (1993 & Supp. 1995). This statute must be read "in pari materia" with the report requirement itself, said the court. 214 Ga. App. at 237, 447 S.E.2d at 688. "Since the treasurer was authorized to file and sign the reports, and based his disclosure of common source contributions on his own personal knowledge, only he could be the 'violator' for the purpose of imposition of penalties under O.C.G.A. § 21-5-6(b)(14)." 214 Ga. App. at 238, 447 S.E.2d at 689.
203. 214 Ga. App. at 238, 447 S.E.2d at 689. "If imputed knowledge is to be made the basis of a fine or penalty, the intent of the legislature must be made abundantly clear."
Another subject of scrutiny is the officer's working in more than one capacity for the county. For instance, Black v. Catoosa County School District\(^{204}\) yielded a decision by the court of appeals that a county deputy sheriff could not simultaneously serve as a member of the school board. Anchoring the prohibition in both general\(^{205}\) and local legislature,\(^{206}\) the court held that both a school board member and a sheriff were commissioned county officers.\(^{207}\) "[I]t is clear," the court asserted, "that one cannot be a commissioned officer (school board member) and be a deputy for any other commissioned officer (sheriff) at the same time."\(^{208}\)

The supreme court considered a different type of capacity conflict in Chapel v. State,\(^{209}\) an action to disqualify an attorney from representing a criminal defendant because the attorney represented the county in other (civil) matters.\(^{210}\) On the grounds that the attorney intended to use information obtained during his civil work for the county to assist in his representation of the criminal defendant, the court affirmed the attorney's disqualification.\(^{211}\) The court reasoned that both a conflict...
of interests and an appearance of impropriety rendered the attorney's criminal representation impermissible.\textsuperscript{212}

Resignations and reassignments give full account of themselves in the law of county officials. As for the former, \textit{Henry County Board of Registrars v. Farmer}\textsuperscript{213} sought out the correct recipient for a letter of resignation from a member of the county board of registrars.\textsuperscript{214} Holding statutory law to mandate acceptance by the judge of superior court,\textsuperscript{215} the court of appeals declared ineffective a resignation submitted to the chief registrar.\textsuperscript{216}

\textit{Hamilton v. Telfair County School District}\textsuperscript{217} focused upon a school principal's reassignment\textsuperscript{218}—specifically upon whether the transfer constituted a demotion thus entitling plaintiff to a hearing.\textsuperscript{219} Holding demotion to require "adverse effect on one's salary, responsibility, and prestige,"\textsuperscript{220} the supreme court scored plaintiff's failure to establish a reduction in pay.\textsuperscript{221} "Accordingly, [plaintiff] cannot demonstrate that

\begin{itemize}
\item \textsuperscript{212} \textit{Id.} at 270, 443 S.E.2d at 274. Additionally, the court noted that there would be a potential for a post-trial claim of ineffectiveness, "based on the possibility that [the attorney's] loyalty to or efforts on behalf of [the criminal defendant] could be threatened by his responsibilities to the county." \textit{Id.}
\item \textsuperscript{213} \textit{Id.} at 522, 444 S.E.2d 877 (1994).
\item \textsuperscript{214} \textit{Id.} at 522, 444 S.E.2d at 877. Plaintiff sought back pay, contending that her resignation to the chief registrar which was sent to, but not accepted by, the superior court judge was ineffective. \textit{Id.}
\item \textsuperscript{215} \textit{Id.} at 523, 444 S.E.2d at 878. \textit{Id.} (citing O.C.G.A. § 21-2-211 (1993 & Supp. 1996)). The court relied upon O.C.G.A. § 21-2-211. The court said that "[e]ven though there was evidence that [the chief registrar] had forwarded the letter . . . to the chief judge, there was no evidence that the letter was either received or accepted." \textit{Id.}
\item \textsuperscript{216} \textit{Id.} at 523, 444 S.E.2d at 878. The court thus affirmed the trial judge's award of back pay to the plaintiff. \textit{Id.}
\item \textsuperscript{217} \textit{Id.} at 524, 444 S.E.2d 23 (1995).
\item \textsuperscript{218} \textit{Id.} at 304, 455 S.E.2d at 23. Plaintiff had been transferred from her position of assistant principal at the county high school to the position of principal at the county alternative training center. \textit{Id.}
\item \textsuperscript{220} \textit{Id.} at 304, 455 S.E.2d at 23. The court relied upon O.C.G.A. § 20-2-943(a)(2)(C) (1992), and Rockdale County School Dist. v. Weil, 245 Ga. 730, 266 S.E.2d 919 (1980). 265 Ga. at 304, 455 S.E.2d at 23.
\item \textsuperscript{221} \textit{Id.} at 304, 455 S.E.2d at 23. The court noted the record to support findings that had plaintiff remained in her former position, she would have received total compensation of $44,273.44, and that in her new position she would receive total compensation of $45,671.00. \textit{Id.}
\end{itemize}
her transfer constitutes a demotion," the court reasoned, affirming the trial judge's denial of her petition for a hearing.

The county's responsibility for workers' compensation benefits constituted the concern of *North v. Floyd County Board of Education*. That concern focused upon an applicant for the position of substitute school bus driver injured while undergoing a two-week training period. During that period, plaintiff was neither compensated nor assured of employment. In these circumstances, and operating under the "any evidence rule," a majority of the court of appeals affirmed a decision that the plaintiff was not a county "employee" at the time of her injury.

C. Finances

The survey period canvassed an assortment of litigated county financial facets. *Abe Engineering, Inc. v. Fulton County Board of Education* encompassed a scenario in which the board accepted a statutorily sufficient payment bond from its contractor and made final payment to the contractor upon verification of work completion.

222. *Id.*

223. *Id.* Presiding Justice Benham, joined by Justice Hunstein, dissented, primarily taking issue with the trial court's method of determining what plaintiff's pay would have been had she remained in her former position: "The trial court opined that, had appellant remained in her former position, she would not have received the optional $2400 [county] supplement and would have received an 11-month contract instead of a 12-month contract." *Id.* at 307, 455 S.E.2d at 25 (Benham, P.J., dissenting). The dissenter argued that exclusion of the local supplemental pay from the calculation was error. *Id.*


225. *Id.* at 593, 442 S.E.2d at 810. Plaintiff was injured after accompanying a bus driver on a route when she fell while walking from the bus to her car. *Id.* The administrative law judge had decided against plaintiff primarily because she had not been assured of employment even upon successful completion of the training program and because she had received no compensation during the training period. *Id.*

226. *Id.* at 595, 442 S.E.2d at 811. "Those findings are supported by evidence in this record, and we are, therefore, bound to accept them under the 'any evidence' standard of review." *Id.*

227. *Id.* The court reasoned that the potential benefit to the county from having another driver in the pool of substitute drivers "is not significant enough to demand a finding of an implied contract of employment in this case." *Id.* at 594, 442 S.E.2d at 811.

A four-judge dissenting opinion maintained that the "any evidence" rule did not apply when the administrative findings rest upon an erroneous legal theory, that the chief test is "control," and that this facet was not considered below. *Id.* at 595-96, 442 S.E.2d at 811-12 (Blackburn, J., dissenting). The dissenters argued that the case should be remanded for the compensation board's consideration of this facet. *Id.* at 596, 442 S.E.2d at 812.


229. *Id.* at 514, 448 S.E.2d at 222. The court observed that "there is no question that the payment bond in issue met the statutory requirements of O.C.G.A. § 36-82-102 and was
Following that final payment, the subcontractor on the project obtained an arbitration award against the contractor and sought to hold the board responsible for that award. The court of appeals held that the board's actions satisfied its statutory responsibilities and that it "was not required . . . to obtain an additional payment bond from [the contractor] pending the outcome of the arbitration proceeding on [the subcontractor's] payment dispute with [the contractor]."

Moving from payment bonds to sales taxes, *C.W. Matthews Contracting Co. v. Collins* featured a contractor's claim for refunds of local option sales taxes paid while performing state highway construction projects. Holding the statutory tax exemption unequivocal and clear, the court declared that "the phrase 'any tax' includes the local option, MARTA, and special county sales taxes which were assessed against [plaintiff] on work performed in connection with its contracts with [the Georgia Department of Transportation]."

approved by and filed with the appropriate official." 214 Ga. App. at 515, 448 S.E.2d at 223.

230. 214 Ga. App. at 514, 448 S.E.2d at 222. The award arose out of a dispute between the contractor and subcontractor over work performed under the subcontract agreement. *Id.*

231. *Id.* at 515, 448 S.E.2d at 223. Otherwise, the court noted, "'A county is not liable to suit for any cause of action unless made so by statute.' O.C.G.A. § 36-1-4." 214 Ga. App. at 515, 448 S.E.2d at 223.

232. 214 Ga. App. at 515, 448 S.E.2d at 223. Thus, the court affirmed summary judgment for the county board of education. *Id.* at 516, 448 S.E.2d at 223.


234. *Id.* at 532, 448 S.E.2d at 234. These taxes were paid over a three-year period and collected by the State Revenue Commissioner. *Id.*

235. *Id.* at 533, 448 S.E.2d at 235. See O.C.G.A. § 50-17-29(e) (1994 & Supp. 1995). Said the court: "It plainly prohibits the imposition of 'any tax, assessment, levy, license fee, or other fee' upon contractors 'as a . . . result of the performance of a contract, work, or services in connection with any project being constructed (etc) for, or on behalf of, the state or any of its agencies . . . ." 214 Ga. App. at 533, 448 S.E.2d at 235.

236. 214 Ga. App. at 534, 448 S.E.2d at 235. In holding the plaintiff contractor entitled to the refund, the court reversed the lower court and rejected an opinion by the Attorney General drawing a distinction between taxes on person and property in comparison to taxes on transactions. *Id.* at 533, 448 S.E.2d at 235.

Some three weeks after the decision in *C.W. Matthews*, the court decided Gainesville Asphalt, Inc. v. Hall County, 214 Ga. App. 679, 448 S.E.2d 721 (1994). There, the court refused to extend the statutory exemption of O.C.G.A. § 50-17-29(e) to county ad valorem taxes on plaintiff's inventory and equipment permanently located in the county, even though plaintiff alleged that it had sold 74% of the asphalt it produced during the taxable year to the Georgia Department of Transportation. 214 Ga. App. at 679, 448 S.E.2d at 721.

Because there is no genuine issue of material fact that [the county] did not tax [plaintiff's] inventory and equipment solely as a condition to or result of the performance of work on behalf of the state, the trial court properly granted summary judgment to the county and denied summary judgment to [plaintiff] on
The supreme court entered the financial fray in *Clayton County Airport Authority v. State*,\(^{237}\) a proceeding to validate the authority's revenue bonds for financing acquisition of a county airport.\(^{238}\) Under the challenged agreement, the county would convey the airport to the authority, use the expanded airport facility, and pay "amounts sufficient to enable the Authority to pay the principal and interest on" the revenue bonds.\(^{239}\) In rejecting intervenors' protests to the arrangement as an unconstitutional county "debt,"\(^{240}\) a unanimous court reviewed relevant authority.\(^{241}\) The constitution's "intergovernmental contracts clause" authorized the agreement, the court reasoned, because both the authority and the county possessed statutory power to provide airport facilities.\(^{242}\) The court placed like reliance upon the clause to sustain the county's agreement to exercise its power of taxation in paying for the use of the airport facility.\(^{243}\) Although the county could not levy taxes to pay off the revenue bonds, it "could 'enter into contracts with the Authority and . . . pledge its full faith and credit and levy taxes to meet its contractual obligations pursuant to the law of contracts.'"\(^{244}\)

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\(^{238}\) Id. at 24, 453 S.E.2d at 9. The validation proceeding was brought under O.C.G.A. § 36-82-75. Id. See O.C.G.A. § 36-82-75 (1993).

\(^{239}\) 265 Ga. at 24, 453 S.E.2d at 9.

\(^{240}\) Id. at 25, 453 S.E.2d at 10. The GEORGIA CONSTITUTION, art. IX, § 3, para. 1, prohibits local governments from incurring new indebtedness without the assent of a majority of the qualified voters. 265 Ga. at 24, 453 S.E.2d at 9. The trial court had voided the agreement in issue as violating this prohibition. Id.

\(^{241}\) 265 Ga. at 24, 453 S.E.2d at 9. "Whether the contractual consideration is an unconstitutional 'new debt' incurred by the County or the Authority's lawful 'revenue pledged to the payment of its bonds is dependent upon whether the contract between the County and the Authority is a valid intergovernmental contract authorized by Art. IX, § 3, para. 1, of our constitution." 265 Ga. at 24, 453 S.E.2d at 9.

\(^{242}\) 265 Ga. at 25, 453 S.E.2d at 10. The court said that "the Authority is granted broad [power] to undertake to provide an airport facility for the County. Ga. L. 1994, pp. 4305, 4311 et seq." and that "pursuant to O.C.G.A. § 48-5-220(14), the County is authorized specifically to expend tax revenues to provide for an airport facility." 265 Ga. at 25, 453 S.E.2d at 10. Given those powers, the court held, "the contractual consideration represents the Authority's lawful 'revenue pledged to the payment of its bonds rather than an unconstitutional 'new debt' incurred by the County." Id.

\(^{243}\) 265 Ga. at 26, 453 S.E.2d at 10. The revenue bond statutes expressly prohibit the holders of revenue bonds from compelling the exercise of the tax power of the governmental body to pay the bonds or the interest. O.C.G.A. § 36-82-66 (1993).

\(^{244}\) 265 Ga. at 26, 453 S.E.2d at 10 (quoting Thompson v. Municipal Elec. Auth., 288 Ga. 19, 231 S.E.2d 720 (1976)). It was immaterial, the court additionally held, that the county would not pay its consideration for the use of the airport to the authority but would rather pay directly to the custodian of the authority's sinking fund established for retire-
D. Openness

Counties faced "openness" challenges in respect both to their records and their meetings during the survey period. Jersawitz v. Hicks featured an action to mandamus a means by which real estate records, available to the public on a computer tape, "could be directly accessed via a telephone modem on a personal computer." Affirming denial of the petition, the supreme court conceded that real estate deeds are public records under the Open Records Act, but noted a recent amendment's provision for charges for "computer disks or tapes." Thus, the Act did not require access by personal computer modem, and was satisfied by the county's computer tape program.

Challengers received slightly better treatment from a closely divided court of appeals in Crosland v. Butts County Board of Zoning Appeals. There, complainants charged the county board's violation of the Open Meetings Act by holding nonpublic meetings prior to its public hearings on a permit for a solid waste landfill. On grounds that the evidence demonstrated "a conflict as to what action was or was not taken at the non-public meetings," the court reversed the trial judge's summary judgment against the plaintiffs. In the court's view, "the conflicting evidence suggests the petition may have been

245. For background and an early review of both topics, see R. Perry Sentell, Jr., The Omen of "Openness" in Local Government Law, 13 GA. L. REV. 97 (1978).
247. Id. at 554, 448 S.E.2d at 352. The action was directed against the clerk of the county superior court. Id. at 553-54, 448 S.E.2d at 352.
250. 264 Ga. at 554, 448 S.E.2d at 353. The court noted that "the prevalence of computers in homes, offices, and schools may make on-line access to computerized public records desirable," but reasoned that "requiring that means of access must be addressed by the General Assembly." Id. For analysis of the frequency with which mandamus is unsuccessful in local government law, see R. Perry Sentell, Jr., Miscasting Mandamus in Georgia Local Government Law (1989).
253. 214 Ga. App. at 296, 448 S.E.2d at 455. Defendants admitted that nonpublic meetings were held but denied that official actions were taken in violation of the Open Meetings Act. Id.
254. Id. at 297, 448 S.E.2d at 455. The court contrasted the testimony of one of the members of the zoning appeals board that the substantive merits of the request were not discussed and that no decisions were made, against the testimony of the county attorney that decisions on the granting of the petition were reached. Id. at 296, 448 S.E.2d at 455.
255. Id. at 297, 448 S.E.2d at 456.
‘acted on’ by the ‘officials’ charged with taking the ‘official action’ at these non-public meetings.  

E. Roads

A major concern and responsibility of county government, public roads are also a continuing source of litigation. The period’s illustration of the point came in Smith v. Board of Commissioners of Athens-Clarke County. There, property owners adjacent to an unpaved county road sought to enjoin the governing authority’s abandonment of the road and appealed the trial judge’s denial of relief. In affirming that action, the supreme court took note of statutory authority for county abandonment if the road “has ceased to be used by the public to the extent that no substantial public purpose is served by it.” Reviewing evidence that public nonuse was for reasons other than the road’s disrepair, the court denied the abandonment to constitute an abuse of the governing authority’s discretion.

F. Liability

In Gilbert v. Richardson, the Georgia Supreme Court undertook a major analysis of current county tort responsibility. The case arose out of plaintiff’s collision with a deputy sheriff responding to an emergency; plaintiff sued both the deputy and the sheriff. Setting

256. Id. A four-judge dissent maintained that if the motion to grant the permit was not passed until the public meeting, there was no violation of the Open Meetings Act. Id. at 299, 448 S.E.2d at 457 (Smith, J., dissenting). “The Act does provide for a remedy for a violation such as that alleged here: an injunction could have issued prohibiting further closed meetings. . . . Penalties may be imposed. . . . The Act simply does not provide for invalidating the permit unless the ‘official action’ was taken at a closed meeting.” Id.


258. Id. at 316, 444 S.E.2d at 775. County abandonment had come in response to the owners’ obtaining a mandamus for the road’s repair. Id.


260. 264 Ga. at 317, 444 S.E.2d at 776. The trial court had found public nonuse to arise from the facts that the bridge on the road was submerged when it rained and that alternative paved routes were available. Id.

261. Id.


264. 264 Ga. at 745, 452 S.E.2d at 478. The trial court granted summary judgments for both defendants, and the court of appeals had affirmed in 211 Ga. App. 795, 440 S.E.2d
the historical stage for the issues presented, the court focused upon the famous 1991 amendment to the constitution.266 That amendment, the court held, expressly confers sovereign immunity upon counties,266 an immunity only the general assembly is empowered to waive.267 The legislature has expressly waived that immunity, the court continued, to the extent of the amount of liability insurance the county purchased "for the negligence of its officers, . . . arising from the use of a motor vehicle."268 Moreover, the court held, the county's authorized participation in a county insurance pool269 "waived its [motor vehicle] sovereign immunity to the extent of its liability coverage."270

As for the defendant deputy, the court interpreted the 1991 amendment to "provide [official] immunity for the negligent performance of

265. 264 Ga. at 746, 452 S.E.2d at 478. See GA. CONST. art. I, § 2, para. 9.
266. 264 Ga. at 747, 452 S.E.2d at 478. "[W]e hold the 1991 amendment's extension of sovereign immunity to 'the state and its departments and agencies' must also apply to counties." Id., 452 S.E.2d at 479.
267. "[W]e hold that sovereign immunity is waived by any legislative act which specifically provides that sovereign immunity is waived and the extent of such waiver." Id. at 748, 452 S.E.2d at 480.
269. 264 Ga. at 751, 452 S.E.2d at 482; O.C.G.A. § 36-85-2(a) (1993). The court explained that "[t]hrough its participation in GIRMA, [the county] is authorized to pool its resources and liabilities with other member counties and jointly purchase general liability, motor vehicle liability, or property damage insurance." 264 Ga. at 751 n.8, 452 S.E.2d at 482 n.8.
270. 264 Ga. at 751, 452 S.E.2d at 482. Although the GIRMA statute itself provides that participation therein shall not waive immunity, in Hiers v. City of Barwick, 262 Ga. 129, 414 S.E.2d 647 (1992), the court invalidated that provision because of its conflict with the Article I provision of the 1983 Constitution. Id. at 130, 414 S.E.2d at 648. Although the 1991 amendment replaced that Article I provision without the previous conflicting language, the court held that the replacement did not resurrect the void statute. 264 Ga. at 751, 452 S.E.2d at 482. "A statute declared unconstitutional is deemed void from its inception and is not revived merely because the constitutional infirmity is subsequently eliminated." Id. For history and analysis of the "void from inception" doctrine in Georgia, see R. Perry Sentell, Jr., Unconstitutionality in Georgia: Problems of Nothing, 8 GA. L. REV. 101 (1974).

On the issue of "extent of waiver" by county motor vehicle insurance, in Mims v. Clanton, 215 Ga. App. 665, 452 S.E.2d 169 (1994)(decided under the 1983 version of Article I), the court of appeals held that a county policy with a $250,000 deductible and a $750,000 limit per occurrence, provided only partial waiver. The court remanded the case for a determination on whether the county had established self-insurance for the first $250,000 of liability. Id. at 667, 452 at 171.
discretionary acts." In rushing to an emergency call, the court held, the deputy "was performing an official discretionary function when the accident occurred and is immune from personal liability under the 1991 amendment."

As for the sheriff's "respondeat superior" liability for the negligence of his employee in performing an official function, the court held the sheriff was "entitled to the benefit of [the county's] sovereign immunity defense." Yet, "[s]ince . . . the county has waived sovereign immunity to the extent of its liability insurance coverage, [the sheriff's] sovereign immunity defense is likewise waived to that extent."

The survey period's other decisions, all rendered by the court of appeals, touched upon various facets of county responsibility. Even prior to the supreme court's decision in *Gilbert, Canfield v. Cook County* held counties immune to liability under the 1991 amendment. In *Canfield*, an action for an accident on a county road, the court of appeals also rejected plaintiff's effort at liability in nuisance: "A county cannot be liable for a nuisance except in the context of a taking of private property for public purposes amounting to inverse condemnation."

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271. 264 Ga. at 753, 452 S.E.2d at 483. The court explained that heretofore the doctrine of "official immunity" had developed primarily through case law. See R. Perry Sentell, Jr., *Individual Liability In Georgia Local Government Law: The Haunting Hiatus of Hennessy*, 40 MERCER L. REV. 27 (1988). With the 1991 amendment, however, that provision expressly treated the issue. Noting that it had not previously considered the effect of this change, the court interpreted "the term 'official functions' to mean any act performed within the officer's or employee's scope of authority, including both ministerial and discretionary acts." 264 Ga. at 753, 452 S.E.2d at 483. "Under this definition, the 1991 amendment provides no immunity for ministerial acts negligently performed or for ministerial or discretionary acts performed with malice or an intent to injure." Id.

272. 264 Ga. at 753, 452 S.E.2d at 483. Thus, the court affirmed the trial judge's grant of summary judgment to the deputy under the doctrine of official immunity. Id.

273. Id. The court explained that "[u]nder the doctrine of respondeat superior, a principal has no defense based on an agent's immunity from civil liability for an act committed in the course of employment." Id. Thus, "[s]ince deputy sheriffs are employed by the sheriff rather than the county, sheriffs may be liable in their official capacity for a deputy's negligence in performing an official function." Id. at 754, 452 S.E.2d at 484.

274. Id.

275. Id. The court thus reversed the trial judge's grant of summary judgment to the sheriff. Id.


277. Id. at 625, 445 S.E.2d at 375. Absent legislative authority, the court further declared, liability insurance could not waive the immunity. Id.

278. Id. For history and analysis of county liability in nuisance, see R. Perry Sentell, Jr., *Georgia County Liability: Nuisance or Not?*, 43 MERCER L. REV. 1 (1991).

In two cases of the period, counties escaped liability simply because they had played no part in bringing about the injury. In *Watson v. Clayton County*, 214 Ga. App. 225, 447 S.E.2d 162 (1994), a complaint that the county allowed the city to barricade and excavate
Coffee County School District v. Snipes\textsuperscript{279} brought the liability focus to bear upon county school districts and their employees.\textsuperscript{280} Closely tracking Gilbert, the court of appeals held that, like counties, county-wide school districts also enjoy the 1991 amendment's immunity.\textsuperscript{281} As for the employees, a teacher and teacher's aide supervising children during recess, the court declared their functions to be "discretionary,"\textsuperscript{282} thus, "they are immune from personal liability under subsection (d) of the 1991 amendment."\textsuperscript{283}

The noteworthy issue of Tillman v. Mastin\textsuperscript{284} went to plaintiff's action under 42 U.S.C. § 1983\textsuperscript{285} for a collision with a police officer responding to an emergency call.\textsuperscript{286} Following review of the requirements for section 1983 claims, the court concluded "that there was not a showing that [the county] intentionally or deliberately promulgated or even tolerated an impermissible or corrupt policy in its training of police officers."\textsuperscript{287}

Johnson v. Gwinnett County\textsuperscript{288} served to remind that not all county liability exemption derives from sovereign immunity. There, plaintiff sued for the wrongful death of her son at the hands of the county's EMT technicians,\textsuperscript{289} with the county pleading immunity under the Good property, the court said none of the property was dedicated to the county nor did the county have control over the city's work. In Hardy v. Candler County, 214 Ga. App. 627, 448 S.E.2d 487 (1994), an action for an accident on a road, the court held the case devoid of evidence that the county owed any duty in respect to the road.

\textsuperscript{280} 216 Ga. App. 293, 454 S.E.2d at 149. Plaintiff sued for injuries to his five-year-old child who fell during a recess period in the school gymnasium. 216 Ga. App. 293-94, 454 S.E.2d at 149.
\textsuperscript{281} 216 Ga. App. 294, 454 S.E.2d at 150. "We conclude that the 1991 amendment extending sovereign immunity 'to the state and all of its departments and agencies' includes county-wide school districts . . . created pursuant to Art. VIII, sec. 5, para. 1 of the 1983 Georgia Constitution." 216 Ga. App. at 294, 454 S.E.2d at 150.
\textsuperscript{282} 216 Ga. App. 297, 454 S.E.2d at 152.
\textsuperscript{283} The court thus reversed the trial judge's denial of defendants' motion for summary judgment. Id.
\textsuperscript{284} 216 Ga. App. 3, 453 S.E.2d 85 (1994). Other issues decided included the county's immunity under the 1983 Article I provision because it had no liability insurance, and the police officer's immunity for discretionary acts. Id.
\textsuperscript{286} 216 Ga. App. 3, 453 S.E.2d at 86. For history, treatment, and analysis of this famous federal statute in the Georgia local government context, see R. Perry Sentell, Jr., GEORGIA LOCAL GOVERNMENT LAW'S ASSIMILATION OF MONELL: SECTION 1983 AND THE NEW "PERSONS" (1984).
\textsuperscript{287} 216 Ga. App. at 4, 453 S.E.2d at 87. The court thus affirmed the trial judge's grant of summary judgments for defendants. Id.
\textsuperscript{289} Id. at 79, 449 S.E.2d at 856. Plaintiff alleged the technicians' negligent treatment of her son in rendering care to him, mistakenly inserting a tube into his esophagus instead
Samaritan Immunity Statute.\textsuperscript{290} The court agreed not only that the Statute covered the case, but also declared its immunity unaffected by the existence of county liability insurance.\textsuperscript{291}

The period's nonimmunity cases included \textit{Landis v. Rockdale County},\textsuperscript{292} complaining of a deputy sheriff's failure to arrest a noticeably intoxicated driver who subsequently caused an accident fatal to plaintiff's decedent.\textsuperscript{293} Basing its treatment of nonfeasance duty upon the supreme court's decision in \textit{City of Rome v. Jordan},\textsuperscript{294} the court of appeals searched for the necessary "special relationship."\textsuperscript{295} Noting the absence of any connection between the deputy and the decedent,\textsuperscript{296} the court turned to the deputy's relation to the intoxicated driver. That relation, the court reasoned, entitled the duty of enforcing the drunk driving laws only "to the public in general, not specifically to plaintiff's decedent."\textsuperscript{297} Accordingly, the court held that defendants violated no
duty "for which they could be held liable in tort for the plaintiff's claims." 298

In Thompson v. Payne, 299 the court found itself laboring under yet another recent supreme court negligence formulation. Thompson featured a motorist's complaint at being struck on the highway by both a pursuing deputy and the fleeing suspect; plaintiff sued both the deputy and his superior, the county sheriff. 300 The court expressly engaged the supreme court's recent analysis of "proximate cause" in Mixon v. City of Warner Robins. 301 Under that analysis, summary judgment for defendants was proper only if the evidence demanded a finding that the officer properly balanced the risk to other drivers when he pursued the fleeing suspect. 302 This case failed that standard, 303 the court held, and "[it] remains for the jury to determine whether, under all the circumstances and conditions, the officer's act of pursuing the suspect's vehicle (including his decision to initiate and continue the pursuit) was performed with the requisite due regard for the safety of all persons." 304

298. Id. at 705, 445 S.E.2d at 268-69. The court reasoned that the officer's "authority" to arrest did not create an affirmative "duty" to arrest for purposes of a tort action. Id. at 704, 445 S.E.2d at 268. Thus, the court affirmed the trial judge's grant of summary judgment for all defendants. Id. at 705, 445 S.E.2d at 269.

Presiding Judge Beasley, joined by Judge Cooper, dissented with the argument that this case was not controlled by City of Rome which involved a relation between the government and the plaintiff, but rather had been distinguished in City of Rome as involving unique circumstances: "That is, it arises from the unique position, power, knowledge of the officer, and foreseeability, to prevent the tort." Id. at 707, 445 S.E.2d at 270 (Beasley, P.J., dissenting).


300. Id. at 217, 453 S.E.2d at 804. The trial judge denied the defendants' motion for summary judgment. Id.

301. 264 Ga. 385, 444 S.E.2d 761 (1994). In Mixon, only the fleeing suspect collided with the plaintiff motorist. Id. at 385, 444 S.E.2d at 763.

302. 216 Ga. App. at 219, 453 S.E.2d at 805. The court said that in Mixon the supreme court had relied on O.C.G.A. § 40-6-6(d) to conclude that "an officer's performance of his professional duty is not to be considered paramount to the duty that he owes to other members of the driving public." 216 Ga. App. at 219, 453 S.E.2d at 805. See O.C.G.A. § 40-6-6(d) (1984 & Supp. 1995).


We conclude that the evidence in this case, construed in favor of the plaintiff on [defendant's] motion for summary judgment, does not demand a finding that [the deputy] properly balanced the risk to the safety of other drivers and that in his pursuit of the fleeing suspect he acted with due regard for the safety of other drivers.

Id.

304. Id. (emphasis in original). The court thus affirmed the trial judge's denial of defendants' motion for summary judgment. Id.
G. Zoning

Few local government functions are as controversial, or complex, as that of zoning. A recurring issue goes to the remedies available to property owners when zoning authorities fail fully to implement court-ordered rezoning. Alexander v. DeKalb County\textsuperscript{[305]} raised that issue when the county, although complying with a court order to increase apartment units per acre, then imposed conditions limiting the increase.\textsuperscript{[306]} Overruling a prior decision restricting available remedies to criminal contempt or exemption from all zoning laws,\textsuperscript{[307]} the supreme court proffered two others: civil contempt\textsuperscript{[308]} and a constitutional challenge to the new zoning classification.\textsuperscript{[309]}

The court admitted to making additional new law in Banks County v. Chambers of Georgia,\textsuperscript{[310]} seeking mandamus for county verification that plaintiffs' proposed landfill complied with zoning ordinances.\textsuperscript{[311]} The court formulated "the question of first impression" as follows: "Does an
applicant for a proposed solid waste landfill have a vested right to written verification of compliance with local zoning ordinances if he is in compliance with such ordinances when he first requests written verification? Exempting prior decisions, the court answered the question in the affirmative and thus affirmed the trial judge's mandamus of verification.

The court of appeals dealt with writs of mandamus and proposed landfills in Butts County v. Pine Ridge Recycling, Inc. There, the court took issue with the county's interpretation of the Georgia Comprehensive Solid Waste Management Act. In refusing verification of plaintiff's proposed landfill, the county had erred in considering the proposed site's "negative impact" on its effort to reduce solid waste disposition. Rather, the court announced, "we hold that a local jurisdiction can only identify a site as unsuitable for a solid waste facility based on environmental and land use factors, not based on the fact that such a facility might increase the amount of waste disposed of in the county." Otherwise, the court reasoned, "a county could meet the waste reduction goal simply . . . by shipping all its solid waste to

312. 264 Ga. at 421, 444 S.E.2d at 785.
314. 264 Ga. at 421, 444 S.E.2d at 785. "We answer this question affirmatively." Id.
315. Id. at 422, 444 S.E.2d at 786. "Plaintiffs were in compliance with the County's zoning ordinances when they sought written verification of compliance on August 20, 1991. It follows that plaintiffs have a vested right to obtain written verification of zoning compliance despite the enactment of the September 26, 1991, zoning ordinance." Id. at 423, 444 S.E.2d at 786.

Chief Justice Hunt and Justice Carley concurred only in the judgment, and Justice Sears-Collins dissented without opinion. Id. at 424, 444 S.E.2d at 787.

Justice Hunstein dissented with an opinion which charged the majority with applying the "minority rule" in the situation at hand and urged application of the "majority rule" which requires that the landowners do more than merely apply for a permit or prerequisite to such a permit once they have knowledge of pending zoning changes at the time of their application. Id. at 425, 444 S.E.2d at 787-88 (Hunstein, J., dissenting).

319. Id. at 512, 445 S.E.2d at 296. The part of the Act under dispute was O.C.G.A. § 12-8-21(c) which the court treated as follows:

We therefore construe the statutory requirement that local governments implement programs to reduce the solid waste received at their disposal facilities as a method both to achieve the state-wide goal of 25 percent waste reduction and to measure the rate at which waste is being reduced; it is not, contrary to [the county's] claim, a means by which local governments can refuse the presence of solid waste handling facilities.

other counties." The court thus approved the trial judge’s consideration of environmental and land use factors and affirmed mandamus of county verification that plaintiff’s site was consistent with a multijurisdictional solid waste management plan.

The supreme court proved far less receptive to mandamus in the distinctly different zoning context of DeKalb County v. Publix Super Markets, Inc. There, the fifteen-acre parcel of land in issue was zoned four acres “commercial” and eleven acres “office-institutional.” Plaintiffs’ proposed commercial shopping center designated the four-acre portion as the location of its food store and the remaining area for parking. Emphasizing that the county zoning ordinance prohibited “placing accessory parking for a C-1 use in a 0-1 zoning district,” the court rejected plaintiff’s position “that there is a clear legal right to approval.” Accordingly, the court reversed the trial judge’s issuance of mandamus.

Dick v. Williams projected the court of appeals into a consideration of ethics in local government zoning. Dick invalidated the county commissioners’ grant of a rezoning application when the applicants were represented by the law partner of a commissioner’s son. Holding the county ethics code to govern the matter, the court emphasized that code’s prohibition of “the appearance of impropriety.” “Clearly,” the

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320. 213 Ga. App. at 511, 445 S.E.2d at 295. “Solid waste reduction cannot be achieved simply by shipping the waste elsewhere; rather, as set forth in O.C.G.A. § 12-8-21(b), the appropriate manner for reducing solid waste is ‘through source reduction, reuse, composting, recycling, and other methods.’” 213 Ga. App. at 511-12, 445 S.E.2d at 295.

321. 213 Ga. App. at 514, 445 S.E.2d at 297. The court explained that plaintiff had “no other specific legal remedy for protecting its right.” Id.


323. Id. at 740, 452 S.E.2d at 471.

324. Id. at 741, 452 S.E.2d at 472. Plaintiff submitted a preliminary plat and permit development application, the county disapproved on grounds of noncompliance with its ordinances, plaintiff filed the mandamus action, and the trial court issued the mandamus. Id. at 740-41, 452 S.E.2d at 472.

325. Id. at 742, 452 S.E.2d at 473. The court observed that a curb-cut proposal was prohibited by ordinance as well. Id. at 741, 452 S.E.2d at 472.

326. Id. The court disagreed with the trial judge’s determination that cross-district parking was not prohibited by the county ordinance. Id. at 743, 452 S.E.2d at 474.

327. Id.


329. Id. at 629, 452 S.E.2d at 172. The rezoning application sought a rezoning from “Office & Industrial” to “Office High Rise.” Id., 452 S.E.2d at 174.

330. Id. at 631, 452 S.E.2d at 175. Rejecting defendants’ contention that the matter was controlled by state law, the court said “that state law provides a floor and not a ceiling for the boundaries of ethical conduct by government officials.” Id.

331. Id.
court asserted, "an appearance of impropriety was created by [the commissioner] acting on an application where the applicants were represented by his son's law partner." Accordingly, the court affirmed the trial judge's remand of the case for rehearing by the commissioners without the participation of the offending member.

H. Authorities

The county hospital authority suffered litigation in both appellate courts. In Martin v. Hospital Authority of Clarke County, the supreme court reaffirmed and extended the exemption of governmental entities from punitive damages. The court anchored that exemption firmly in "our state's public policy," and viewed punitive damages in this setting to serve no valid purpose. That same rationale, moreover, rendered the exemption oblivious to the hospital authority's insurance against punitive damages. The court maintained that "the existence of insurance and the issue of sovereign immunity simply have no bearing in this case."

On the point of sovereign immunity itself, the court of appeals employed Randolph County Hospital Authority v. Johnson to adopt

332. Id. The court also rejected defendants' contention that the commissioner's son was given no role and no compensation in the part of the practice dealing with county zoning. Lawyers practicing in the same firm should not be allowed to create multiple legal entities and parcel their clients among them in order to circumvent an otherwise existing conflict, and it necessarily follows that they should not be able to do so in order to allow some lawyers in the firm to have an "interest" in a particular matter while others do not.

333. Id. at 632, 452 S.E.2d at 176.

334. Id.


336. 264 Ga. at 626, 449 S.E.2d at 828. The court reasoned that "punitive damages are not appropriate against governmental entities because neither of the twin purposes behind punitive damages—punishment and deterrence—is served by an assessment of those damages against governmental entities." Id.

337. Id. at 627, 449 S.E.2d at 828-29. "[T]he public policy prohibiting punitive damage awards against governmental entities stands on independent grounds unaffected by the existence of insurance coverage." Id.

338. Id., 449 S.E.2d at 829. Justice Carley, joined by Justice Thompson, dissented on the ground that "the public policy of this state should not be extended to protect the purely private interest of an insurer who has contracted to afford liability coverage to a governmental entity against whom punitive damages are sought." Id. at 631, 449 S.E.2d at 831 (Carley, J., dissenting).

339. 215 Ga. App. 283, 450 S.E.2d 318 (1994). This was a wrongful death action against the hospital authority with the trial judge denying the defendant's motion for
the supreme court's recent approach. A hospital authority, the court reasoned, although an instrument of government, is not an "agency or department of the state" within the constitution's conferral of immunity.

Finally, plaintiff in Atlanta Airmotive, Inc. v. Royal sought to impose personal liability upon members of the county airport authority. Relying exclusively upon the "supplemental immunity" statutorily provided for members of local government authorities, the court affirmed summary judgment for the defendants. Under that statute, the court asserted, the members' immunity did not turn upon the "ministerial-discretionary" dichotomy, as long as their actions were taken in good faith and within the scope of their official duties. The court rejected plaintiff's argument that defendants' acts fell outside their official duties because they violated the Open Meetings Act. Such violations, the court reasoned, would not strip the actions of their "official duty" characteristic.

III. LEGISLATION

Although space limitations preclude adequate presentation, a few local government products of the 1995 legislative session might be mentioned.

summary judgment on grounds of sovereign immunity. Id. at 283, 450 S.E.2d at 318.


343. Id. at 760, 449 S.E.2d at 316. Plaintiff lessee of a part of the county airport sued the airport authority members for terminating its lease, claiming personal liability for tort damages caused by alleged malicious interference with plaintiff's business. Id.
346. Id.
347. Id. Further, damages must not be the result of willful or wanton misconduct. Id.
348. Id. at 762, 449 S.E.2d at 317; O.C.G.A. §§ 50-14-1 to -6 (1994).
349. 214 Ga. App. at 762, 449 S.E.2d at 317. Although not deciding whether in fact the members had violated the Open Meetings Act, "it does not follow that any actions taken by Authority members which may have violated the Open Meetings Act lost their character as actions taken within the scope of the members' official duties for purposes of the immunity provided by O.C.G.A. § 51-1-20." 214 Ga. App. at 762, 449 S.E.2d at 317.
Apparently reacting to a recent decision by the Georgia Supreme Court, the general assembly set a proximate cause standard for police officers who pursue fleeing suspects. Unless the officer acts "with reckless disregard for proper law enforcement procedures," the officer's conduct may not be deemed the proximate cause of the suspect's injury to other persons.

A legal liability concern at the county level led to yet another innovative measure. The new statute authorizes a county officer, sued in a civil or criminal action, to petition for court order of a personal attorney. This may be done only when the county agrees to provide a defense in lieu of insurance and when an ethical conflict of interests prevents the county attorney from representing the petitioning officer.

Continuing the focus upon individual officers, two statutes loosened prohibitions upon service. One of these eliminates the requirement that a municipal court judge reside in the same judicial circuit as that in which the court is located. The other measure removes the prohibition against directors of development authorities being officers or employees of a county or municipality.

An effort to bring some order to the legal world of local government authorities materialized in a statute requiring their annual registration with the Department of Community Affairs. The Department will establish registration fees and regulations and provide a certified list of registered authorities. Failure to register shall preclude an authority from incurring new debt.

Manifesting yet another concern with indebtedness, a new statute focuses upon a local governing body's legal advertisements of bond

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352. *Id.* Only if the officer so acts may a jury consider whether the officer is the "proximate cause" of the injury. *Id.* Additionally, the statute increases significantly the criminal penalties for convicted fleeing suspects. *Id.*
354. *Id.* In those circumstances, the officer must first request, and be denied, a personal attorney from the county governing authority. Any legal fees paid to a court-appointed personal attorney are limited to fees paid the county attorney or to a schedule of fees paid outside attorneys by the governing authority. *Id.*
358. *Id.* The statute specifies the information which the registering authority must provide to the Department. *Id.*
359. *Id.* Registrations are required to be made each January. *Id.*
The statute requires the advertisement to state that any other ads or brochures issued by the authority to promote bond financing shall be statements of intention as to the use of the bond funds.\textsuperscript{361}

Drawing impetus from recent statewide emergency experiences, a new enactment seeks to control commercial exploitation of disaster victims. The statute empowers local governments to adopt ordinances creating emergency registration programs for businesses in disaster areas during a declared state of emergency.\textsuperscript{362} The measure further prohibits retail price increases on goods or services to levels above prices charged in the area prior to the emergency.\textsuperscript{363}

Law enforcement refinements of the legislative session included a statute empowering local governments to establish holding facilities for juveniles.\textsuperscript{364} At these facilities, local law enforcement officers may detain juveniles who have violated curfew ordinances or whose parents have reported them absent.\textsuperscript{365}

More broadly, other new legislation authorizes local governments to create regional jail authorities.\textsuperscript{366} The authority is empowered to issue bonds and utilize local option sales taxes and is to operate the regional jail through a management committee composed of participating county sheriffs.\textsuperscript{367}

Local governments were armed anew with authority to enact business taxes.\textsuperscript{368} In order to exercise this optional power, the local government must adopt a new business tax ordinance and may base the taxes on number of employees, profitability, gross receipts, or a flat fee.\textsuperscript{369} Although regulatory fees may be imposed, they may not be used to raise revenue but must approximate the cost of the regulations.\textsuperscript{370}

Local governments also received additional authority in respect to licensing the sales of alcoholic beverages. The local governing authority is now empowered on its own to enact a resolution calling for a

\textsuperscript{361} Id.
\textsuperscript{363} Id. The statute provides for a three-month recovery period in the area. Id.
\textsuperscript{365} Id.
\textsuperscript{367} Id.
\textsuperscript{369} Id. The statute makes it clear that no local government is required to impose the taxes. Id.
\textsuperscript{370} Id.
referendum on allowing the government to issue licenses for the sale of liquor by the drink.\footnote[371]{Ga. H.R. Bill 680, Reg. Sess. (1995). The statute continues the provision allowing 35\% of the voters to petition for such a referendum, and requires that 35\% of the voters petition for an election to nullify a previous election allowing liquor sales. \textit{Id}.}

Motor vehicle tag registrations drew legislative attention via a statute staggering registrations over a twelve-month period.\footnote[372]{Ga. H.R. Bill 379, Reg. Sess. (1995).} In the absence of local legislation expressly exempting the county from the new system, registrations will be pegged at the vehicle owner’s birthdate.\footnote[373]{Id.} The statute further exempted motor vehicle dealers from ad valorem taxation on vehicles held in inventory.\footnote[374]{Id.}

The legislature sought to foster economic development by enactment of an accelerated foreclosure procedure for tax delinquent properties.\footnote[375]{Ga. S. Bill 338, Reg. Sess. (1995).} The statute empowers local governments to create an in rem foreclosure process, to establish criteria for such properties, and thus more promptly to obtain a clear and marketable title for redevelopment purposes.\footnote[376]{Id.}

Finally, the 1995 general assembly created the Georgia Future Communities Commission.\footnote[377]{Ga. H.R. Res. 324, Reg. Sess. (1995).} That Commission is charged with examining governmental, social, and economic issues facing local governments and considering changes in local government structure conducive to a good quality of life.\footnote[378]{Id.} The Commission is to recommend proposals “to ensure that all of Georgia’s local governments become catalysts for economic prosperity.”\footnote[379]{Id.}

\section*{IV. Conclusion}

The law by which local governments regulate, and are regulated, is law of inordinate importance. That law determines the quality of life, no less, for a majority of Georgia’s citizens. Little wonder that again this year Georgia local government law stood in the cross hairs of public scrutiny.

\begin{itemize}
\item \footnote[371]{Ga. H.R. Bill 680, Reg. Sess. (1995). The statute continues the provision allowing 35\% of the voters to petition for such a referendum, and requires that 35\% of the voters petition for an election to nullify a previous election allowing liquor sales. \textit{Id}.}
\item \footnote[373]{Id.}
\item \footnote[374]{Id.}
\item \footnote[375]{Ga. S. Bill 338, Reg. Sess. (1995).}
\item \footnote[376]{Id. Those having an interest in the properties will have twelve months following the date when the taxes became delinquent in which to redeem the properties before this procedure could begin. \textit{Id}.}
\item \footnote[377]{Ga. H.R. Res. 324, Reg. Sess. (1995).}
\item \footnote[378]{Id. The Commission is to assess future implications of current negative trends in local governments. \textit{Id}.}
\item \footnote[379]{Id. The Commission will be composed of legislators and representatives of local governments. \textit{Id}.}
\end{itemize}