Local Government Law

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

Plaintiff filed an action against the county for the repeated flooding of his home. The county attorney responded with a deft procedural maneuver:

It was my bright idea to take the plaintiff’s deposition at his home. My timing was impeccable. During the deposition, . . . something on the order of a ten-year storm [occurred], an event which flooded [plaintiff’s] property just as [he] had claimed. During our “adjournment” of the deposition, . . . I [was] captured on video [by plaintiff’s attorney] wading through plaintiff’s front yard with my pants legs somewhere in the vicinity of my knees!

The “law” of local government, both decisional and statutory, indelibly reflects its origins.

I. MUNICIPALITIES

A. Home Rule

Although enacted in 1965, the Georgia “Municipal Home Rule Act” continues to raise issues of first impression in the appellate courts.

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3. For background, see R. Perry Sentell, Jr., Home Rule Benefits or Homemade Problems for Georgia Local Government? 4 GA. ST. B.J. 317 (1968); R. Perry Sentell, Jr., “Home Rule”: Its Impact on Georgia Local Government Law, 8 GA. ST. B.J. 277 (1972); R. Perry Sentell, Jr., The United States Supreme Court as Home Rule Wrecker, 34 MERCER L.
The issue of Kemp v. City of Claxton went to the Act's authorization of citizen petitions initiating "amendments to or repeals of ordinances, resolutions, or regulations." Specifically, the supreme court queried, did that delegation permit petitions "to amend or repeal any ordinance, resolution, or regulation enacted by the [municipal governing authority]?" Reversing the trial judge, the court held the authorization is confined to citizen petitions seeking "to amend the city charter, or repeal an amendment to the charter."

The court rested its conclusion upon several facets of the home rule statute. As for "legislative intent," the statute's "primary purpose" was "to authorize municipalities to amend their charters by their own actions." Moreover, the petition authorization "is prefaced by a statement that what follows are the methods by which a municipal corporation may 'amend its charter.'" Finally, the Act's legislative delegation power ran expressly to the municipal "governing authority." That delegation's requisite "strict construction" restricted the citizen petition procedure "only to amendments to municipal char-

REV. 363 (1982).
5. Id. at 175, 496 S.E.2d at 715 (quoting O.C.G.A. § 36-35-3(b) (1993 & Supp. 1998)).
6. Id. The municipal governing authority had adopted ordinances closing two railroad grade crossings inside the municipality. Plaintiffs claimed that the closings would reduce customer access to certain businesses and submitted petitions for referendums on repealing the ordinances. Upon the municipal clerk's refusal to accept the petitions, plaintiffs sought a writ of mandamus, which the trial court issued. Id. at 173, 496 S.E.2d at 714.
7. Id. at 175, 496 S.E.2d at 715. "The petition procedure of OCGA § 36-35-3(b)(2) applies only to amendments to municipal charters. Consequently, the superior court erred in granting mandamus and requiring that the City Clerk accept and approve the petitions at issue." Id. at 176, 496 S.E.2d at 716.
8. Id. at 175, 496 S.E.2d at 715. "The Act was passed under the authority of a 1954 amendment to the Constitution of the State of Georgia, which is currently found at Art. IX, Sec. II, Par. II. Prior to the 1954 amendment and the Home Rule Act of 1965, city charters were amendable only by acts of the General Assembly." Id.
9. Id. at 176, 496 S.E.2d at 715. "This also shows that the petition and referendum provision is intended to be available only when the proposed amendment is intended to affect a city charter." Id. The court reasoned that "a statute is to be read as a whole, and the spirit and intent of the legislation prevails over a literal reading of the language . . . . The legislative intent will be effectuated even if some language must be eliminated." Id. at 175, 496 S.E.2d at 715.
10. Id. at 176, 496 S.E.2d at 716.
11. Id. "Municipal corporations are creations of the state, possessing only those powers that have been granted to them, and allocations of power from the state are strictly construed . . . . Municipal home rule power is a delegation of the General Assembly's legislative power to the municipalities." Id., 496 S.E.2d at 715.
It could not countenance an interpretation permitting the electorate's direct exercise of "general legislative power."\(^{13}\)

### B. Dissolution

Of all the self-evident truths of municipal law, one is paramount: For its continuing viability, a municipality must avoid dissolution. In 1993, the Georgia General Assembly engaged the sensitive subject of municipal dissolution\(^{14}\) via a statute defining "inactive municipalities."\(^{15}\) So designated were municipalities failing to provide at least three of eleven enumerated services, failing to hold at least six council meetings per year, and failing to hold regular elections.\(^{16}\) The statute automatically repealed the charters of inactive municipalities as of July 1, 1995;\(^{17}\) thereafter, it empowers any citizen of such a municipality to bring an action for "a declaration of the dissolution of the municipal corporation."\(^{18}\)

*Sherrer v. City of Pulaski*\(^{19}\) presented an effort under the statute to dissolve a municipality allegedly failing to provide the requisite services.\(^{20}\) Rejecting that effort, the court of appeals relied upon the municipal mayor's uncontradicted affidavit that the city had contracted

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12. *Id.*, 496 S.E.2d at 716.
13. *Id.*
17. *Id.* § 36-30-7.1(e).
18. *Id.* § 36-30-7.1(j). "Any such action shall be brought in the superior court of the county wherein the legal situs of the municipal corporation is located." *Id.*
20. Plaintiff demanded that the city charter be dissolved and that a municipal ordinance prohibiting the sale of beer and wine be declared void upon its face. *Id.* at 78, 491 S.E.2d at 130.
for the county's performance of the services. As for plaintiff's charge of insufficient contract consideration, the court emphasized the agreement's provision that the county performed the services "[i]n consideration for the County's receipt of [the city's] one percent sales tax program." Accordingly, the court affirmed summary judgment favoring the municipality's continued existence.

C. Annexation

Less disruptive than dissolution, municipal annexation is a far more prevalent boundary-altering procedure. Because of annexation's perceived impact upon municipal voting, the United States Supreme Court early held the procedure subject to the preclearance strictures of the 1965 Voting Rights Act. A municipal failure to meet those strictures brought *City of Arcade v. Emmons* before the Georgia Supreme Court.

*Emmons* turned upon the status of a municipal election admittedly held without federal preclearance of prior annexations, an omission that the trial court determined to vacate the election. On appeal, the

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21. The mayor's affidavit stated that the municipality held regular meetings and qualified elections and that it had contracted for the county's provision of law enforcement services, road and street construction and maintenance, solid waste collection, and recreational services. *Id.* at 79, 491 S.E.2d at 130.

22. *Id.* at 80, 491 S.E.2d at 131.

23. *Id.* The court termed "unpersuasive" the plaintiff's argument that under the contract the county "is only agreeing to perform services it would have performed anyway for citizens in [the unincorporated county]." *Id.*


28. Persons residing in the annexed areas had admittedly voted in the election. *Id.* at 230, 486 S.E.2d at 360.

29. *Id.* at 231, 486 S.E.2d at 360.
supreme court expressly disapproved the municipality's actions, but insisted that "ordering new elections is a drastic remedy." For at least three reasons, the court maintained that remedy was excessive in this case: the elected individuals held their offices for only two years, there was no discriminatory purpose, and the city had subsequently obtained federal approval of the annexations. Accordingly, the court reversed the trial judge's vacation of the election.

D. Officers and Employees

Once again this year, municipal officers and employees constituted prolific sources of diverse litigation. Drawing a largely procedural disposition, Police Benevolent Ass'n v. Brown featured an action brought by an association and seven police officers. Plaintiffs sought to mandamus the city manager to recognize the association as the police bargaining representative and to bargain with it under a specified set of "guidelines." Emphasizing the association's unclear status, the supreme court held it was without standing to seek "the harsh remedy" of mandamus. As for the officers' action, the court found the record barren of any ordinance containing the alleged bargaining "guide-

30. Id. at 233, 486 S.E.2d at 362 (quoting United States v. City of Houston, 800 F. Supp. 504, 506 (S.D. Tex. 1992)).
31. Thus, those officers should have already served their terms by the time the trial court's order was entered. Id. at 230-31, 486 S.E.2d at 360.
32. "[T]he facts of this case do not present the sort of egregious situations justifying the setting aside of an election." Id. at 234, 486 S.E.2d at 363.
33. "The City having now obtained after-the-fact approval of the challenged annexations, we hold that the matter is thus at an end." Id.
34. Id.
36. The association had failed to show that it would gain "a material advantage" from issuance of a writ of mandamus; it had "no standing to seek the writ of mandamus it filed with the seven officers." Id. at 27, 486 S.E.2d at 29.
37. "Mandamus is 'a harsh remedy' and should not be granted unless the applicant would be afforded a material advantage by its grant . . . or has suffered 'special damages.'" Id. at 26, 486 S.E.2d at 29. For the history and applicability of the writ of mandamus in the context of local government law, see R. Perry Sentell, Jr., Miscasting Mandamus in Georgia Local Government Law (1989). As indicated by its title, the monograph stresses petitioners' inordinately inappropriate and excessive appeal to the writ as a means of righting perceived wrongs in local government administration.
The city manager could not be ordered "to comply with the terms of an ordinance not properly before the court."\(^{39}\)

The court of appeals likewise assumed a procedural focus in *Webb v. City of Atlanta*.\(^{40}\) There, the municipality had suspended plaintiff's workers' compensation payments on grounds that he also received benefits under a city-sponsored disability plan.\(^{41}\) The court held that the unappealed award of workers' compensation payments precluded the city from later raising the disability-plan benefits.\(^{42}\) Otherwise, the court reasoned, there had been no change in plaintiff's physical condition or wage-earning capacity and thus no legitimate ground for suspending his workers' compensation payments.\(^{43}\)

Workers' benefits also propelled the controversy over the validity of a municipal ordinance in *City of Atlanta v. Morgan*.\(^{44}\) That ordinance provided insurance benefits for city employee dependents registered under yet another ordinance as "domestic partners."\(^{45}\) Appraising
challengers' contentions that the benefits ordinance was precluded by an existing general statute (the Municipal Home Rule Act), the court observed that the general statute failed to define the term "dependent." The benefits ordinance was thus free to define "dependent" as one "who is supported, in whole or in part, by the employee's earnings" and who uses such contributions to maintain his or her standard of living. Consequently, the court concluded, the benefits ordinance was consistent with the general statute and the Georgia Constitution.

Employee termination confronted the court of appeals in City of Atlanta v. Smith. Specifically, the case dealt with the city's termination of a police officer for paying confiscated money to an informant and filing a false report. Adopting an "any evidence" standard for reviewing the civil service board's dismissal, the court first held the officer's plea of entrapment unavailable in this civil proceeding.

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46. Plaintiffs argued that the Home Rule Act, O.C.G.A. section 36-35-4(a), authorizes municipalities to provide insurance benefits to employees and their dependents; thus, plaintiffs contended, the benefits ordinance was a special law as prohibited by the Georgia Constitution. GA. CONST. art. III, § 6, para. 4(a) and (c).

47. "Although this section of the Municipal Home Rule Act grants specific authority to provide such benefits to the dependents of a municipal employee, it does not provide a definition of the term 'dependent.'" 268 Ga. at 587, 492 S.E.2d at 194.

48. Id. at 589, 492 S.E.2d at 196 (quoting Atlanta Ordinance 96-0-1018). The court emphasized that the municipality "followed our holding in McKinney and carefully avoided the constitutional flaw in its previous benefits ordinance by eliminating from Ordinance 96-0-1018's definition of 'dependent' any language recognizing any new family relationship similar to marriage." Id. at 588, 492 S.E.2d at 195.

49. Id. at 590, 492 S.E.2d at 196. A dissenting opinion by Justice Carley, joined by Justice Thompson, charged the majority with construing the registry ordinance much broader than the McKinney interpretation and "as creating a legal right to insurance coverage as a 'dependent' under OCGA § 36-35-4(a) . . . . With regard to the creation of legal rights arising from domestic relations, the general state law of marriage and divorce preempts the municipal domestic partnership benefits ordinance." Id. at 591, 492 S.E.2d at 197 (Carley, J., dissenting).


51. On a tip from an informant that an officer was paying confiscated drug money to the informant, the city set up a sting operation that caught the officer. The city civil service board had affirmed the officer's dismissal, but the superior court had reversed. Id. at 865, 493 S.E.2d at 52.

52. The court expressly overruled its own decisions distinguishing between "any evidence" and "substantial evidence" and followed the supreme court's decision in Emory University v. Levitas, 260 Ga. 894, 401 S.E.2d 691 (1991), that "the substantial-evidence standard is effectively the same as the any-evidence standard." 228 Ga. App. at 865, 493 S.E.2d at 53. Thus, "we are required to reverse the superior court if there was any evidence to support the Board's decision." Id. at 867, 493 S.E.2d at 53.

53. Id. at 867, 493 S.E.2d at 53. Rejecting applicability of an exception when the proceeding could result in a licensee's loss of the right to engage in a profession, the court reasoned that here the officer "was not deprived . . . of a license to engage in a given
for alleged due process violations, the court upheld the board's decision that the sting operation lacked sufficient outrageousness: "[T]here is no evidence that [the city's informant] did more than inform [the officer] of the dealer's location and encourage him to hurry to the scene." The court thus reversed the trial judge's order of reinstatement.  

E. Recall

On two significant occasions, the supreme court revisited the controversial issue of municipal recall. Davis v. Shavers featured an official's libel action for statements made against him in an unsuccessful recall application. Upon the court of appeals decision that the statements enjoyed only a conditional privilege, the supreme court granted certiorari to resolve the issue. Approaching the matter from dual perspectives, the court first rejected assimilation of the recall procedure and court pleadings. "[T]he recall procedure is not a 'judicial' or even 'official' procedure, but is political in nature, and the issue to be determined is of a political character." As for "public policy," the court reasoned that public officials should not be left without "remedy for allegedly libelous statements made with actual malice in the profession, but was rather terminated from a particular job." Id. at 866, 493 S.E.2d at 53.

In yet another police misconduct instance of the survey period, Dudley v. State, 230 Ga. App. 339, 496 S.E.2d 341 (1998), a police chief was convicted of three simple batteries for using pepper spray in attempting to arrest four individuals. Reviewing the chief's supersedeas bond requirements as set by the trial judge, the court held that a total prohibition on working in law enforcement was excessive and that other restrictions on the chief's conduct (e.g., no bail bonding, dog training, or private investigations and a curfew and banishment from the county) were "totally unrelated to the offense for which the defendant was convicted and are, therefore, unreasonable as a matter of law." Id. at 341, 496 S.E.2d at 343.

54. Id. at 867, 493 S.E.2d at 54. “There is no evidence that the informant during these conversations encouraged [the officer] to file a false arrest report.” Id.


57. For background on the defamation action in Georgia local government law, see R. Perry Sentell, Jr., Defamation in Georgia Local Government Law: A Brief History, 16 GA. L. REV. 627 (1982).


59. Defendants argued application of O.C.G.A. section 51-5-8, conferring an absolute privilege upon official court documents. Id. at 498, 484 S.E.2d at 246.

60. The court observed that the recall statute (O.C.G.A. section 21-4-6) "provides for only limited judicial review of the legal sufficiency of the recall application, and prohibits discovery or evidentiary hearings and any determination of the truth of the statements in the application." Id.
context of a procedure having only the slightest hint of a judicial nature.\textsuperscript{62} Accordingly, the court affirmed that, in a defamation action, recall application statements enjoy only a conditional privilege.\textsuperscript{63}

The second occasion, \textit{Phillips v. Hawthorne},\textsuperscript{64} went directly to the recall application's content—allegations that the officials committed a crime by holding a closed meeting on abolishing the municipal police department. The trial judge held those allegations legally insufficient for failing to specify dates and places and for failing to allege both the presence of a quorum and wilful violation of the Open Meetings Act.\textsuperscript{65} Charging the judge with an "inappropriately restrictive reading" of its prior decisions,\textsuperscript{66} the supreme court tendered the following admonishment:\textsuperscript{67} "Recall applications are not criminal indictments. They are not drawn by prosecutors; they need not be written by lawyers."\textsuperscript{68} These allegations, the court emphasized, "were necessarily premised on the presence of a quorum at a meeting held in wilful and voluntary violation of the Act."\textsuperscript{69} Otherwise, "there could have been no 'meeting' that constituted a 'crime' under the statutory definitions set forth in the Act."\textsuperscript{70} Likewise, for dates and places: "The requisite information identifying the meeting was provided here not by date or location but by the controversial subject matter that was allegedly discussed at the

\textsuperscript{62} Id. Although recognizing "the importance that criticism of the conduct of public officials plays in the administration of their offices," the court concluded that defendants "are entitled to the protection of a conditional privilege only." \textit{Id.} at 76-77, 495 S.E.2d at 25.

\textsuperscript{63} \textit{Id.} at 77, 495 S.E.2d at 25. In a dissenting opinion, Justice Fletcher charged the court with unnecessarily eroding the right of recall. He maintained that the decision "will have a chilling effect on political speech," and that "the recall statute already provides sufficient safeguards to protect elected officials from false allegations." \textit{Id.} (Fletcher, J., dissenting).

\textsuperscript{64} 269 Ga. 9, 494 S.E.2d 656 (1998).


\textsuperscript{66} 269 Ga. at 10, 494 S.E.2d at 657. The court identified that decision as \textit{Davis v. Shavers}, 263 Ga. 785, 439 S.E.2d 650 (1994), a decision, the court maintained, in which the issue was "whether the facts in the recall applications were sufficient under the particular circumstances of that case to provide" adequate notice. 269 Ga. at 12, 494 S.E.2d at 658.

\textsuperscript{67} The court cited as setting the procedure for the trial judge's review the following provision of the recall statute: O.C.G.A. section 21-4-6(f).

\textsuperscript{68} 269 Ga. at 14, 494 S.E.2d at 659.

\textsuperscript{69} \textit{Id.} at 13, 494 S.E.2d at 659. "We reject the implication that a recall application is legally insufficient for using terms the definitions of which are established by statutes referenced in the application." \textit{Id.} at 14, 494 S.E.2d at 659.

\textsuperscript{70} \textit{Id.}
meeting.” Finally, the court asserted, the recall allegations “were sufficiently specific to place the public and [officials] on notice of the substance of [the citizens’] complaint.”

F. Regulation

The scope of municipal regulatory power ranged from the esoteric to the exotic—from Vietnamese potbellied pigs to lingerie modeling studios. In both settings, moreover, the power prevailed.

City of Lilburn v. Sanchez focused upon the constitutionality of a municipal ordinance requiring a lot of at least one acre in size for keeping a Vietnamese potbellied pig. Under the “rational basis” constitutional standard, the supreme court stated the test was whether the ordinance was substantially related to the public health, safety, or general welfare. Reviewing expert testimony on health hazards associated with the animal, the court deemed the lot size requirement to satisfy at least two legitimate municipal interests. First, the ordinance would control the overall size of the municipality’s pig

71. Id., 494 S.E.2d at 660. The court emphasized the small size and population of the municipality, reasoning that “[i]t is no great stretch to acknowledge that even in a much larger city such conduct would create great controversy.” Id.
72. Id. A three-justice dissent complained that the court’s “analysis appears to say that controversial matters require less specificity in recall petitions than mundane matters.” Id. at 16, 494 S.E.2d at 661 (Benham, C.J., dissenting). The dissent elaborated as follows: What we need in this area is some minimum, easily ascertainable standard that is clear and unequivocal to citizens who avail themselves of the recall process, to elected officials and to a reviewing court. What we do not need is some amorphous standard that changes with each shifting political wind or issue.

Id.
75. Challengers' home was located on a .24 acre lot in a municipal subdivision; thus, their keeping of the pig as a household pet violated the ordinance. Id. at 520, 491 S.E.2d at 354.
76. Id. at 522, 491 S.E.2d at 355. The standard “does not require that an ordinance adopt the best, or even the least intrusive, means available to achieve its objective.” Id.
77. Evidence showed that the smell emanating from the pigs was much stronger than that from dogs and cats and that the pigs generated manure in quantities four times greater than dogs. Id. at 522-23, 491 S.E.2d at 356.
78. Id. at 523-24, 491 S.E.2d at 356.
population,\textsuperscript{79} and second, it would dissipate the pig's impact over a greater area, thus minimizing the effects upon neighbors.\textsuperscript{80} Consequently, the court concluded, the city had validly exercised its police power.\textsuperscript{81}

The regulatory setting of \textit{Quetgles v. City of Columbus}\textsuperscript{82} reflected the municipal concern of recent years with adult entertainment establishments. There, a city ordinance prohibited one-on-one modeling sessions in lingerie studios and distanced the business from other establishments. Upon constitutional challenge,\textsuperscript{83} the supreme court found sufficient municipal consideration of specific evidence of "secondary effects."\textsuperscript{84} Based on concerns with property values and criminal activities, the ordinance was "content-neutral",\textsuperscript{85} and it met the "tripartite test"\textsuperscript{86} for restrictions upon expression. The court likewise rejected plaintiffs' "taking" argument: the ordinance did not eliminate but only regulated.\textsuperscript{87} Finally, the court viewed the ordinance as providing objective standards so as to meet due process requirements\textsuperscript{88} and escaping the invidious discrimination prohibition of equal protection.\textsuperscript{89}

\textsuperscript{79} There was a finite number of one-acre lots within the municipality. \textit{Id.} at 523, 491 S.E.2d at 356.

\textsuperscript{80} 268 Ga. at 523-24, 491 S.E.2d at 356. "Fairly debatable questions as to the ordinance's reasonableness, wisdom, and propriety . . . remain within the sound discretion of city leaders." \textit{Id.} at 524, 491 S.E.2d at 357.

\textsuperscript{81} \textit{Id.} A dissenting opinion for two justices maintained that the court had failed to employ the proper "clearly erroneous" standard of review and thus "ha[d] substituted its judgment for that of the trial court." \textit{Id.} at 527, 491 S.E.2d at 359 (Carley, J., dissenting).

\textsuperscript{82} 268 Ga. 619, 491 S.E.2d 778 (1997).

\textsuperscript{83} The trial court had granted summary judgment for the municipality. \textit{Id.} at 619, 491 S.E.2d at 779.

\textsuperscript{84} \textit{Id.}, 491 S.E.2d at 780. These consisted of affidavits and supporting materials relating to increased crime and a decrease in property values.

\textsuperscript{85} \textit{Id.} at 620, 491 S.E.2d at 780.

\textsuperscript{86} This test is derived from \textit{Paramount Pictures Corp. v. Busbee}, 250 Ga. 252, 297 S.E.2d 250 (1982). Under it, the ordinance will prevail "(1) if it furthers an important governmental interest; (2) if the governmental interest is unrelated to the suppression of speech; and (3) if the incidental restriction of speech is no greater than necessary to the furtherance of the governmental interest." 268 Ga. at 620-21, 491 S.E.2d at 780.

\textsuperscript{87} \textit{Id.} at 621, 491 S.E.2d at 781. "[T]he procurement of a business license does not, by itself, give the license holder vested rights." \textit{Id.}

\textsuperscript{88} \textit{Id.}

\textsuperscript{89} \textit{Id.}, 491 S.E.2d at 781-82. "The ordinance targets not just one-on-one modeling, but any one-on-one activity between customers and employees where the employees display their bodies in order to excite customers sexually." \textit{Id.} at 622, 491 S.E.2d at 781. The court thus affirmed the trial judge's summary judgment for the municipality.
G. Contracts

The court of appeals resolved municipal contract disputes in three distinctly different subject matter contexts. *Municipal Electric Authority of Georgia v. City of Calhoun* featured a disagreement over the terms of a contract between a municipality and its nonprofit wholesale electric supplier. Siding with the municipality, the court held the trial judge not "clearly erroneous" in finding an overcharge for "certain bulk power and energy." The contract's reference to "methodology," the court held, alluded to the system by which the supplier could determine the quantity of excess capacity and not to the rate schedule. Accordingly, the contract permitted the supplier to unilaterally change the method used for determining quantity, but it did not allow the supplier's unilateral change of the price for that quantity.

In *World Championship Wrestling, Inc. v. City of Macon*, the city found itself codefendant to an action by one injured while attending a wrestling event at the municipal coliseum. The municipality then cross-claimed against the event's promoter, suing under the indemnification clause of the city's coliseum lease to the promoter. Affirming summary judgment for the city, the court construed the lease to include the

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91. Id. at 571, 489 S.E.2d at 601. The parties had dealt with each other over a period of more than twenty years and through a series of contracts. Id. at 571-72, 489 S.E.2d at 601-03.
92. Id. at 571, 489 S.E.2d at 601.
93. Id. at 572, 489 S.E.2d at 602. This 1987 contract resulted from the overestimation of the demand for electric power by participants in the program. It provided a method for determining a participant's excess allotment and for disposing of the excess capacity. The agreement stated that "[t]he Participant and the Authority agree that this methodology shall be used for the sale and purchase of excess capacity and energy until such time as changed upon thirty days prior written notice from the Authority to the Participant." Id.
94. The court agreed with the trial judge that "if any term of the contract is amendable at the will of MEAG, the entire contract would be void for vagueness because there could be no assent of the parties to the terms of the contract." Id. at 573, 489 S.E.2d at 602. Additionally, "it is logical to expect that calculations regarding excess capacity may be subject to differing methodologies. This is not so with the price, which was negotiated and agreed to by the parties." Id., 489 S.E.2d at 603.
96. Id. at 248, 493 S.E.2d at 630.
concession area where the injury occurred. Additionally, the court held the indemnification agreement was not violative of public policy.

Municipal failure to comply with the notice requirement of the Solid Waste Management Act culminated in City of Arcade v. Emmons and the court's invalidation of the city's contract with a private developer for a proposed landfill. Under the Act, the court held proper notice of the council meeting at which the contract was actually executed was insufficient. Rather, the Act required notice of a previous council meeting that began the process which eventually resulted in the siting decision. Admittedly, the municipality provided no notice of that crucial meeting, a failure fatal to the validity of the subsequent contract.

97. Id. at 250, 493 S.E.2d at 631. Reasoning that construction of a contract is a question of law for the court, the court viewed the only evidence regarding the leased "arena" to be testimony by the coliseum's general manager which "clearly indicates that the leased space includes the space in which [plaintiff] was injured." Id.

98. Id. at 249, 493 S.E.2d at 630. "Although such a clause standing alone might be against public policy pursuant to OCGA § 13-8-2(b), combined with the lease provision requiring insurance, the lease validly 'shifts the risk of loss to the insurance company regardless of which party is at fault.'" Id. (quoting McAbee Constr. Co. v. Kraft Co., 178 Ga. App. 496, 498, 343 S.E.2d 513, 515 (1986)). This was true even though the lessee never purchased the insurance and the municipality was thus enforcing the indemnification clause directly against the lessee. The court relied upon Myers v. Texaco Refining Co., 205 Ga. App. 292, 422 S.E.2d 216 (1992).


101. Id. at 879, 494 S.E.2d at 191. The trial court had invalidated the contract and permanently enjoined the municipality from taking any actions in conjunction with the private developer with regard to the decision to site the landfill on the subject property. Id. at 880, 494 S.E.2d at 188.

102. Id. at 884, 494 S.E.2d at 191. The court observed that the Act "makes clear that a siting decision is not necessarily limited to the actual execution of the contract pertaining to the location of the landfill." Id.

103. "The City's properly noticed meeting on November 16, at which the contract was formally executed, was not sufficient to satisfy the statutory requirement for public notice prior to action resulting in a siting decision." Id.

104. The court did, however, reverse the trial court's permanent injunction against the city:

The City's failure to hold a properly noticed meeting pursuant to O.C.G.A. § 12-8-26(b) rendered its siting decision and contract with [the developer] invalid, but that failure does not prevent the City from subsequently holding a properly noticed meeting for public discussion of a new siting decision and consideration of a new agreement with [the developer] for the operation of a landfill on the same site.

Id. at 885, 494 S.E.2d at 191.
H. Taxation

Characterized by the court of appeals as a “complex case,” Jackson v. City of College Park\textsuperscript{105} presented a controversy over the distribution of special local option sales tax proceeds.\textsuperscript{106} Specifically, the issue went to the state revenue commissioner’s power to impose a distribution formula within a county\textsuperscript{107} when one city there claimed “absent municipality” status\textsuperscript{108} and the remaining municipalities failed to reach a valid distribution agreement.\textsuperscript{109} Essentially, the court responded by denying the commissioner any formulation power at all.\textsuperscript{110} Rather, the court delineated, the applicable “statutory scheme” requires the remaining municipalities to renegotiate their distribution agreement.\textsuperscript{111} If unable to do so, the municipalities must submit their dispute “to nonbinding arbitration, mediation, or such other means of resolving conflicts.”\textsuperscript{112} Finally, should no resolution materialize, the municipal “power to levy the tax may terminate.”\textsuperscript{113}

\begin{itemize}
\item \textsuperscript{105} 230 Ga. App. 487, 496 S.E.2d 777, 778 (1998).
\item \textsuperscript{106} As of 1994, the court emphasized, the local option sales tax statute, O.C.G.A. section 48-8-89(b), included “a list of criteria the governments should consider when negotiating the distribution agreements.” \textit{Id.} at 487, 496 S.E.2d at 778.
\item \textsuperscript{107} In issue was the Revenue Department’s effort to distribute tax revenues to all the cities in the tax district (the county) based only on “the proportion of each city’s population to the population of all cites in the district.” \textit{Id.} at 488, 496 S.E.2d at 778.
\item \textsuperscript{108} A city may make such an election under O.C.G.A. section 48-8-89(b).
\item \textsuperscript{109} 230 Ga. App. at 489, 496 S.E.2d at 778. Their agreement failed to allocate the requisite amount to the absent municipality. \textit{Id.}, 496 S.E.2d at 779.
\item \textsuperscript{110} “[T]he Revenue Department had no statutory power to impose on the county and cities its own distribution plan.” \textit{Id.}, 496 S.E.2d at 779.
\item \textsuperscript{111} “[T]he governments were statutorily required to renegotiate their agreement and file it with the Revenue Commissioner . . . .” \textit{Id.}
\item \textsuperscript{112} \textit{Id.}
\item OCGA § 48-8-89(d)(3) provides that, when the governments fail to agree to a certificate of distribution within a 60-day period, they must submit their dispute to “nonbinding arbitration, mediation, or such other means of resolving conflicts in a manner which, in the judgment of the commissioner, reflects a good faith effort to resolve the dispute.” \textit{Id.} at 491, 496 S.E.2d at 780. Under the precept of \textit{ejusdem generis}, the court held, the italicized language required a type of resolution that did not involve coercive relief or rule by decree or fiat. \textit{Id.} For discussion of the Georgia appellate courts’ penchant for employing this maxim of statutory construction, see R. Perry Sentell, Jr., \textit{The Canons of Construction in Georgia: “Anachronisms” in Action}, 25 GA. L. REV. 365 (1991), reprinted in R. PERRY SENTELL, JR., STUDIES IN GEORGIA STATUTORY LAW 185, 212 (1997).
\item \textsuperscript{113} 230 Ga. App. at 491, 496 S.E.2d at 781. “The incentive to negotiate is not the threat that a judge or Revenue Department will decide the issue; rather, if the parties reach no agreement their power to levy the tax may terminate. See OCGA § 48-8-89(d)(7).” \textit{Id.}, 496 S.E.2d at 780-81.
\end{itemize}
I. Liability

The "general rule" holds the Georgia municipality immune from liability for torts committed by its officers and employees.\textsuperscript{114} A traditional exception to that immunity holds the municipality responsible for negligence in the maintenance of its streets and sidewalks.\textsuperscript{115} An exception to the exception, in turn, precludes city liability for defects in portions of the county or state highway system lying within municipal limits.\textsuperscript{116} Unless the city constructed or agreed to maintain the system, it escapes tort responsibility for those defects.\textsuperscript{117} Two cases of the survey period featured controversy over that escape potential.

In Williams v. City of Social Circle,\textsuperscript{118} an action for injuries on a defective sidewalk, the city supported its motion for summary judgment with affidavits that the sidewalk lay within a state highway right-of-way not under the city's maintenance.\textsuperscript{119} In opposition, plaintiff proffered the city clerk's alleged admission of municipal responsibility.\textsuperscript{120} Discounting the admission as hearsay\textsuperscript{121} from one who was not the...
city's alter ego\textsuperscript{122} and finding no evidence of "[any city] duty to maintain the sidewalk,"\textsuperscript{123} the court of appeals affirmed summary judgment for the municipality.\textsuperscript{124}

The municipality enjoyed less success on the issue in \textit{City of Social Circle v. Sims},\textsuperscript{125} an action for injuries in a highway mishap "just inside the City limits."\textsuperscript{126} Again, the municipality moved for summary judgment on grounds that "the accident occurred on a county road it had not assumed an obligation to maintain."\textsuperscript{127} Elaborating a general municipal responsibility for annexed public streets,\textsuperscript{128} the court perused statutory definitions of both county and municipal public ways. Those definitions, considered in light of evidence in the case, raised general issues of material fact for a jury trial,\textsuperscript{129} issues fatal to summary judgment for the city.\textsuperscript{130}

Another effort at avoiding tort immunity seeks to charge the municipality with maintaining a nuisance.\textsuperscript{131} \textit{Hibbs v. City of Riverdale}\textsuperscript{132} instanced that effort via the charge of repeated flooding to plaintiffs' homes from a drainage pond constructed by a subdivision

\begin{enumerate}
\item\textsuperscript{122} "Unlike a corporation's president, the city clerk in this case cannot be considered the alter ego of the city." \textit{Id.} at 748, 484 S.E.2d at 689.
\item\textsuperscript{123} \textit{Id.} at 749, 484 S.E.2d at 690.
\item\textsuperscript{124} \textit{Id.} Presiding Judge McMurray dissented, arguing that the clerk's statement "is admissible to estop the defendant municipal corporation from denying it accepted responsibility for any liability to plaintiff." \textit{Id.} (McMurray, J., dissenting). For analysis of and perspective on the estoppel precept in this context, see R. Perry Sentell, Jr., \textit{The Doctrine of Estoppel in Georgia Local Government Law} (1985).
\item\textsuperscript{125} 228 Ga. App. 582, 492 S.E.2d 240 (1997).
\item\textsuperscript{126} \textit{Id.} at 583, 492 S.E.2d at 241. Plaintiff drove off a curve and alleged defects in the road's design and maintenance. \textit{Id.} at 582, 492 S.E.2d at 241.
\item\textsuperscript{127} \textit{Id.} at 582, 492 S.E.2d at 241.
\item\textsuperscript{128} The court noted that the county and state had constructed the road in 1958 and that its surrounding territory was annexed into the municipality in 1972. \textit{Id.} at 583, 492 S.E.2d at 241. The court also observed that the case was not subject to O.C.G.A. section 36-36-7(c) (1993): "Whenever a municipality annexes land on both sides of a county road right of way, the annexing municipality shall assume the ownership, control, care, and maintenance of such right of way unless the municipality and the county agree otherwise by joint resolution." \textit{Id.} at 583 n.1, 492 S.E.2d at 241 n.1.
\item\textsuperscript{129} "At trial, the jury must review the evidence in light of OCGA § 32-4-1(2) and 32-4-2(a) and (f) to determine which entity owned the stretch of road at issue." \textit{Id.} at 583, 492 S.E.2d at 241.
\item\textsuperscript{130} \textit{Id.}
\item\textsuperscript{132} 227 Ga. App. 889, 490 S.E.2d 436 (1997).
\end{enumerate}
The issue for decision was whether the municipality had impliedly accepted responsibility for maintaining the pond. The court of appeals found no such acceptance from the facts that the city (1) required the developer to build the drainage system according to code, (2) inspected construction of the system, (3) investigated complaints of pond flooding, and (4) required the developer to post a maintenance bond. Affirming defendant's summary judgment, the court reasoned that "no evidence shows the City 'maintained' or 'controlled' the nuisance drainage system."

The nuisance action is also vulnerable to traditional tort defenses. In City Council of Augusta v. Booker, for example, the court rejected nuisance contentions that a power pole and overgrown grass at an intersection obstructed a child's view of a stop sign and the car that struck him. Relying upon depositions that the child "was aware of the stop sign and chose to ignore it," the court asserted that "the placement of the pole or the condition of the lot was not the proximate cause of [the child's] accident." Plaintiff suffered similar disposition in Goodman v. City of Smyrna, a nuisance action for the death of a

133. In Hibbs v. City of Riverdale, 267 Ga. 337, 478 S.E.2d 121 (1996), the supreme court held that a municipality could be responsible in nuisance for repeated flooding damage but remanded the case to the court of appeals for a determination on whether material issues of fact existed as to the city's acceptance of the drainage system so as to establish a municipal duty. Id. at 338-39, 478 S.E.2d at 122-23.

134. "[A] city does not assume responsibility for a property dedicated to public use unless it has accepted that dedication, and such acceptance may be direct or implied." 227 Ga. App. at 890, 490 S.E.2d at 437.

135. "[T]hat exercise of regulatory power does not make the City responsible for maintaining the development." Id., 490 S.E.2d at 438.

136. Id.

137. "We do not believe the mere fact that the City investigated the problem shows [the City] exercised any 'dominion or control' over the property." Id.

138. "[T]he requirement that a developer post a maintenance bond for the benefit of subdivision residents and the public does not create an inference that the City exercised control of the stormwater drainage systems." Id. at 891, 490 S.E.2d at 438.

139. Id.


141. Id. at 567, 494 S.E.2d at 376. The five-year-old child had darted through an intersection on his bicycle and was struck by a motorist who had the right of way. Id. at 566, 494 S.E.2d at 375.

142. Id. at 567, 494 S.E.2d at 376. There were depositions by both the child and his sister, who was riding with him. As for other, and contradictory, statements by the child, the court noted that "a party's self-conflicting testimony is to be construed against him unless a reasonable explanation for the contradiction is offered." Id.

143. Id. The court reversed the trial judge's denial of the municipality's motion for summary judgment. Id. at 568, 494 S.E.2d at 377.

child who roller-skated down the incline of a city street and into the drop-off of a rocky creek bed.\textsuperscript{145} Stressing evidence on the obviousness of the condition and the child's experience,\textsuperscript{146} the court held the case one "in which a minor below the age of fourteen may be deemed to have assumed the risk as a matter of law."\textsuperscript{147}

Yet another immunity-skirting tactic, the action for "constitutional tort"\textsuperscript{148} emerged in \textit{Maxwell v. Mayor & Aldermen of Savannah}.\textsuperscript{149} There, a former police officer charged both the police chief and the city governing authority with violating due process by wrongfully terminating his employment.\textsuperscript{150} Affirming summary judgment for the governing authority, the court held that final disciplinary power rested with the police chief.\textsuperscript{151} Additionally, plaintiff's evidence showed city "policy" to allow terminations "only for cause."\textsuperscript{152} As for plaintiff's claim against the police chief, the court held the chief's actions to lie within the scope of his "discretionary authority."\textsuperscript{153} Additionally, plaintiff failed to show that it was "obvious to all reasonable government actors, in [the chief's] place, that 'what he was doing' violated federal

\textsuperscript{145} \textit{Id.} at 630, 497 S.E.2d at 373. Plaintiff alleged "that the street and the creek were negligently constructed and maintained by the City or constituted a nuisance." \textit{Id.}

\textsuperscript{146} A friend of the deceased child testified that they had discussed the drop-off and the fact that they could be hurt by falling into the creek. \textit{Id.} at 631, 497 S.E.2d at 374.


\textsuperscript{150} \textit{Id.} at 705, 487 S.E.2d at 480. Plaintiff had been arrested and charged with drug trafficking, and the police chief immediately terminated his employment. \textit{Id.} at 705-06, 487 S.E.2d at 480-81. Said the court: "42 U.S.C. § 1983 provides a cause of action to an individual who has been deprived of a property right by a government official without due process." \textit{Id.} at 707, 487 S.E.2d at 481.

\textsuperscript{151} \textit{Id.} at 709, 487 S.E.2d at 483.

\textsuperscript{152} \textit{Id.}

\textsuperscript{153} \textit{Id.} at 708, 487 S.E.2d at 482. "[A] defendant public official asserting immunity must show that 'he was acting within the scope of his discretionary authority when the allegedly wrongful acts occurred.'" \textit{Id.} (quoting Stough v. Gallagher, 967 F.2d 1523, 1526 (11th Cir. 1992)).
Accordingly, the chief enjoyed "qualified immunity" from liability for the "constitutional tort." 155

J. Zoning

On occasion, a municipality's reaction to a judicial zoning order can bear striking consequences. In City of Cumming v. Realty Development Corp., 156 the trial judge ordered the municipal reconsideration of an application for rezoning to "multi-family residential." 157 The municipality responded by rezoning the property to "industrial use." 158 Affirming a finding of wilful contempt, the supreme court observed as follows: "The evidence . . . supported the trial court's finding that appellants made no effort to reconsider the rezoning application or to consider, in the rezoning process, the findings and conclusions the trial court made in its first order." 159 The court likewise rejected the city's protest to the requirement of a public hearing. 160 "When . . . the court finds the first zoning decision unconstitutional and remands the matter to the local government, the process is, in essence, begun anew." 161 In

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154. Id.

Considering the availability of . . . pre- and post-termination remedies, and [plaintiff's] failure to present authority showing these remedies deprived him of due process, we cannot say that it must have been obvious to all reasonable government actors in [the chief's] place that terminating [plaintiff] under the above procedures violated federal law.

Id. at 709, 487 S.E.2d at 483.

155. Id. However, the court did reverse the trial judge's summary judgment for the police chief on plaintiff's charge of deprivation of a liberty interest via defamation. Id. at 710, 487 S.E.2d at 483. The chief had made no claim of qualified immunity to this claim in the trial court. Id. at 711, 487 S.E.2d at 484. As to the state law of defamation in respect to Georgia local government, see R. Perry Sentell, Jr., Defamation in Georgia Local Government Law: A Brief History, 16 GA. L. REV. 627 (1982).

156. 268 Ga. 461, 491 S.E.2d 60 (1997).

157. The trial court found the existing zoning ("Highway Business") unconstitutional and directed the municipality to reconsider the rezoning petition taking into account the findings made in the court's order. Id. at 461, 491 S.E.2d at 62.

158. Id. The municipality gave "notice that a vote on rezoning would be held at a specially called meeting, but that there would be no hearing conducted at the meeting." Id.

159. Id. at 462, 491 S.E.2d at 62. The court also affirmed the imposed sanction of two hundred dollars per day until municipal compliance with the order but reversed the award of attorney fees. "The award of attorney fees based on no more than being held in contempt, however, does nothing to encourage appellants to comply with the court's order and, therefore, is punitive." Id., 491 S.E.2d at 63.

160. Id. at 463, 491 S.E.2d at 63.

161. Id.
that circumstance, the court held, the Zoning Procedures Law requires another hearing.\footnote{\textit{Id.} at 463-64, 491 S.E.2d at 63. "The Zoning Procedures Law, OCGA § 36-66-4(a), states plainly that '[a] local zoning authority taking action resulting in a zoning decision shall provide for a hearing on the proposed action.'\textit{Id.} at 463, 491 S.E.2d at 63.}

A second rezoning controversy, \textit{City of McDonough v. Tusk Partners},\footnote{268 Ga. 693, 492 S.E.2d 206 (1997).} featured a trial court's invalidation of the subject property's current zoning.\footnote{\textit{Id.} at 695, 492 S.E.2d at 208. Plaintiff sought a commercial classification but defendants zoned the property residential. \textit{Id.} at 694, 492 S.E.2d at 207.} The supreme court's affirmance aptly evidenced both the standard of review and the substantive law.\footnote{\textit{Id.}, 492 S.E.2d at 209. The court agreed that the evidence would also have authorized an opposite conclusion but emphasized that it would not reweigh the evidence on appeal. \textit{Id.}} First,

Where a property owner adduces evidence that establishes a down turn in viability of a property under its current zoning and a decrease in land value if the property remains under its current zoning classification, a trial court does not clearly err by concluding the property owner has carried its burden of proving a significant detriment.\footnote{\textit{Id.} at 694, 492 S.E.2d at 207.}

Second, "Where the evidence conflicts as to the impact of the use on the public health and welfare, the trial court does not clearly err by concluding the property owner has carried its burden of proving the zoning is unsubstantially related to the public health, safety and welfare."\footnote{\textit{Id.}, 492 S.E.2d at 209.} The court agreed that the evidence would also have authorized an opposite conclusion but emphasized that it would not reweigh the evidence on appeal. \textit{Id.}

\section{Counties}

\subsection{Officers and Employees}

Intragovernmental conflict accounted for most of the litigation surrounding county officers and employees. The conflict of \textit{In re Floyd County Grand Jury Presentments}\footnote{\textit{Id.} at 705, 484 S.E.2d 769 (1997).} arose from a county grand jury's report extremely critical of the Georgia attorney general's investigation of the county hospital authority.\footnote{\textit{Id.} at 705, 484 S.E.2d at 770. "The presentment contained allegations which not only were critical of the Attorney General, but also cast reflections of misconduct and impugned the character of the Attorney General and his office." \textit{Id.}} Upon the attorney general's petition to expunge the report, the court of appeals held the grand jury's
presentment powers statutorily limited to true bills of indictment charging specific offenses. There is no power to cast "reflections of misconduct" or impugn "the character of a local office holder." This principle applies all the more forcefully to the attorney general, a state constitutional officer. Reversing the trial judge, the court ordered the report expunged.

A more localized conflict erupted in Purvis v. Ballantine, a former county school superintendent's defamation action for statements by his successor. Classifying the superintendent as a "public official," the court reasoned that he "was an integral policy maker," he was "involved in the conduct of [the school system]," and he had "greater access to the media than would a private individual." As such, plaintiff had failed to make his case—he had "failed to point to any evidence of actual malice giving rise to a triable issue.

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170. Id. at 707, 484 S.E.2d at 771. This was true, the court observed, even under the grand jury's recently broadened powers in O.C.G.A. section 15-12-71(b)(1) and (2). Id.
171. 225 Ga. App. at 707, 484 S.E.2d at 771.
172. "Under no legal fiction does the expanded powers of OCGA § 15-12-71(b) allow a grand jury to civilly investigate a state official or agency." Id. at 708, 484 S.E.2d at 771. "Thus, the grand jury cannot do indirectly what it is prohibited from doing directly: poke the Attorney General for the State of Georgia in the eye and then claim that it was merely incidental to a legitimate exercise of civil investigative powers and presentments regarding county authorities." Id.
173. Id. Moreover, the court held that the trial judge "erred in holding that the Attorney General or a member of his staff was not a state agent but, in fact, a district attorney pro tempore." Id. at 709, 484 S.E.2d at 772. Finally, the court noted that public officers facing indictment in Georgia are entitled to "the right to appear before a grand jury with counsel, to give sworn testimony without cross examination, and to view but not cross-examine witnesses appearing against them." Id. For perspective on this point, see R. Perry Sentell, Jr., Georgia Local Government Officials and the Grand Jury, 26 GA. ST. B.J. 50 (1989).
175. Plaintiff sued the successor superintendent and members of the county board of education, alleging they made statements falsely implying that his administration had failed to make payments to the Teacher's Retirement System. Id. at 248, 487 S.E.2d at 17.
178. Id. at 251, 487 S.E.2d at 18. The court held that defendants' "refusal to retract their statements [was not] clear and convincing evidence that the statements themselves were made with knowledge of their falsity or reckless disregard for their falsity." Id., 487 S.E.2d at 19. The court thus affirmed the trial judge's summary judgment for defendants. Id.
On several occasions, the county governing authority was at odds with other county officials regarding personnel powers. *Glynn County v. Waters* featured a standoff between the governing authority and the county administrator over the power to terminate a department head. In resolving the conflict, the supreme court relied upon a county ordinance providing that the employee “shall be hired and terminated by the county administrator, subject to approval by the county commission.” Under that ordinance, the court held, the governing authority could only approve or disapprove the administrator’s employment decision. "It was without authority to initiate its own effort to discharge [the employee]."

The court reached a similar conclusion in *Chambers v. Fulford* in respect to a county tax appraiser. Under general statutes, the court held the county board of tax assessors was required to employ a tax appraiser subject to the approval of the county commissioners. Having approved a contract of employment, the commissioners could not subsequently refuse to fund the position. The power to hire and fire the tax appraiser rests with the board of tax assessors, the court held, “not with the board of commissioners, which previously approved the contract.”

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180. *Id.* at 500, 491 S.E.2d at 371. The department head was charged with creating a hostile work environment. The county administrator offered the employee reassignment to another position. The county governing authority discharged the employee. *Id.*
181. *Id.* at 500-01, 491 S.E.2d at 371.
182. *Id.* at 502, 491 S.E.2d at 372. “Since the county commission has neither express nor implied authority to hire and discharge [the employee], the trial court correctly construed the county ordinance as vesting the exclusive power to do so in the county administrator.” *Id.*
183. *Id.* The court held the governing authority's actions to be ministerial in nature and thus affirmed the trial judge's grant of equitable relief against the authority. *Id.* at 503, 491 S.E.2d at 372-73.
185. *Id.* at 894, 495 S.E.2d at 9. The court relied upon O.C.G.A. section 48-5-262. The appraiser's rate of compensation is determined by the state revenue commissioner and payable from county funds. *Id.* at 893, 495 S.E.2d at 8.
186. The commissioners had approved the board of tax assessors' four-year contract with the appraiser, but the next year a successor board of commissioners refused to appropriate funds sufficient to honor the contract. *Id.* at 892, 495 S.E.2d at 7.
187. *Id.* at 894, 495 S.E.2d at 8. Because the commissioners were liable on the contract and because the assessors had no other legal remedy to honor it, the court affirmed the trial court's issuance of a mandamus against the commissioners. *Id.* at 893, 495 S.E.2d at 8. On the inordinate amount of litigation over mandamus in local government law and the necessary prerequisites for its issuance, see R. Perry Sentell, Jr., MISCasting MANDAMUS IN GEORGIA LOCAL GOVERNMENT LAW (1989).
Contrarily, under a local statute approved as valid in *Hussey v. Chatham County*, the commissioners were empowered to remove members of the board of tax assessors. Upholding the statute's repeal of earlier legislation authorizing the board's creation, the court rejected arguments of due process. "[T]he right of an incumbent to an office depends upon the law under which he holds. If the law is capable of being repealed, the right of the officer is gone."

There were also controversies over workers' compensation benefits for county employees. In *Housing Authority of Cartersville v. Jackson*, the court of appeals considered the status of an appointed member of the housing authority whom agreed to serve, without pay, as the authority's acting executive director. Affirming workers' compensation coverage for injuries, the court reasoned as follows: "Because the Authority's Board of Commissioners had the power to control and discharge [the director], and his services were of significant economic value to the Authority, the superior court did not err in upholding the State Board's finding that he was an employee."

In yet another survey period case, *Lee v. Peach County Board of Commissioners*, 269 Ga. 380, 497 S.E.2d 562 (1998), the court mandamused the county commissioners to pay the county chief magistrate the salary he was receiving at the time of his appointment. Id. at 382, 497 S.E.2d at 563. Having assumed the unexpired term of office of chief magistrate at a given salary, the court held, the plaintiff's salary could not later be reduced by the commissioners. Id. at 381-82, 497 S.E.2d at 563. "The Board violated both the constitutional [art. VI, § VII, ¶ V] and statutory [O.C.G.A. § 15-10-23(a)] mandates in reducing [plaintiff's] salary during the unexpired term which he was serving." Id.

189. Id. at 871, 494 S.E.2d at 511. 1994 Ga. Laws 3940. The statute authorized the county commissioners to appoint a board of tax assessors. Under this statute, the commissioners removed the members of the joint city-county board of tax assessors. For an earlier installment in the litigation, see *Chatham County v. Hussey*, 267 Ga. 895, 485 S.E.2d 753 (1997), holding that the 1994 statute's predecessor had not been repealed by implication.

190. The court held that the statute's title was not insufficient under the constitution's requirement (Art. III, § V, ¶ III) that statutory titles relate to the object of the statute. 268 Ga. 871, 871, 494 S.E.2d 510, 511 (1998).
191. 268 Ga. at 872, 494 S.E.2d at 512 (quoting City of Mountain View v. Clayton County, 242 Ga. 163, 168, 249 S.E.2d 541, 544 (1978)).
193. Id. at 182, 486 S.E.2d at 55. Although the position was a full-time one and carried a substantial salary, the claimant agreed to serve in the temporary position of acting director without compensation. Id.
194. Claimant was injured in a traffic accident while driving an authority-owned car on authority business. Id. at 183, 486 S.E.2d at 56.
195. Id. at 184-85, 486 S.E.2d at 57. The court reviewed the statutory definition of "employee" in O.C.G.A. section 34-9-1(2) and said that the main test is whether the worker is subject to control and discharge by the master. Id. at 183, 486 S.E.2d at 56. "We do not
Finally, Bartow County Board of Education v. Ray featured a county's intervention in its employee's action against a third-party tortfeasor, claiming reimbursement for workers compensation benefits paid to the employee. The court immediately seized upon the subrogation statute's prerequisite that the third-party action has "fully and completely compensated" the employee. The county failed to establish that prerequisite, the court held, upon the following showing: (1) it had paid the employee $39,000 in benefits, (2) the employee sought $900,000 in damages from the third party but only demonstrated special damages of $54,000, and (3) the jury returned a general verdict of $175,000. From these facts, it was impossible to know "what portion of the award applied to economic losses and what portion applied to noneconomic losses." Although not statutorily required, the court reflected, a special verdict "would have given . . . the answer it is now impossible to ascertain."

B. Regulation

A general statute requires county approval for the construction of a landfill that, though located in another jurisdiction, will be within one-
half mile of the county's border. In Long v. FSL Corp., plaintiff sought to mandamus the county's approval of such a landfill. Rejecting plaintiff's efforts, the supreme court viewed the requirement as a part of the "statutory scheme requiring a permit from the State for a land use which is regulated by the State." Although the statute places no limits on the county's decision-making process, the state retains authority to grant the permit under specified conditions. "Since a jurisdiction can withhold permission for any reason, there can be no clear legal right to have permission given, and the statute provides another remedy which has not been ruled inadequate." Accordingly, neither condition for obtaining a mandamus was present.

A county's challenged prohibition on alcohol at adult entertainment establishments brought Chambers v. Peach County before the supreme court. The court held that the county had relied upon evidence reasonably believed to show that such establishments decreased residential property values and increased crime. As a content-neutral measure, the ordinance furthered important governmental interests unrelated to suppressing speech and incidentally restricted

202. O.C.G.A. § 12-8-25(3) (1996 & Supp. 1998). This statute was amended in 1997 so as to afford municipalities the same power of approval.
204. Id. at 479, 490 S.E.2d at 102. Plaintiff sought a permit to build the landfill from the Department of Natural Resources only to be informed that it must obtain the county's approval. Plaintiff then sought the county's approval and shortly thereafter filed this action in mandamus. Id. at 480, 490 S.E.2d at 102.
205. Id., 490 S.E.2d at 103. "Since this is not a zoning case, it is to be considered an appeal from the grant of a writ of mandamus, which is a direct appeal." Id.
206. The state can grant the permit "if the applicant provides evidence that no alternative sites or methods are available in that jurisdiction or in any adjoining jurisdiction of the affected city or county for the handling of its solid waste." O.C.G.A. § 12-8-25(a)(3) (Supp. 1998).
207. 268 Ga. at 481, 490 S.E.2d at 103.
208. The court thus reversed the trial judge's issuance of the mandamus. For discussion of the general issue, see R. Perry Sentell, Jr., Miscasting Mandamus in Local Government Law (1989).
210. Id. at 673-74, 492 S.E.2d at 192. This evidence consisted of testimony regarding other cities' experiences, as well as testimony by law enforcement officers relating to greatly increased criminal activities at plaintiff's establishment. Id. at 674, 492 S.E.2d at 192.
211. "Since the new ordinance is designed to combat the undesirable secondary effects of sexually explicit businesses, it is content-neutral . . . ." Id.
speech no greater than necessary. Consequentially, the court affirmed denial of an interlocutory injunction.

C. Contracts

An effort to sue the county in contract fared poorly in Merk v. DeKalb County, an action for damages caused when defective sewer lines flooded plaintiff's home. The court of appeals resolutely rejected plaintiff's attempt to prove a contract from county code provisions regarding water service. The county code does not constitute a contract as contemplated by the constitution for purposes of waiving sovereign immunity. Neither was the code a contract "written and

212. Id., 492 S.E.2d at 192-93 (citing Paramount Pictures v. Busbee, 250 Ga. 252, 297 S.E.2d 250 (1982)).

213. Id. at 675, 492 S.E.2d at 193. The court rejected arguments that the ordinance could not be applied to a club operating prior to its adoption and that the ordinance was unconstitutionally overbroad, thus affording county officials unbridled discretion. Id. at 674, 492 S.E.2d at 193. In the event of overbroadness, said the court, the ordinance's severability clause would save its valid parts. Id. at 674-75, 492 S.E.2d at 193. For background on the issue of county regulation, see R. Perry Sentell, Jr., Discretion in Georgia Local Government Law, 8 GA. L. REV. 614 (1974); R. Perry Sentell, Jr., Reasoning by Riddle: The Power to Prohibit in Georgia Local Government Law, 9 GA. L. REV. 115 (1974); R. Perry Sentell, Jr., Local Government Law and Liquor Licensing: A Sobering Vignette, 15 GA. L. REV. 1039 (1981); R. Perry Sentell, Jr., "Ascertainable Standards" vs. "Unbridled Discretion" in Georgia Local Government Law, GA. COUNTY GOV. MAG. (Dec. 1989).


215. Id. at 191, 486 S.E.2d at 67. Plaintiff was a county citizen receiving water and sewer services from the county. Id.

216. Id. at 192, 486 S.E.2d at 67. Plaintiff alleged that the county code "constitutes a written contract for sewer service between her[self] and the county." Id. The court was skeptical of plaintiff's cite of a code provision dealing with water services: "While [plaintiff] acknowledges that this language pertains to water and not sewer service, she maintains that it creates an enforceable written contract for sewer service." Id.

217. GA. CONST. art. I, § II, para. IX. "[Plaintiff's] claim, though couched in contract, actually sounds in tort. We have held that when a plaintiff's action sounds in tort and not contract, even though the action is brought as a contractual one, no constitutional waiver of sovereign immunity results." 226 Ga. App. at 192, 486 S.E.2d at 67.
entered” on the county minutes as required by statute. The court thus affirmed summary judgement for the county.

In tension with its treatment of Merk, the court of appeals also decided Cherokee County v. Hause. There, a wrecker service sought to recover vehicle storage fees from the county. The court approached the case by expressly excluding theories of quantum meruit and restitution. Likewise, “[t]here is in the record no contract in writing between the county and [plaintiffs] entered on the minutes of the county commission.” Accordingly, “a contract is unenforceable.” However, the court delineated, the claim rested not upon contract but on a county ordinance providing for wrecker and storage services. Plaintiffs who supplied those services “are entitled to be paid the fees expressly provided by that same ordinance.” It was left to a dissent-
ing opinion to emphasize that an ordinance authorizing contracts with approved wrecker services “is not itself a sufficient writing entered upon the minutes of the county commission.”

The court’s approach turned considerably more restrictive in *Wasilkoff v. Douglas County*,229 a case litigating a multi-year lease purchase agreement “from which [the county] could be released only if it did not have sufficient funds to appropriate for the required payments.”230 Emphasizing the “strictly limited” statutory exception231 to constitutional “debt” prohibitions,232 the court held the agreement insufficient.233 By conditioning the county’s release upon lack of sufficient funds, the contract failed the statutory mandate that the agreement “must terminate absolutely and without further obligation on the part of the [county] at the close of each calendar year.”234 The court thus declared the contract “void as a matter of law”235 and denied the lessor’s recovery under it.236

Finally, in *Chambers v. Fulford*,237 county commissioners attacked the validity of a four-year contract between the board of tax assessors and a tax appraiser—a contract approved by former commissioners.238 The successor commissioners charged that the contract violated the statute prohibiting governing authorities from binding themselves or their successors in governmental matters.239 Summarily rejecting the


228. 229 Ga. App. at 583, 494 S.E.2d at 238 (McMurray, P.J., dissenting).
230. *Id.* at 234, 488 S.E.2d at 724. The county entered the lease purchase agreement for a computer system in 1989, refused to make payments for the fiscal year 1993, and was sued under the contract by the assignee. *Id.* at 232-33, 488 S.E.2d at 723.
232. GA. CONST. art. IX, § V, para. I(a).
235. *Id.*
236. *Id.*
238. This case is previously discussed as holding that the county commissioners were without power to terminate the tax appraiser when statutory law vested that authority in the board of tax assessors. See text accompanying *supra* notes 185-87.
charge, the supreme court held the binding-contracts prohibition "plainly not applicable." The issue, reasoned the court, "is not legislation promulgated by the former board of commissioners but an act of the Georgia Legislature expressly requiring the county, through the board of tax assessors, to provide for an appraiser under its comprehensive uniform codification of real property taxation."

D. Roads

In McDilda v. Board of Commissioners of Bulloch County, two counties sought to enjoin defendant from blocking a road. For two reasons, the court of appeals affirmed the trial court's finding that the road was a public one. First, the court held that the road did not cease to be public because the counties failed to maintain it. The county would not be authorized to abandon the road because of disuse when that disuse was occasioned by the county's failure to comply with its duty to maintain and repair it. Second, a resolution to close the road, executed by the chairman of one county's board of commissioners, was ineffective. The commission had not delegated its power of

240. 268 Ga. at 894, 495 S.E.2d at 8.
241. Id. "We cannot read OCGA § 36-30-3 as creating a rule that a county board of tax assessors may not enter into a contract of reasonable duration which extends beyond the term of that board of commissioners which had the initial approval power over the contract." Id., 495 S.E.2d at 8-9.

Yet another case of the period, Providence Construction Co. v. Bauer, 229 Ga. App. 679, 494 S.E.2d 527 (1997), involved not a county contract, but rather deed covenants under which subdivision residents agreed not to oppose the subdivision developer's subsequent efforts to rezone property for certain purposes. When the developer sued the residents on these covenants for publicly opposing its efforts to obtain county rezoning, the court viewed this as "its first opportunity to apply the provisions of OCGA § 9-11-11.1 . . . sometimes referred to as an 'anti-SLAPP' statute." Id. at 679, 494 S.E.2d at 528. The court proceeded to hold the covenants "overly broad" and "vague" and "contrary to public policy and the public interest." Id. at 681-82, 494 S.E.2d at 530.

243. Id. at 530, 497 S.E.2d at 26. Defendant contended that the portion of the road crossing his property is private property, that the counties had abandoned the road, and that neither county possessed the power to reopen the road. Id. at 530-31, 497 S.E.2d at 26.

244. Id. at 534-35, 497 S.E.2d at 29.
245. Id. at 531, 497 S.E.2d at 27. "It is therefore clear from the record that the road did not become private property because it was impassable and was abandoned by virtue of the two counties' failure to maintain it." Id.

246. Id.
247. The court held that neither county had ever followed the statutory procedures necessary for closing the road. Id. at 531-32, 497 S.E.2d at 27-28; O.C.G.A. § 32-7-2(b)(1).
abandonment to the chairman,248 and "[t]he citizens of [the county] cannot be estopped . . . by the action of the Commission Chairman in executing an unauthorized resolution."249

E. Taxation

In Cellular One, Inc. v. Emanuel County,250 "a case of first impression in this state,"251 the court of appeals held a county devoid of power to sue dealers for failing to properly remit local option sales taxes to the State Revenue Commissioner.252

Considering the comprehensive administrative scheme provided by the Georgia statutes and the Department of Revenue's rules and regulations, which include remedies for the failure to properly remit the taxes and an administrative forum for the resolution of controversies concerning the taxes, we conclude that the legislature did not intend for counties to have an independent right of action against dealers for damages resulting from the improper remittance of local sales taxes administered and collected by the commissioner.253

F. Liability

County liability litigation maintained a frantic pace during the survey period.254 In Cleveland v. Skandalakis,255 plaintiff sought to manda-

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248. The court held that under O.C.G.A. section 36-5-22.1(a)(3) "the commission as a body has the authority to decide matters" of abolishing roads and that "no local law had been enacted delegating this authority to the Commission Chairman acting alone." 230 Ga. App. at 533, 497 S.E.2d at 28. For treatment of the assorted issues arising under delegation of power in local government law, see R. Perry Sentell, Jr., Delegation in Georgia Local Government Law, 7 GA. ST. B.J. 9 (1970).


251. Id. at 199, 489 S.E.2d at 52.

252. Id. The county alleged improper collection and remittance of the taxes on the part of the dealers and its consequent receipt of inadequate revenues and sought both to collect the reduced revenues and to recover damages directly from the dealers. Id. at 197, 489 S.E.2d at 51.

253. Id. at 200, 489 S.E.2d at 53. The court reviewed various provisions of the relevant statute, O.C.G.A. sections 48-8-30 to -113, concluded the statute to provide the exclusive means of administration and collection, and opposed a view that "would allow tax beneficiaries . . . to sue any taxpayer or dealers for failing to properly remit a tax; a situation which we believe would severely frustrate the orderly administration and collection of taxes by the commissioner." Id. The court thus reversed the trial judge's denial of defendants' motions to dismiss. Id.

254. For perspective, see R. Perry Sentell, Jr., Georgia Local Government Tort Liability: The "Crisis" Conundrum, 2 GA. ST. U.L. REV. 19 (1985); R. Perry Sentell, Jr., Local
mus county payment of a default judgment against a former county employee. At the time of the original action, the county assigned an attorney to represent the employee. That action was dismissed without prejudice and later refiled at a time when the individual no longer worked for the county. This time, the former employee requested no county attorney and suffered the default judgment. The supreme court held the refiled action was one de novo, carrying no continuing county obligation. Because the former employee failed to make a timely request under the county code, the county owed no duty to defend him or to pay the judgment against him.

Obligation likewise proved pivotal in Macon-Bibb County Hospital Authority v. Reece, an action seeking reimbursement for medical care provided by the hospital to county “detainees.” Under the material statute, the county’s reimbursement duty depended upon whether the detainees were “inmates” in the sheriff’s “physical custody.” Concluding that under the circumstances a jury might reasonably find either way on both issues, the court of appeals voided the trial judge’s summary judgment.

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256. Plaintiff was the administrator of the estate of one who sued the county employee for wrongful death. Id. at 133, 485 S.E.2d at 778.
257. Id., 485 S.E.2d at 778-79. “The undisputed facts show that [the former employee] failed to comply with the ‘timely written request’ requirements of [the] County Code § 24-4-4(b) after he was served with the complaint . . . .” Id. at 134, 485 S.E.2d at 779.
258. “A renewal suit filed under OCGA § 9-2-61 is an action de novo.” Id.
259. “Timely written notice was required in order to obligate the county to defend the lawsuit, and without a request for defense . . . no such obligation arose.” Id.
260. Id. “Accordingly, plaintiff is not entitled to the extraordinary writ of mandamus.” Id. at 135, 485 S.E.2d at 780.
262. Id. at 532, 492 S.E.2d at 293 (quoting O.C.G.A. § 42-5-2(a) (1997)).
263. The detainees had been shot by a deputy sheriff when stopped as suspects in a robbery. They were handcuffed and transported to the hospital, where the deputy remained while they were treated. They were then arrested several days after their release. Id. at 533, 492 S.E.2d at 293-94.
264. As to “physical custody,” the deputy had placed the suspects under arrest when he stopped them and he remained with them throughout their treatment. On the other hand, the deputy released the suspects to the hospital, where they were not arrested until several days after their release. Id. at 534-35, 492 S.E.2d at 294. As to their “inmate” status, although the suspects were not imprisoned, but for their injuries, they would have been detained in the county detention facility. Id. at 535, 492 S.E.2d at 295.
265. Id. at 536, 492 S.E.2d at 296.
Several claimants raised the prospect of immunity waiver by statutory authorization of insurance. Plaintiff prevailed on the issue in Coffee County School District v. King, a claim for injuries sustained in a collision with defendant's school bus. Given the undisputed presence of liability insurance, the court relied upon the statute expressly waiving county immunity for insured motor vehicles. That waiver, the court held, justified denial of the school district's motion for summary judgment.

The motor vehicle insurance statute also controlled Simmons v. Coweta County, a county inmate's suit for injury when struck by a piece of metal while operating a bush hog. Under a "commercial general insurance policy," the court held that the bush hog was a covered vehicle being operated by county employees and in-
mates. Thus, the county bore liability (to the extent of the insurance) for its officer's negligent supervision and for "the failure of other inmates to remove the coil of barbed wire from the path of the bush hog." Other efforts at avoiding county immunity sounded in inverse condemnation and constitutional tort. The inverse condemnation venture drew short shrift from the court of appeals in Parian Lodge, Inc. v. DeKalb County, a claim for "just compensation" arising out of a property valuation disagreement. "[Plaintiff] has failed to cite any authority permitting a taxpayer to file a cause of action for just compensation due to a tax assessment valuation dispute."

The constitutional tort assertion, an alleged violation of 42 U.S.C. § 1983 ("Section 1983"), surfaced in several contexts. Thomas v. DeKalb County featured a claim for alleged mistreatment by county paramedics responding to an emergency call. Holding no federal-right infringements, the court of appeals found necessary evidence

276. Id. at 554, 494 S.E.2d at 367. The court held the plaintiff was not a county "employee" within a policy exclusion; rather, he was "an involuntary servant." Id. at 553, 494 S.E.2d at 367. Further, "the negligence of the other prisoners in failing to discover and remove the wire, as well as the negligent supervision by [the officer] of the prisoners and to discover and remove the wire himself comes within the use and operation of the insured vehicle." Id. at 553 n.2, 494 S.E.2d at 366 n.2.

277. Id. at 555, 494 S.E.2d at 368. The court reversed the trial judge's summary judgment for the county. Id.

278. 225 Ga. App. 853, 485 S.E.2d 545 (1997). Plaintiff obtained the property by foreclosure in 1991, paid the 1990 ad valorem taxes without protest, and later claimed a refund representing the difference between taxes paid on the 1990 fair market value and taxes which would have been owing on the 1991 reduced fair market value. Id. at 853, 485 S.E.2d at 546. The court held plaintiff's claim not cognizable as a refund action. Id. at 855, 485 S.E.2d at 547.

279. Id. at 855-56, 485 S.E.2d at 548. Therefore, "[N]o legal basis exists for [plaintiff's] claim that its payment of the tax resulted in an unconstitutional taking of its property without just compensation." Id. at 856, 485 S.E.2d at 548. The court thus affirmed the trial judge's grant of the county's motion to dismiss. Id.


282. Id. at 187, 489 S.E.2d at 60. The paramedics responded to an emergency call at plaintiff's home; plaintiff became unresponsive while being transported to the ambulance and died a week later at the hospital. Id. at 187-88, 489 S.E.2d at 60.
lacking that the county created the emergency or that plaintiff was "in
the county's custody or control." \textsuperscript{283}

Federal tort claims emanating from county law enforcement activities
fared no better. In \textit{Thompson v. Chapel}, \textsuperscript{284} plaintiff sued for the
county's failure to adequately supervise a police officer who murdered
plaintiff's mother.\textsuperscript{285} Plaintiff offered evidence of four prior instances
of the officer's questionable conduct.\textsuperscript{286} The court could not see "how
these disparate incidents 'caused' the alleged constitutional deprivations,
much less constituted a 'policy.'"\textsuperscript{287} None of the "events" showed "the
requisite deliberate indifference to citizens' rights,"\textsuperscript{288} nor did they
"rise to the level of customs or policies."\textsuperscript{289}

The court likewise discounted the alleged misconduct in \textit{Webb v.}
\textit{Carroll County}, \textsuperscript{290} an inmate's action for county failure to provide
protective goggles or prompt medical care for a work-related injury.\textsuperscript{291}
Summarily rejecting claims under the Eighth Amendment and Section
1983, the court emphasized a requirement of "'obduracy and wantonness,

\textsuperscript{283} \textit{Id.} at 191, 489 S.E.2d at 62. The court affirmed a grant of summary judgment for
the county under section 1983. \textit{Id.} Regarding plaintiff's state law claims, the court
examined O.C.G.A. section 51-11-8(a), granting civil immunity to persons licensed to
furnish ambulance services who, without remuneration, render emergency care in good
faith. The court held that defendants were properly licensed, that a county fee to defray
a part of the cost of the services did not constitute "remuneration," and that defendants
rendered the services to plaintiff in good faith. \textit{Id.} at 189, 489 S.E.2d at 61. On the latter
issue, the court examined the evidence on both sides and reasoned that its "entirety . . .
shows that [the] . . . actions taken by the defendants, were all directed at saving
[plaintiff's] life." \textit{Id.} at 190, 489 S.E.2d at 62. This was true even though "hindsight might
show that some things could have been done differently." \textit{Id.} Accordingly, the court
concluded, under the emergency care immunity statute, defendants were entitled to
summary judgment on plaintiff's state law claims. \textit{Id.} at 191, 489 S.E.2d at 62.


\textsuperscript{285} The officer had been convicted for the murder. \textit{Id.} at 537, 494 S.E.2d at 217.

\textsuperscript{286} These included a suspect score on a psychological test, a garnishment of wages for
child support, allegations of a robbery conspiracy, and allegations of keeping confiscated
weapons. \textit{Id.} at 538, 494 S.E.2d at 217.

\textsuperscript{287} \textit{Id.} The court noted the officer's receipt of commendations and citations and the
unproven nature of the allegations against him. \textit{Id.}

\textsuperscript{288} \textit{Id.}, 494 S.E.2d at 218. The court observed that Section 1983 liability does not
impose respondeat superior liability nor does it reach negligent or unintentional customs
or policies. \textit{Id.} at 538, 494 S.E.2d at 217.

\textsuperscript{289} \textit{Id.} at 539, 494 S.E.2d at 218. The court affirmed summary judgment for the
county. \textit{Id.}


\textsuperscript{291} \textit{Id.} at 584, 494 S.E.2d at 197. Plaintiff prisoner alleged injury while working with
equipment at the county correctional institute. \textit{Id.}
not inadvertence or error in good faith." The plaintiff’s claims, the court insisted, "fail to reach this standard."

A Section 1983 employment claim failed the plaintiff in *Board of Commissioners of Effingham County v. Farmer.* There, the former county administrator charged the commissioners with procedural due process violations in terminating his employment. In structuring its analytical "legal framework," the court found that “[t]he Commissioners’ action was random and unauthorized as opposed to action resulting from adherence to established governmental procedure." In that setting, "an adequate post-deprivation remedy would provide the requisite procedural due process." Because “[t]he state courts of Georgia provided an adequate post-deprivation remedy," the court concluded, the trial judge erred in “denying appellant Board complete summary judgment on the § 1983 claim.”

Claimants frequently sought recovery from individual county officers and employees, thus drawing defendants’ invocations of "official immunity." As derived from Georgia’s 1991 constitutional amend-

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292. *Id. (quoting Whitley v. Albers, 475 U.S. 312, 319 (1985)).*
293. *Id. at 585, 494 S.E.2d at 198. “Accordingly, the trial court did not err by granting summary judgment to [defendants] on [plaintiff’s] claims under the Eighth Amendment and 42 U.S.C. § 1983.” *Id.*
295. *Id. at 819, 493 S.E.2d at 24. The commissioners adopted a motion to terminate plaintiff’s employment, sent him a notice of termination listing five reasons and informing him of his right to appeal to the board, conducted a public hearing, and reaffirmed in writing his dismissal. *Id. at 820, 493 S.E.2d at 24.*
296. *Id. at 821, 493 S.E.2d at 25.*
297. *Id. “In this context, the individual Commissioner’s ability to foresee the deprivation is of no consequence; the proper inquiry is whether the state is in a position to provide for pre-deprivation process, under the attendant situation . . . , and we find it was not.” *Id.*
298. *Id. “The burden is on the plaintiff to plead and prove that the State did not provide him with an adequate post-deprivation remedy.” *Id. at 822, 493 S.E.2d at 26.*
299. *Id. at 823, 493 S.E.2d at 26. The court reasoned that all plaintiff’s claims “could be addressed before a court of this state had [plaintiff] chosen to utilize this available postdeprivational judicial remedy.” *Id.*
300. *Id. Additionally, the court held, the individual commissioners enjoyed qualified immunity under Section 1983. *Id. at 823-24, 493 S.E.2d at 27. At the time of termination, “there existed no law in concrete and factually defined context that would have compelled the Board to conclude that its actions violated federal law in the existing circumstances . . . .” *Id. at 824, 493 S.E.2d at 27.*
301. "Sovereign" or "governmental" immunity protects the local government’s purse, and “official” immunity protects officials and employees in their individual capacities so that responsible persons will fill public positions. See R. Perry Sentell, Jr., *Georgia Local Government Officers: Rights for Their Wrongs,* 13 GA. L. REV. 747 (1979); R. Perry Sentell, Jr., *Individual Liability in Georgia Local Government Law: The Haunting Hiatus of*
official immunity turns upon whether the offending conduct is deemed “ministerial” (liability for negligence) or “discretionary” (liability only for wilfulness). The court of appeals was called to draw this line in several instances.

Apparently of the “discretionary” persuasion, Diaz v. Gwinnett County featured a police officer’s complaint that his supervisors failed to provide him vaccination against Hepatitis B. Rejecting the claim, the court was adamant: “Inasmuch as the record contains no evidence that [defendants] acted maliciously, wilfully, or corruptly, there was no waiver of their official immunity.”

However, the same could not be said in Simmons v. Coweta County of a correctional officer’s directing inmates in clearing debris from a roadside. That conduct “involves no discretion and was ministerial in nature as a matter of law.” Thus, the officer’s “acts or omissions in supervising inmates were subject to tort liability.” A similar approach yielded a similar result in Seay v. Cleveland. There,


304. An act calling for the exercise of “personal deliberation and judgment” and manifested in actions “not specifically directed.” Id. at 96, 395 S.E.2d at 276 (citations omitted).
306. Id. at 807, 485 S.E.2d at 43. Plaintiff alleged that he contracted the virus in his undercover narcotics investigation work and sued defendants “in their individual and official capacities” for failing to provide or seek county funding for hepatitis vaccinations. Id.
307. Id. at 809, 485 S.E.2d at 44. The court affirmed summary judgment for defendants. Id.
309. Id. at 550-51, 494 S.E.2d at 365. While operating a bush hog on the roadside, plaintiff inmate was struck by a piece of wire that the clearing crew had failed to remove and sued defendant for negligent supervision. Id. at 551, 494 S.E.2d at 365.
310. Id. at 554, 494 S.E.2d at 367.
311. Id. The court thus reversed the trial judge’s grant of summary judgment for the officer. Id. at 555, 494 S.E.2d at 368. Contrarily, the court did classify as “discretionary” (hence, no liability) the conduct of the county warden in charge of the prison. Id.

Even “ministerial” conduct only entails liability for negligence; the officer is not rendered an insurer. For instance, in Brown v. Hines, 230 Ga. App. 103, 495 S.E.2d 592 (1998), the court conceded that the correctional officer’s duty to replace stop signs is “ministerial” once the official receives notice that the sign is missing. Id. at 103, 495 S.E.2d at 593. There, however, no evidence revealed such notice, and the officer was not responsible for an intersection collision. Id. at 104, 495 S.E.2d at 593.
purchasers of property at a sheriff's sale sued the sheriff for failing to properly apply sale proceeds to satisfy superior liens on the property purchased. Sketching statutory requirements for sheriff's sales, the court found that the sheriff enjoyed no discretion in the matter and that he had thus "forfeited" his official immunity.

In both medical and educational contexts, the court reverted to the "discretionary function" classification. Schulze v. DeKalb County presented a claim against county paramedics for delaying plaintiff's transportation to the hospital in order to arrange care for her small child. As a result, plaintiff alleged, her second child suffered serious birth defects. Affirming a judgment of official immunity, the court designated the paramedics' actions "clearly discretionary."

The court responded similarly in Crisp County School System v. Brown, a student's personal injury action against a physical education instructor. The student complained that the instructor insisted that she attempt to traverse monkey bars and that she was injured in the process.

313. Id. at 836, 493 S.E.2d at 31. Plaintiffs purchased a home at the sheriff's sale, and because funds therefrom were not applied to an existing superior lien on the home, plaintiffs were forced either to pay off the loans or lose both the property and their investment. Id. at 836-37, 493 S.E.2d at 31.
315. "This statutory mandate allows no discretion on the part of the sheriff or his employees regarding how to disperse the funds acquired during a sheriff's sale. The act is mandatory and not directory." 228 Ga. App. at 838, 493 S.E.2d at 32. Thus, the sheriff, "through his employees, had negligently performed statutorily-defined ministerial functions." Id.
316. Id. at 839, 493 S.E.2d at 32. The sheriff "was not entitled to the protections of sovereign immunity under the 1991 constitutional amendment," and the court affirmed the trial judge in directing a verdict for plaintiffs. Id. at 838, 493 S.E.2d at 32. Additionally, the court held that the sheriff "was subject to suit on his Sheriff's bond, an action which is ex contractu and therefore outside of the protection of sovereign immunity." Id. at 839, 493 S.E.2d at 33. For specific treatment of Georgia law on the bond liability of local government officials, see R. Perry Sentell, Jr., Georgia Local Government Officers: Rights for Their Wrongs, 13 GA. L. REV. 747 (1979).
318. Id. at 306, 496 S.E.2d at 275: Where they found her bleeding, and found her small child present in the house. They arranged care for the child and had plaintiff admitted to the hospital at 9:00 A.M. Id. at 306, 496 S.E.2d at 275.
319. Id. at 305, 496 S.E.2d at 274-75.
320. Id. at 308, 496 S.E.2d at 276. "They exercised personal deliberation and judgment in delaying transportation of [plaintiff] to the hospital for several minutes to make certain that the small child would not be left home alone." Id. Because there was no allegation or evidence of wilfulness, "they are afforded official immunity." Id.
effort.\textsuperscript{322} Once again, the court was unrelenting: “The decisions and acts of [the instructor], regarding the degree of monitoring, supervision and control which he exercised over his student . . . were discretionary functions.”\textsuperscript{323}

G. Zoning

County rezoning litigation found exemplification in \textit{Gwinnett County v. Davis},\textsuperscript{324} a constitutional attack upon a zoning classification.\textsuperscript{325} In order to succeed, the supreme court elaborated, plaintiff must show by “clear and convincing evidence” a “significant detriment” from the zoning classification and its “insubstantial relationship” to the public interest.\textsuperscript{326} Because plaintiff’s evidence showed “merely” that the property “is not presently zoned for its highest and best use,”\textsuperscript{327} the court found no “significant detriment.”\textsuperscript{328} Accordingly, the court asserted, the trial court had reached an “erroneous legal conclusion” when it invalidated the classification.\textsuperscript{329}

\textsuperscript{322} Id. at 800, 487 S.E.2d at 514. The defendant had instructed his class to complete an obstacle course which required them to traverse monkey bars. When plaintiff student told him she did not think she could cross the bars, the defendant instructed her to try. Plaintiff fell from the bars breaking her arm. Id.

\textsuperscript{323} Id. at 803, 487 S.E.2d at 516. In the absence of wilfulness, defendant “was entitled to assert the defense of official immunity and to summary judgment regarding any claims averred against him in his private (individual) capacity.” Id. at 804, 487 S.E.2d at 516.

\textsuperscript{324} 268 Ga. 653, 492 S.E.2d 523 (1997).

\textsuperscript{325} Plaintiffs sought rezoning from “residential” to “residential lakeside,” as well as a special use permit for operation of a boat storage facility. Id. at 653, 492 S.E.2d at 524-25.

\textsuperscript{326} Id. at 653-54, 492 S.E.2d at 525. Although plaintiffs need not show that the classification rendered their property “totally useless” for its zoned purpose, they must demonstrate a “significant loss” unjustified by any resulting public benefit. Id. at 654, 492 S.E.2d at 525.

\textsuperscript{327} Id. “[T]he trial court relied solely on evidence that the property ‘as zoned is worth substantially less than it would be if it were zoned [residential lakeside] and it had a special use permit for a boat storage facility.’” Id.

\textsuperscript{328} Id.

\textsuperscript{329} Id. at 655, 492 S.E.2d at 526. “However, the trial court would be authorized to conclude that the [plaintiffs] had suffered a significant detriment from the present R-100 classification if it finds clear and convincing evidence of a substantial decrease in the value of [plaintiffs’] property for its R-100 use.” Id. at 654, 492 S.E.2d at 525. Thus, the court vacated the judgment and remanded the case for the trial court’s reconsideration under this latter standard. Id. at 655, 492 S.E.2d at 526.
H. Authorities

A member of a county development authority found himself the target of a quo warranto proceeding in Maddox v. Schrader because he did not reside in the district he was appointed to serve. In response, defendant argued that although the applicable local statute required initially appointed members to serve specified districts, it imposed no such requirement for successors. Rejecting that position, the supreme court employed "that rule of statutory construction which requires courts to construe language in one part of a statute in light of the legislature's intent as found in the statute as a whole." So construed, the statute "requir[ed] Authority members to reside within the commissioner district to which they are appointed to serve" and mandated defendant's removal from the authority.

I. Legal Organ

A local newspaper's designation as the county's "official organ" carries a significant distinction: that publication serves as the exclusive official link between the citizens and their various local officials. Designation requirements mandate that the subject newspaper has published continuously for two years and has maintained an eighty-five percent-paid-subscription rate for the previous twelve months. The designation determination is vested in a majority of the probate judge, the

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331. Defendant was appointed to the authority by the county commissioner from the third district; defendant was a county resident but not a resident of the third district. 268 Ga. at 661, 492 S.E.2d at 522.


333. Id. at 661, 492 S.E.2d at 522. Defendant "contends that the trial court erred by transposing the residency requirement for this transitional period to the local act's successor clause . . . ." Id. at 662, 492 S.E.2d at 522.


335. 268 Ga. at 663, 492 S.E.2d at 523.

sheriff, and the clerk of superior court. The designation process becomes the occasional focus of heated litigation. 

Atlanta Journal v. Clarke featured the effort by one newspaper to replace another as “official organ” on grounds that the latter publication’s paid subscriptions no longer totaled eighty-five percent of its circulation. In response, the supreme court held the requirement to turn only upon time of designation. “[O]nce a newspaper has been designated official organ, that status . . . is not open to challenge on the ground that its paid circulation has dropped below the statutory requirement.” The three designating officials exercise “an extremely broad discretion” and bear no duty to monitor continuing qualification compliance. Accordingly, the court affirmed the trial judge’s dismissal of plaintiff’s effort at replacement.

337. Id. § 9-13-142(b). The probate judge is required to report annually to the secretary of state, giving the name and address of the organ or any changes in designation. Id. § 9-13-142(d).


339. Id. at 33, 497 S.E.2d at 358. Plaintiff alleged that the designated organ had, subsequent to its designation, deliberately reduced its paid circulation, and plaintiff sought to mandamus the designating officials to make the replacement. Id. at 33-34, 497 S.E.2d at 358-59.

340. Id. at 34, 497 S.E.2d at 359. “Nowhere in the Code section are the designating officials given any responsibility for monitoring continuing qualification.” Id. Although a 1997 amendment to the statute required that the paper must have maintained the 85%-paid-circulation rate for twelve months prior to its designation, that amendment does not “place a new duty on the designating officials to ensure that the standards are met at any time other than when the newspaper is first designated as the official organ.” Id. at 34-35, 497 S.E.2d at 359.

341. Id. at 35, 497 S.E.2d at 359. The court conceded that “compelling policy considerations” augured for continuing qualification, “but under the present language of the statute, there simply is no such requirement.” Id.

342. Id., 497 S.E.2d at 360.

343. Id. In a second case of the period, Southern Crescent Newspapers v. Dorsey, 269 Ga. 41, 497 S.E.2d 360 (1998), a former legal organ protested the change to a new designee on grounds that the 1997 amendment to the material statute, requiring the 85%-paid-circulation rate for the previous twelve months, became effective prior to the change. Id. at 41, 497 S.E.2d at 361. Rejecting that argument, the supreme court held that the new designation was made on April 4, 1997, and that the amendment to the statute did not occur until April 14, 1997. Id. at 41-42, 497 S.E.2d at 361. The fact that the amendment occurred prior to the new designee’s commencing to publish legal notices was immaterial. “[T]he official action required by the Code to effectuate a change in legal organs was completed before the legislature added the new criterion for legal organs.” Id. at 45, 497 S.E.2d at 363. A dissenting opinion for three justices viewed the amendment to apply to the designation in issue. Id. at 49, 497 S.E.2d at 366.
III. LEGISLATION

The 1998 General Assembly acted upon a number of local government issues; a few examples illustrate coverage.

Efforts at resolving city-county annexation tensions resulted in two measures. First, if the county raises a land use dispute regarding an annexation, that dispute must be resolved prior to the annexation's completion, moreover, the municipal zoning process for the subject property must be substantially completed prior to final annexation. Second, if the city and county have a common zoning ordinance, then annexed land is zoned as it was prior to the annexation, and any deannexed property is zoned as it was prior to the deannexation.

The Zoning Procedures Law now includes the local government's consideration of requests for special use permits. That expansion enables the local government to limit the time to ten minutes per side for arguments for and against a permit request.

Local government officers and employees encountered new legislative prohibitions. Employees are now prohibited from striking. Violation entails termination of employment and forfeiture of civil service status, job rights, and seniority, as well as ineligibility for public employment for three years. The officers and employees of local government authorities are now prohibited from selling property to the authority unless the value is less than $200 per quarter or the sale is made pursuant to sealed bids.

Accountability exactions drew legislative attention in several contexts. For instance, a superior court may now review the grounds for a recall petition to determine the presence of a factual basis. As for "open-

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344. Ga. H.R. Bill 1603, Reg. Sess. (1998) (codified at O.C.G.A. §§ 36-36-2, -11, 36-66-4). The county can dispute the land use only if the proposed change results in a substantial change in the intensity of the allowable use of the property or in a change to a significantly different allowable use.

345. Id.


347. Id.


350. Id.


352. Id. A nonpublic employee who attempts to entice a public employee to strike is guilty of a misdemeanor. This prohibition previously applied only to state employees.


354. Ga. H.R. Bill 942, Reg. Sess. (1998) (codified at O.C.G.A. § 21-4-6). The officer sought to be recalled may appeal the determination to the supreme court, but the appeal will not stay the recall proceedings.
ness" concerns, the state attorney general may now independently bring civil and criminal enforcement actions for violations of the Open Meetings Act\footnote{355. Ga. H.R. Bill 1549, Reg. Sess. (1998) (codified at O.C.G.A. §§ 50-14-5, 50-18-73).} and pursue civil actions to enforce the Open Records Law.\footnote{356. Id.}

The legislature confronted a major problem with the state revenue commissioner's distribution to local governments of the proceeds from special local option sales taxes. The commissioner may now distribute previously “unprocessable” or “unattributable” proceeds based upon a pro rata share formula.\footnote{357. Ga. H.R. Bill 1784, Reg. Sess. (1998) (codified at O.C.G.A. § 48-8-67).} A local government's acceptance of such distributions will preclude a claim for additional past proceeds.\footnote{358. Id.} As for expenditures, local governments may now utilize special local option sales tax proceeds to purchase voting equipment.\footnote{359. Ga. H.R. Bill 1467, Reg. Sess. (1998) (codified at O.C.G.A. § 48-8-111).}

Local governments were the recipients of additional powers from the 1998 legislature but also suffered the imposition of new obligations. From the power perspective, cities and counties are authorized to build toll roads or bridges and to contract with private interests for construction of the projects.\footnote{360. Ga. H.R. Bill 1486, Reg. Sess. (1998) (codified at O.C.G.A. § 36-60-19).} Additionally, local governments are empowered to contract with private parties for up to ten years for the government's provision of gas, electricity, or water.\footnote{361. Ga. H.R. Bill 1160, Reg. Sess. (1998) (codified at O.C.G.A. §§ 36-1-26, 36-30-3, 36-80-17).} Finally, in the interest of growth management, the legislature authorized local governments to establish procedures and standards for the transfer of development rights within their jurisdictions.\footnote{362. Ga. H.R. Bill 1540, Reg. Sess. (1998) (codified at O.C.G.A. § 36-66A-1, -2). The statute provides for notice and provides that any proposed transfers of development rights are subject to the approval of affected property owners and shall be subject to a separate vote by the local governing authority.}

On the duty side of the ledger, local governments must now provide (on request) Hepatitis C vaccinations and screenings to their public safety employees.\footnote{363. Ga. H.R. Bill 1410, Reg. Sess. (1998) (codified at O.C.G.A. §§ 31-33-7, 31-35-1, -3). The statute mandates that after payment for the vaccinations by third parties, insurers, or the like, the local government is responsible for any remaining cost.} Additionally, cities and counties are required to post signs on bridges in their respective road systems which provide information on maximum safe load, weight, and other vehicle dimen-
The mandating statute provides for weight limits, signs, and citations for violations. More prohibition than duty, the local government may no longer require that an applicant for an alcoholic beverage license be a local government resident if the applicant designates a resident who will be responsible for any matter relating to the license.

Finally, anticipated technological problems concurrent with “Year 2000” prompted a legislative grant of immunity to state and local governments. Thus, the government is excused for losses from malfunctions caused directly or indirectly by the failure of computers to accurately process dates or times.

IV. CONCLUSION

As reflected by its origins, the “law” of local government develops apace. This year’s developments counsel caution in the painstaking process of accommodation—accommodating the ends of those who govern with the means of those whom are governed.