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Municipal Corporations

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MUNICIPAL CORPORATIONS

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The General Assembly of Georgia in its 1951 session enacted several statutes dealing with municipalities and counties. The Municipal Home Rule Law, which is certainly the most important enactment, is summarized at the end of this paper. The cases and other statutes are discussed under their customary topics.

TORTS

The immunity of municipal corporations from liability resulting from governmental duties in contrast to its liability for torts resulting from ministerial duties is well known to everyone.[1] In *Banks v. City of Albany*,[2] the plaintiff alleged that to obtain fire protection for his dwelling outside defendant's corporate limits, he had registered with the Chief of the Albany Fire Department and paid the annual fee of $10 as prescribed in an ordinance; and that his residence was totally destroyed by fire due to the negligence of the defendant and its employees in failing to extinguish the fire. The defendant demurred saying that the maintenance of a fire department by the municipality is a governmental function. The court agreed, reasoning that the fact that the protection was extended beyond the corporate limits and that a reasonable fee was charged for such service did not change the operation of the fire department from a governmental function to a ministerial one. The court followed the case of *Mayor of Savannah v. Lyons*,[3] which held that the operation of an airport outside the corporate limits was a governmental function, notwithstanding that fees and revenue were received for the use of the flying field, when it did not appear that the airport was operated primarily as a source of revenue.

The law requires a municipal corporation to exercise reasonable care to make and keep its streets safe for all ordinary uses for which they are open to the public,[4] based on the theory that this is a ministerial function.[5] In *Hammock v. City Council of Augusta*,[6] the plaintiff alleged that while walking on the sidewalk, a dead limb fell from a tree extending overhead and struck her. The court reversed the judgment for the defendant on demurrer saying, that Georgia Code Section 69-303 is not in derogation of the common law. Therefore, it should not be strictly construed to include only defects in the surface of a street or sidewalk but

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1. GA. CODE § 69-301 (1933); 18 MCQUILLIN, MUNICIPAL CORPORATIONS § 53.23 (3d ed. 1950).
2. 83 Ga. App. 640, 64 S.E.2d 93 (1951).
3. 54 Ga. App. 661, 189 S.E. 63 (1936).
4. GA. CODE § 69-303 (1933); 18 MCQUILLIN, MUNICIPAL CORPORATIONS §§ 54.02, 54.03 (3d ed. 1950).
5. Mayor of Savannah v. Jones, 149 Ga. 139, 99 S.E. 294 (1919); City of Barnesville v. Sappington, 58 Ga. App. 27, 197 S.E. 342 (1938), and cases there cited.
6. 83 Ga. App. 217, 63 S.E.2d 290 (1951).

also include defects on the side of or above it. By alleging the city knew of the condition of the limb or should have known about it by the exercise of ordinary care, the plaintiff stated a good cause of action against a general demurrer. The same principle was applied again in *City of Bainbridge v. Cox*,[7] where the court, citing the *Hammock* case, stated that it is a jury question as to whether the defendant's negligence brought about the injury to the plaintiff, where the defect consisted of a rotten tree growing between the sidewalk and the street and extending over the paved street.

In *Glover v. City Council of Augusta*,[8] the plaintiff testified that she alighted from an automobile and walked directly to a display window to look at the objects therein. Still looking at the window, she moved down, in response to a remark of her husband as to its contents, and instantly fell over or upon the no-parking sign which had been placed directly under the window. The directed verdict for the defendant was reversed on appeal. The court said that in a suit against a municipality which is negligent in keeping its streets and sidewalks in a reasonably safe condition, the defendant can defend by proving that the pedestrian could nevertheless have avoided the consequences by using ordinary diligence on his part; and also that it is incumbent on the plaintiff, as a matter of law, to use his eyesight for the discovery of any such obstruction. Nevertheless, the pedestrian may still recover even where the obstruction is patent and there are reasons why he did not see it,[9] and even where he actually did see it, if by looking the pedestrian would not have a full appreciation of the danger involved in using the sidewalk; nor is one bound to the same degree of care in discovering or apprehending danger in moments of stress or excitement, or when the attention has been necessarily diverted as at other times. Whether the defendant was negligent in placing a no-parking sign directly under a window especially decorated for the purpose of attracting and holding the attention of passers-by, and whether the plaintiff used the diligence of an ordinary prudent person to apprehend the existence of such negligence, are both jury questions.

Rhodes v. Perlis[10] held that where an injury is caused by the failure to repair a defect in a sidewalk, the law places the duty to repair upon the municipality, not the owner of property abutting such sidewalk; that this is true even if this owner also owns the fee to a sidewalk used by the public; and that the owner can only be held where he caused or actively participated in causing the obstruction or defect.

The most interesting tort case of the past year as to municipal corporations was *City of Atlanta v. Hurley*.[11] The plaintiff alleged that he was a convict working on a street project, and that while digging in an excavation on orders of the convict boss, an employee of the defendant, the excavation caved in inflicting on him very serious injuries; that the

7. 83 Ga. App. 453, 64 S.E.2d 192 (1951).
8. 83 Ga. App. 314, 63 S.E.2d 422 (1951).
9. (Rope same color as street) Holliday v. Mayor of Athens, 10 Ga. App. 709, 74 S.E. 67 (1912); (darkness) Davis v. Buckeye Cotton Oil Co., 143 Ga. 436, 85 S.E. 335 (1915).
10. 83 Ga. App. 312, 63 S.E.2d 457 (1951).
11. 83 Ga. App. 879, 65 S.E.2d 44 (1951).

cause of the cave-in was due to the negligence of the defendant.[12] The demurrer to the petition was overruled and the defendant excepted. With two judges expressing regret and one judge dissenting the court reversed saying:

> The general rule in this respect is that a municipal corporation is not liable for injuries to prisoners or convicts resulting from the negligence of the keeper, guard, policeman, or convict boss in charge of them, for the reason that, in the maintenance of a jail and the *working of convicts* the municipality is exercising governmental duties, and cannot be held responsible for the negligence or misconduct of officers which it must, of necessity, employ. 46 A.L.R. 100.[13]

The court said the case of *Nisbet v. City of Atlanta*[14] "is applicable to and controlling in the case at bar." In the *Nisbet* case the widow of a convict sued alleging an injury to the husband's hand while working on the streets under the orders of a street foreman, which injury, due to the failure of the defendant to provide any medical attention, resulted in his death; the court affirmed defendant's demurrer on the ground that the municipality was exercising governmental powers.

Judge Worrill agreed that the decision is correct under the authorities cited, but it is his opinion that the law "should be changed or modified." Judge Townsend concurred specially saying that while the court cited many decisions, they all, except for the *Nisbet* case, grew out of the governmental function of keeping prisoners, and that were it not for the *Nisbet* decision he would dissent. He pointed out that at the time of the injury the plaintiff was engaged in two functions; one governmental, that of keeping prisoners and administering penal affairs, and the other ministerial, that of building streets. If he were not bound by the *Nisbet* case, he would allow the plaintiff to recover on the theory that the city, at the time of his injury, was engaged in a ministerial function. Judge Felton dissented on the ground that the dual phase (governmental and ministerial) wasn't mentioned in the *Nisbet* case because that case went on the theory that the inatteniton to the medical needs of the prisoner, not the injury while working on the streets, was the proximate cause of the death, and also that the court in the *Nisbet* case cites a case[15] as being directly in point. The cited case, however, dealt with an injury incurred inside a prison, whereas, here the ministerial function was dominant and the governmental was merely incidental; that the modern tendency is to restrict rather than extend the doctrine of municipal immunity and "a majority of cases seem to hold that where the two functions are combined, it is impracticable to separate them and that the rule as to private activities must be followed. 38 Am. Jur. Section 608, p. 305."

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12. "Failing to inspect and brace the walls and sides of the excavation where the plaintiff was ordered and compelled to work, and where he was injured, and in failing to use reasonable care and diligence in providing a safe place and working facilities where the plaintiff was ordered and compelled to work, and in failing to give the plaintiff any warning of the dangerous condition of the excavation where he was injured."
13. While not cited by the court, GA. CODE § 69-307 (1933). "A municipal corporation shall not be liable for the torts of policemen or other officers engaged in the discharge of the duties imposed on them by law."
14. 97 Ga. 650, 25 S.E. 173 (1896).
15. Wilson v. Mayor of Macon, 88 Ga. 455, 14 S.E. 710 (1892).

PUBLIC FINANCE

In *Miller v. State*,[16] various residents, taxpayers, and water users of the city filed interventions and demurrers to a petition seeking validation of certain municipal water revenue certificates. The court reversed the overruling of these demurrers saying that it is implicit in the Act of 1937, as amended,[17] that the revenue certificates be issued to pay for a definite undertaking (as to improvements and the estimated cost thereof), that the whole and reasonable details of which must be contemplated, chosen and planned by the governing body of the municipality; that while it isn't necessary for the resolution to contain an intricate and detailed set of plans, enough facts should appear to afford a key from which the full picture of the project or improvement may be ascertained, such as, a reference to reasonably specific plans, maps and specifications or their equivalent. The reasons for this requirement are that the resolution and certificates become a contract between the city and the certificate purchasers which the latter can enforce by mandamus; and that the citizens of the municipality have the right to object to the validation of the certificates on the grounds that the project is unreasonable, or unsound, and possibly others; that unless a reasonable degree of definiteness is required in the ordinance, the project may be carried out substantially different from the plan originally contemplated; and that as this resolution only shows that the money be borrowed to pay the cost of "making improvements and extension to the waterworks plant and system," the intervenors' demurrer should be sustained.

In *New v. State*,[18] and *Robinson v. State & Camden County*,[19] the court affirmed the sustaining of the intervenors' demurrers to proceedings to validate muincipal bonds, by saying in the former case that the ineligibility of two of the managers of the election did not in and of itself vitiate the election, and that in both cases the alleged irregularities were not sufficient to render the election void, in absence of any fraud or any evidence that the election had not been fairly and honestly conducted, and in absence of any evidence that the results of the election would have been different if there had been full compliance with the law.[20]

The legislature, in its last session, passed two bills amending the Revenue Certificate Law of 1937.[21] One bill[22] authorizes state and local public authorities having corporate powers which have been or may hereafter be created by general, local or special act of the General Assembly, to enjoy the benefits of and to operate under the Revenue Certificate Law of 1937 (as amended) in the same manner as counties, cities, towns and school districts of the state. The other bill[23] provides for the authorization

16. 83 Ga. App. 135, 62 S.E.2d 921 (1951).
17. GA. CODE ANN. § 87-816 (Supp. 1947).
18. 83 Ga. App. 428, 63 S.E.2d 671 (1951).
19. 82 Ga. App. 584, 61 S.E.2d 773 (1950).
20. GA. CODE § 34-3101 (1933).
21. Ga. Laws 1937, pp. 761-774, as amended, Ga. Laws 1939, pp. 362-366, Ga. Laws 1950, pp. 188-189, GA. CODE ANN. §§ 87-802, 87-803 (Supp. 1947).
22. Ga. Laws 1951, p. 46.
23. Ga. Laws 1951, p. 455.

of revenue-anticipation certificates for the purpose of refunding or refinancing in whole or in part all outstanding revenue-anticipation certificates and general obligation bonds upon any given undertaking of any municipality.

DELEGATION OF AUTHORITY

Some municipalities and counties in the State of Georgia have employed appraisal experts to revalue the property within their respective localities. There has been some doubt as to the legality of such contracts. In *Bagwell v. Cash*,[24] the petitioners, as taxpayers, sought to enjoin the Commissioner of Roads and Revenues and the Tax Assessors of Hall County from carrying out a contract with a company, under which the latter was to furnish experts to make estimates as to the valuation of property within the county. The contract provided that the employees of the company were not to act as tax assessors, but that all findings were to be used as the tax assessors deemed best. The demurrer to the petition was overruled. The court affirmed saying, that by law, the county boards of tax assessors can only employ agents to seek out unreturned property;[25] that the assessors cannot, with the approval of the county commissioners, obligate the county to pay another, with county funds, for performing services which the law[26] requires the assessors to perform and for which they draw pay from the county; nor is the public estopped by the acts of these officers as the company had notice.[27] Chief Justice Duckworth in his concurring opinion stated that if the counties desire such services, they should seek recourse to the legislature.

The court above pointed out Ga. Code, Chapter 92-69 applies only to counties and not municipalities, thereby distinguishing the case of *Tietjen v. Mayor of Savannah*,[28] which held that the city was authorized under its charter to make such a contract.

But in *Ezzard v. City of Lawrenceville*,[29] the court held that where the charter provided for the election of three city tax assessors, who are to value and assess for taxes all property within the city, this negatives any authority on the part of the mayor and council to employ anyone else to do the same thing, and this is true even though another section of the charter provides that the mayor and council have full power and authority for the assessment, levying and collecting of *ad valorem* taxes, as this latter provision must be construed in connection with the former which is mandatory. The *Tietjen* case is distinguished in that, the charter of the City of Savannah had no mandatory requirement that assessors be elected, but that the right of the Mayor and Council of the City of Savannah to elect assessors was discretionary under Ga. Code Section 92-4001.

Telford v. City of Gainesville[30] held that the cooperation agreement between the City of Gainesville and the Housing Authority of the City of Gainesville, whereby the former agrees to eliminate unsafe or insanitary

24. 207 Ga. 222, 60 S.E.2d 628 (1950).
25. GA. CODE § 92-6910 (1933).
26. GA. CODE § 92-6911 (1933).
27. GA. CODE § 89-903 (1933).
28. 161 Ga. 125, 129 S.E. 653 (1925).
29. 207 Ga. 649, 63 S.E.2d 657 (1951).
30. 208 Ga. 56, 65 S.E.2d 246 (1951).

dwellings, "as approved by the P. H. A.," which equal in number the newly constructed dwelling units provided by the project, should not be construed as an attempt by the city to delegate to the P. H. A. non-delegable police power; but it should be construed to be only an assurance from the city that it will, as it should, properly exercise that power for the purpose of abating as public nuisances unsafe or insanitary dwellings which should be eliminated by it in the interest of public welfare.

Ordinances Not Inconsistent With State Law

Reid v. Perkerson[31] held that the well-established rule that a municipal corporation cannot legislate on subjects already made offenses and punishable by the laws of the state is obviously not violated when a municipality makes the mere act of possessing a lottery ticket or number, prima facie evidence of the violation of an ordinance, because the state law[32] only makes the operation to a lottery or the selling, offering for sale, procuring for or furnishing to any person a ticket in a lottery, a misdemeanor.

Public Officers

While there is considerable conflict of opinion as to whether an officer or employee of a municipality has a vested right to a pension, a majority of jurisdictions say that it is a bounty to be given or withheld by the legislature and that it is no part of the contract of employment, even where the employee contributes to the pension fund.[33]

In *Bender v. Anglin*,[34] a retired member of the Fire Department of the City of Atlanta sued to recover the difference between the pension ($100 per month) he was due under the pension fund set up under the Acts of 1924 and 1931,[35] and the pension he was actually paid ($75 per month) under an amendment in 1935;[36] while working, he was assessed one percent of his monthly salary and later two percent, which was paid into the pension fund. The demurrer to his petition was sustained. The court, with two members dissenting, reversed the demurrer, holding that while the general rule is that such a pension is a gratuity, not a contractual obligation and may be terminated at the will of the grantor; that where the employee's salary is taxed, this is a contract[37] with consideration flowing from both parties, giving him a vested right which cannot be impaired under the Constitution of the United States[38] or the Constitution of Georgia;[39] that if it were construed to be a gratuity, it is doubtful that this

31. 207 Ga. 27, 60 S.E.2d 151 (1950).
32. Ga. Code §§ 26-6501, 26-6502 (1933).
33. 3 McQuillin, Municipal Corporations § 12.144 (3d ed. 1949).
34. 207 Ga. 108, 60 S.E.2d 756 (1950).
35. Ga. Laws 1924, p. 167, as amended, Ga. Laws 1931, p. 223.
36. Ga. Laws 1935, p. 450.
37. Trotzier v. McElroy, 182 Ga. 719, 186 S.E. 817 (1936); and West v. Anderson, 187 Ga. 587, 1 S.E.2d 671 (1939), also held that such a plan was a contract, but in these cases the right to receive benefits in the pension fund had already accrued (retired) prior to the amendment of 1935 reducing the amount. In the former case there was dicta that this must occur for the petitioner to recover.
38. U. S. Const., Art. I, § 10, cl. 1.
39. Ga. Const., Art. I, § 3, ¶ 2, Ga. Code Ann. § 2-302 (1948 Rev.).

pension system could be sustained, since the State Constitution prohibits the General Assembly from voting any such gratuity.[40]

Where a county official fails to make bond as required by law,[41] such county office will not be declared vacant, unless this failure is due to the negligence or default of such officer; and the requirement that it be filed on or before the first day of January next after the election[42] should not be strictly construed.[43] In *Robert v. Stead.*[44] the court held that there is no compliance with the law where one is elected county surveyor and fails to file the bond for more than ten months after notice from the county ordinary that no bond was filed within the statutory time, and that this forfeiture is especially true where, due to this neglect and delay, another person is named to the office and qualifies by taking oath and giving bond as required by law.

The law[45] establishing in each county a board of tax assessors consisting of three members appointed by the county commissioners has been amended[46] as to counties with a population of less than 25,000, in that the number of tax assessors in these counties shall consist of not less than three nor more than five. The number serving is to be determined by the county commissioners or other county governing authority.

STREETS AND HIGHWAYS

Harbuck v. Richland Box Company[47] held that while an ordinance cannot authorize and ratify the maintenance by a person of a permanent obstruction in a public street amounting to a public nuisance, it can, under authority delegated by the legislature, abolish or close a street; and in so doing, the interest of the public therein ceases, and the owners of the fee, who are presumptively the abutting landowners, become entitled to use the property without regard to the former servitude imposed upon it.

ZONING

In *Ellis v. Stokes,*[48] it was alleged that the state statute[49] creating the Fulton Planning Commission required that on the submission of any amendment to a zoning resolution by this commission, the Commissioners of Roads and Revenues shall set a time (*day and hour*) for the hearing of the proposed change and give notice to the public thereof; that this requirement was not complied with as to the rezoning of the district in which the petitioners own property, in that the notice did not specify the day and hour of the hearing, nor did thirty days elapse between the date of the notice and the date of the hearing as required by the zoning ordinance of the

40. GA. CONST., Art. VII, § 1, ¶ 2 (1), GA. CODE ANN. § 2-5402 (1948 Rev.).
41. GA. CODE c. 89-4 (1933).
42. GA. CODE § 89-501 (6) (1933).
43. Ross v. Williamson, 44 Ga. 501, (1871).
44. 207 Ga. 41, 60 S.E.2d 134 (1950).
45. GA. CODE § 92-6903 (1933).
46. Ga. Laws 1951, p. 715.
47. 207 Ga. 537, 63 S.E.2d 333 (1951).
48. 207 Ga. 423, 61 S.E.2d 806 (1950).
49. Ga. Laws 1939, § 9, p. 584.

county commissioners.[50] In affirming the denial of a temporary injunction, the court with three members dissenting,[51] held that the notice given by the commissioners of a hearing "at their regular meeting, at the Fulton County Courthouse on Wednesday, July 2, 1947" was sufficient compliance with the statute; that as the commissioners by law are to meet on the first Wednesday in each month; and that July 2, 1947, being the first Wednesday in July, the notice complied with the statute as to the day; that as the statute only requires constructive notice, the petitioners, having notice of the day, had notice that the meeting would be held at the time of the regular meeting of the commissioners on that day. Therefore, in the absence of a showing that the meeting occurred at some time other than at the time of their regular meeting, the notice also complied with the statute as to the hour; that even if it be conceded that the notice did not comply with the literal and technical terms of the statute, in the absence of a showing that the failure resulted in harm or injury to the plaintiffs, this is not sufficient under the facts of this case to overcome the presumption that the action of the commissioners was valid.

LICENSES

In *Crummey v. State*,[52] the defendant was convicted of selling intoxicating liquors after his license had been revoked. The evidence showed, that the defendant had paid the sum of $500 for the license to sell whiskey and $100 for the license to sell beer and wine, and that he had agree to pay in addition a monthly tax based on five percent of his gross purchases of whiskey, wine, and beer; that while the license was granted, it was later revoked, without a hearing, on his failure to pay this monthly tax. The court reversed saying that a county or municipality can only charge an annual license, payable in advance, for the sale of alcoholic beverages.[53] It has no right under legislative authority to engage in the liquor business, or accept a share of the profits from anyone so engaged; nor has it the right to levy a tax on the sales of liquor. While the sale of liquor is a privilege and not a right, and while a city or county, in the valid exercise of its police power, may revoke a liquor license without a hearing or notice, the defendant's license was not revoked in order to protect the welfare, health, or prosperity of the county's inhabitants, but it was revoked because of a breach of contract. Therefore, that part of the agreement requiring the defendant to pay a percentage of the gross purchases is void. The revocation by the county without a hearing, not being in the exercise of its police power is likewise void.

The law,[54] which requires a dealer to obtain a license from the Com-

50. Court easily disposed of the second point by the familiar rule that: "Rules of procedure passed by one legislative body are not binding upon a subsequent legislative body operating within the same jurisdiction. Courts ordinarily will not invalidate an ordinance enacted in disregard of parliamentary usage, provided the enactment is made in the manner provided by statute." South Ga. Power Co. v. Baumann, 169 Ga. 649 (2), 151 S.E. 513 (1929).
51. On the ground that the notice did not comply with the statute, thus making it a denial of due process in violation of the State and Federal Constitutions.
52. 83 Ga. App. 459, 64 S.E.2d 380 (1951).
53. Ga. Laws 1937-38, pp. 103-113, GA. CODE ANN. §§ 58-1031, 58-1032 (Supp. 1947).
54. GA. CODE § 84-1702 (1933).

missioner of Revenue prior to the holding of any jewelry auction, has been amended[55] by adding that such dealer must in addition obtain a license from the municipality wherein such auction is to be held, or if outside the corporate limits of any municipality, then obtain such a license from the county.

HOME RULE

Municipal home rule in its broadest meaning deals with the power of local self-government. While home rule is generally recognized as sound in principle, in practice there are advantages and disadvantages. The advantages are that each community is free to choose the kind of local government best suited for its needs, such responsibility would stimulate the citizenry in community affairs, permit prompt action in dealing with current municipal problems, relieve the state legislature of the details of local government, and remove from the state legislature the temptation to interfere with municipal affairs for reasons of partisan politics. The disadvantages are that the populations of large cities are usually indifferent or apathetic to community affairs, it favors the rule of the oligarchy or the boss, and the difficulty in differentiating between state and municipal affairs under home rule.[56]

Under authority of the Constitution,[57] the 1951 General Assembly of Georgia enacted a statute[58] known as the Municipal Home Rule Law, which repeals the Act of 1947[59] and provides the opportunity for all municipalities in the state to adopt municipal home rule. The original charter for a municipality can only be granted by the General Assembly, but once a municipality is incorporated, it may come under the provisions of the Home Rule Law by electing a charter commission to write a new charter or by voting to come under the act and retain its old charter.

New Charter.—Under this method, the legislative body of the municipality may pass an ordinance to submit the question, "Shall a commission be selected to frame a charter?" or thirty percent of the eligible voters of the municipality may by petition request the submission of the same question. At the same election, the members of the charter commission are also elected. Each voter shall vote for not more than seven candidates, and if the vote be in favor of framing a charter, the seven candidates receiving the highest number of votes shall constitute the charter commission. This commission, within ninety days after its election, shall submit a charter to the governing authority of the municipality. If the charter submitted is approved in an election by the voters, then the municipality is subject to the Home Rule Law. If the charter voted on is not approved, then it is thought that the whole procedure must be repeated.

Old Charter.—Under this method, the legislative body may submit the question, "Shall this municipality come under the provisions of the

55. Ga. Laws 1951, p. 495. (The words "such dealer" in the first sentence were omitted in copying the old section of the Code. It is doubtful if this error affects the provision in any way as the term "dealer" is used in other parts of the section.)
56. 1 MCQUILLAN, MUNICIPAL CORPORATIONS § 1.93 (3d ed. 1949).
57. GA. CONST. Art. XV, § 1, ¶ 1, GA. CODE ANN. § 2-8301 (1948 Rev.).
58. Ga. Laws 1951, p. 116.
59. Ga. Laws 1947, p. 118, GA. CODE ANN. § 69-1001 *et seq.* (Supp. 1947).

Municipal Home Rule Law and retain its present charter with the right to amend the same under terms of said act?" or thirty percent of the eligible voters may petition for the submission of such question to the eligible voters of the municipality. An election is then held.

Amendments.—Once a municipality is operating under the provisions of the Home Rule Law, an amendment to its charter may be proposed by the legislative body of the municipality or by petition of thirty percent of the eligible voters and becomes part of the charter when approved by the electorate. As the Home Rule Law is a general act, it would seem that once a municipality comes under it, the charter could not be amended by local legislation enacted by the General Assembly.

Annexation.—The annexation of territory must be voted upon in both the territory to be annexed and the municipality in separate elections. The former election shall be called by the ordinary of the county in which the territory proposed to be annexed lies,[60] upon notice from the governing authority of the municipality or upon receipt of a petition of thirty percent of the qualified voters in such territory.[61] If there is both a county and a separate or independent school system in the county from which the territory is to be annexed, the written approval of a majority of the members of the county board of education must be attached to the petition.[62] If the election in the territory to be annexed[63] is favorable, then an election is held in the municipality. If this is also favorable, the territory immediately becomes part of the municipality. Annexation under this act is prohibited as to any municipality with a population of more than 200,000 persons, whose boundaries extend into two or more counties.

Recall.—An election to recall a municipal official may be effected by a petition of thirty percent of the eligible voters. A two-thirds vote of those voting in the election is necessary to effect a recall. If the official is not recalled, no recall election shall be held on such official for a period of one year.

In all probability, the General Assembly in 1952 will find it necessary to clarify certain aspects of the act, but already many municipalities have adopted or are moving toward the adoption of home rule under the 1951 act.

60. If the territory to be annexed lies in more than one county, the ordinary of the county in which the larger portion of such territory lies shall act.
61. Note this is of the voters of the territory to be annexed, not the voters within the municipality.
62. No such approval is necessary where the annexation is called for in the notice by the governing authority of the municipality.
63. Those eligible to vote include both qualified voters residing in such territory and qualified voters who own property therein.