Administrative Law

by Martin M. Wilson*
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I. Introduction and Overview

Agency decision makers continue to shape just about every facet of life as we know it. This Article discusses the peculiar procedures for obtaining final agency decisions and the review of those decisions. The survey period for this Article is from June 1, 2004 through May 31, 2005. Only cases from the Georgia Supreme Court and Georgia Court of Appeals have been reviewed, and there has been no attempt to usurp the prerogative of other authors for this issue. Thus, although the subject matters may overlap, such areas as local government law, workers' compensation law, insurance law, and others are reserved for more specialized articles.

This Article begins by discussing a case on standing, followed by several cases on agency defenses and immunities. Next, the standards of review used to evaluate agency decisions are covered with cases including examples of evidentiary standards, the plain meaning of statutes, and agency deference. The next section charts the effects of agency actions with cases on the failure to follow agency rules and on the validity of rules. A section on whether a direct appeal or an application to appeal must be used for review by the appellate courts follows, and the final section covers recent legislation from the 2005 regular session of the Georgia General Assembly.

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II. STANDING TO INITIATE PROCEEDINGS

The only case addressing standing in this year's survey period is the appeal of a case included in last year's survey.[1] In *Gonzalez v. Department of Transportation*,[2] the supreme court tackled the issue of whether a plaintiff who is a non-resident alien lacked standing to sue in Georgia courts. As discussed in last year's article, the court of appeals affirmed the trial court's finding that such a plaintiff lacked standing to sue.

The court of appeals interpreted the supreme court's decision in *AT&T Corp. v. Sigala*[3] as barring all suits in Georgia courts brought by non-resident aliens and held that because actions under the Georgia Tort Claims Act ("GTCA")[4] can only be brought in Georgia courts, Gonzalez lacked standing to initiate the suit. The issue in *Sigala* was whether a trial court has the inherent authority to dismiss a lawsuit brought by a non-resident alien for injuries occurring on foreign soil.[5] In that case, the court determined that a Georgia trial court does, in fact, have the authority to dismiss such a suit.[6] The court based its decision "on traditional principles of public policy and the inherent power of the courts 'to maintain . . . an orderly and efficient court system.'"[7]

In *Gonzalez* the supreme court held that *Sigala* should be relied on solely for the notion that Georgia courts can apply the doctrine of forum non conveniens to dismiss improper lawsuits in state courts brought by non-resident aliens who suffer injuries outside the United States, and it is not an authority for dismissing a suit by a non-resident alien for injuries suffered in the United States.[8] As such, the trial court improperly dismissed Gonzalez's suit on the ground that as a non-resident alien, she lacked standing to bring suit in a Georgia court, and the court of appeals improperly affirmed the decision.[9]

III. AGENCY DEFENSES AND IMMUNITIES

Seven cases within this year's survey period addressed agency defenses and immunities. The cases ranged in issue from *ante litem*

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1. Martin M. Wilson, *Administrative Law,* 56 MERCER L. REV. 31, 32 (2004).
2. 279 Ga. 230, 610 S.E.2d 527 (2005).
3. 274 Ga. 137, 549 S.E.2d 373 (2001).
4. O.C.G.A. § 51-21-20 (2002).
5. *Gonzalez*, 279 Ga. at 230, 610 S.E.2d at 527 (citing *Sigala*, 274 Ga. at 137, 549 S.E.2d at 375).
6. *Id*. (citing *Sigala*, 274 Ga. at 139, 549 S.E.2d at 377).
7. *Id*. (quoting *Sigala*, 274 Ga. at 139, 549 S.E.2d at 376-77).
8. *Id*. at 231, 610 S.E.2d at 528-29.
9. *Id*., 610 S.E.2d at 529.

notice requirements, to qualified privilege rights, to the scope of sovereign immunity. The court of appeals overwhelmingly upheld broad interpretations of statutes relating to the state's rights and demanded strict compliance with notice provisions designed to protect the state.[10] The first two cases address the stringent service of process and *ante litem* notice requirements for suits filed against government entities as provided for in the GTCA.[11] In both cases, the court of appeals emphasized that substantial compliance with the GTCA is not enough; instead, the court of appeals held that strict compliance is required.[12]

The discussion begins with a case on service of process and *ante litem* requirements. In *Camp v. Coweta County*,[13] Camp sued the Department of Corrections ("DOC"), alleging he was injured while participating in mandatory work detail at the Coweta County Fair Ground. Under Official Code of Georgia Annotated ("O.C.G.A.") section 50-21-35,[14] in all civil actions brought against the state, the plaintiff must serve the Attorney General with a copy of the complaint showing the date of filing and a certificate of compliance stating this requirement has been satisfied.[15] Camp failed to mail the Attorney General a copy of the complaint when he filed it, and Camp also failed to mail a certificate of compliance at that time. Instead, it was not until eleven months after filing the complaint that Camp mailed a copy of the complaint, amended to include a certificate of compliance, to the Attorney General. Because of Camp's failure to perfect service of process, the trial court granted the DOC's motion to dismiss.[16]

On appeal, Camp argued that because the complaint was sent to the Attorney General and the certificate of compliance was added by amendment within the statute of limitations, O.C.G.A. section 50-21-35 was satisfied and service of process was perfected.[17] The court of appeals disagreed, asserting that the GTCA must be strictly construed based on legislative intent.[18] Because O.C.G.A. section 50-21-35 clearly states the Attorney General "shall" be served a copy of the complaint

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10. *See, e.g.*, Baskin v. Ga. Dep't of Corr., 272 Ga. App. 355, 612 S.E.2d 565 (2005); Camp v. Coweta County, 271 Ga. App. 349, 609 S.E.2d 695 (2005), *cert. granted*.

11. *See* Baskin v. Ga. Dep't of Corr., 272 Ga. App. 355, 612 S.E.2d 565 (2005); Camp v. Coweta County, 271 Ga. App. 349, 609 S.E.2d 695 (2005).

12. *See* Baskin v. Ga. Dep't of Corr., 272 Ga. App. 355, 612 S.E.2d 565 (2005); Camp v. Coweta County, 271 Ga. App. 349, 609 S.E.2d 695 (2005).

13. 271 Ga. App. 349, 609 S.E.2d 695 (2005), *cert. granted*.

14. O.C.G.A. § 50-21-35 (2002).

15. *Id*.

16. *Camp*, 271 Ga. App. at 350-52, 609 S.E.2d at 697-98.

17. *Id.* at 351-52, 609 S.E.2d at 698.

18. *Id*. at 352, 609 S.E.2d at 698.

and a certificate of compliance in order to perfect service of process, Camp's failure to properly serve the Attorney General resulted in insufficient service of process.[19] To allow service to be made by amendment nearly a year after filing the complaint would be contrary to the legislative intent of providing the state with timely notice of the filing of the suit.[20] As such, the trial court properly granted the DOC's motion to dismiss for failure to perfect service.[21]

The DOC also asserted an inadequacy of *ante litem* notice in their motion to dismiss. Under O.C.G.A. section 50-21-26,[22] a person or corporation bringing a tort claim against the state must first give notice of the claim to the state.[23] The statute sets forth specific information that must be included in the *ante litem* notice to the state.[24] Courts have repeatedly held that substantial compliance with *ante litem* requirements is inadequate.[25] Camp argued that a letter mailed by his attorney to the defendants satisfied the *ante litem* notice requirements. The letter Camp referenced did not name the DOC as a defendant, and the DOC never received a copy of the letter.[26] The court determined that if the DOC had received a copy of the letter, it would have been sufficient to put them on notice of the potential suit.[27] However, because nothing in the record showed that the letter was mailed to the DOC, the trial court was proper in granting the DOC's motion to dismiss for inadequacy of *ante litem* notice.[28]

In a similar suit also filed by an injured inmate, *Baskin v. Georgia Department of Corrections*,[29] the court of appeals again demanded strict compliance with the notice provisions of the GTCA.[30] Baskin filed suit against the Georgia Department of Corrections and Martin, a Department employee, to recover for injuries incurred while he was an inmate at Montgomery Correctional Institute. Baskin failed to give *ante litem* notice to the Department of Administrative Services ("DOAS") after he filed the suit. The DOAS filed a motion to dismiss for failure to comply

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19. *Id*. at 353, 609 S.E.2d at 698-99.
20. *Id*., 609 S.E.2d at 699.
21. *Id*. at 354, 609 S.E.2d at 699.
22. O.C.G.A. § 50-21-26(a) (2002 & Supp. 2005).
23. *Id*. § 50-21-26(a)(5).
24. *Id*.
25. *Camp*, 271 Ga. App. at 354, 609 S.E.2d at 699; *see also* Grant v. Faircloth, 252 Ga. App. 795, 556 S.E.2d 928 (2001).
26. *Camp*, 271 Ga. App. at 354-55, 609 S.E.2d at 699-700.
27. *Id*. at 355, 609 S.E.2d at 700.
28. *Id*.
29. 272 Ga. App. 355, 612 S.E.2d 565 (2005).
30. *Id*. at 358, 612 S.E.2d at 568.

with *ante litem* notice requirements, which the trial court granted. Baskin argued that because he sent notice to other agencies named as defendants in the suit, he substantially complied with the GTCA requirements, and the granting of the DOAS's motion to dismiss was improper.[31] The court rejected this argument, warning, as it did in *Camp*, that substantial compliance is not enough.[32] The GTCA requires strict compliance.[33] As such, the trial court's grant of the DOAS's motion to dismiss was proper.[34]

The next set of cases address the issue of when the state can be sued. Moving from notice provisions, these cases concern sovereign immunity. Overwhelmingly, the cases emphasize the state's broad defense of sovereign immunity.[35] While the doctrine of sovereign immunity prohibits tort claims from being filed against the state, the GTCA provides for a limited waiver of sovereign immunity.[36] The GTCA also sets forth thirteen exceptions to this waiver,[37] which reinforce the broad power of sovereign immunity enjoyed by the state.

In *Comanche Construction, Inc. v. Department of Transportation*,[38] the court held that although the tort action fell within the GTCA's waiver of sovereign immunity, the suit was still barred under the inspection power exception.[39] Warnick was injured when the driver of the car she was in drove off the roadway and collided with a tree. The driver claimed she did not see the stop sign because it was blocked by a detour sign. Warnick sued both the Department of Transportation ("DOT") and Comanche Construction, Inc. ("Comanche") for injuries suffered in the accident, claiming that Comanche negligently placed the detour sign in front of the stop sign and that the DOT was negligent in overseeing the project.[40]

The trial court held that the DOT was immune from suit under the doctrine of sovereign immunity and thereby entitled to summary judgment. The DOT's review and approval of Comanche's traffic control plan and inspection of the route after the detour signs were installed fell within the GTCA's inspection power exception to the waiver of sovereign

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31. *Id*. at 355-57, 612 S.E.2d at 556-68.
32. *Id*. at 357, 612 S.E.2d at 567-68.
33. *Id*. at 357-58, 612 S.E.2d at 568.
34. *Id.* at 359, 612 S.E.2d at 569.
35. *See, e.g.,* Comanche Constr., Inc. v. Dep't of Transp., 272 Ga. App. 766, 613 S.E.2d 158 (2005).
36. *See, e.g., id.* at 768, 613 S.E.2d at 162.
37. *See, e.g., id.*
38. 272 Ga. App. 766, 613 S.E.2d 158 (2005).
39. *Id.* at 769, 613 S.E.2d at 162.
40. *Id*. at 767-68, 613 S.E.2d at 160-61.

immunity.[41] Contrary to Warnick's contentions, the court of appeals determined that approving the plan on the condition that two signs be added did not take the DOT out of the scope of the inspection power exception.[42] To find otherwise would surely defeat legislative intent because it would limit the inspection power exception to only those inspections where no subsequent remedial work was performed.[43]

Comanche argued that the DOT had a nondelegable duty to design the traffic control plan and such duty was outside the inspection power exception.[44] The court rejected this claim, holding that nothing in the applicable state or federal code sections prevented the DOT from delegating responsibility for designing and implementing a traffic control plan to a private contractor.[45] The evidence showed the DOT's actual involvement was limited to approving the traffic control design plan and inspecting the detour route.[46] The court held that such acts were clearly within the inspection power exception to the GTCA's waiver of sovereign immunity.[47] Accordingly, the trial court properly granted the DOT summary judgment under the doctrine of sovereign immunity.[48]

The broad defense of sovereign immunity was again successful in *Gay v. Georgia Department of Corrections*.[49] Gay filed a negligence claim against the Department of Corrections ("DOC") and the Stone Mountain Memorial Association ("Association"), seeking damages for injuries incurred while he was an inmate at the Rockdale/DeKalb Probation Detention Center. Gay asserted his work detail was governed by a contract between the DOC and the Association requiring the Association to provide a safe workplace for inmates. The trial court granted the Association's motion for summary judgment for failure to give *ante litem* notice under the GTCA.[50]

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41. *Id.* at 768-69, 613 S.E.2d at 162. O.C.G.A. section 50-21-24(8) reads:

> The state shall have no liability for losses resulting from . . . [i]nspection powers or functions, including failure to make an inspection or making an inadequate or negligent inspection of any property other than property owned by the state to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety.

O.C.G.A. § 50-21-24(8) (2002).

42. *Comanche*, 272 Ga. App. at 769, 613 S.E.2d at 162.
43. *Id.*, 613 S.E.2d at 162-63.
44. *Id.*, 613 S.E.2d at 163.
45. *Id.* at 770, 613 S.E.2d at 163.
46. *Id.* at 771, 613 S.E.2d at 164.
47. *Id.* at 772, 613 S.E.2d at 164.
48. *Id.*
49. 270 Ga. App. 17, 606 S.E.2d 53 (2004).
50. *Id.* at 17, 606 S.E.2d at 54.

The court of appeals first explored whether the Association was protected from the suit under sovereign immunity and thereby entitled to *ante litem* notice.[51] The court of appeals held that through the GTCA, the General Assembly waived sovereign immunity for tort claims against state officers and employees acting within the scope of their official duties of employment.[52] The GTCA provides an extremely broad definition of "State" as it relates to the defense of sovereign immunity.[53] State is defined as the "'State of Georgia and any of its officers, agencies, authorities, departments, commissions, boards, divisions, instrumentalities, and institutions, but does not include counties, municipalities, school districts, other units of local government, hospital authorities, or housing and other local authorities.'"[54] The supreme court relied on this broad definition in extending sovereign immunity for the purposes of both the constitution and the GTCA.[55]

In determining whether an entity falls under the GTCA's definition of state, the court must look at "the legislation creating the Association and the public purposes for which it was created."[56] Gay argued the Association's enabling legislation showed that it is not a state department or agency and that the Association had its own legal identity shown by its power to acquire property, contract, and borrow money.[57] The court held that the Association is a state department or agency for the purposes of sovereign immunity and is entitled to *ante litem* notice of tort claims filed against it because the Association performs the following valid public functions with statewide benefit: (1) preservation of the Stone Mountain Park, (2) access to Stone Mountain for Georgia's citizens, and (3) maintenance of the confederate memorial.[58] Because Gay failed to provide such notice, the trial court properly granted summary judgment to the Association.[59]

In addition to sovereign immunity, the Georgia Constitution also provides for official immunity for state officials sued in their individual capacity.[60] The court of appeals explored the realm of official immunity in *Banks v. Happoldt*[61] where the court distinguished between the two

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51. *Id*. at 18, 606 S.E.2d at 54.
52. *Id*., 606 S.E.2d at 55.
53. *Id*. at 19, 606 S.E.2d at 55.
54. *Id.* (quoting O.C.G.A. § 50-21-22(5) (2002 & Supp. 2005)).
55. *Id.*
56. *Id*. at 21, 606 S.E.2d at 56.
57. *Id*. at 20, 606 S.E.2d at 55.
58. *Id*. at 21, 606 S.E.2d at 56.
59. *Id*. at 22, 606 S.E.2d at 57.
60. GA. CONST. art. I, § 2, para. 9(d).
61. 271 Ga. App. 146, 608 S.E.2d 741 (2004).

immunities (i.e., state and official) and determined when each was applicable.[62] Happoldt filed an action against Banks, as the Monroe County Superintendent, in his individual and official capacities and against Monroe County's five commissioners in their individual and official capacities for negligent maintenance of a county road related to a vehicle collision in which he was involved. Happoldt was driving with his sister and another person in a vehicle on Pate Road in Monroe County. At one point in the road, the pavement was eroded by water and traffic and narrowed to 17 feet, 4 inches with an 8-to-11-inch drop-off on the right shoulder. As Happoldt entered this area, his right front tire went off the pavement into the drop-off, causing the vehicle to spin out of control and into the path of an oncoming vehicle. The resulting collision injured Happoldt and killed his sister.[63]

The court distinguished between the two types of actions brought against the defendants: the action brought against them in their official capacities and the action brought against them in their individual capacities.[64] Neither the trial court nor the plaintiffs raised this distinction or even addressed sovereign immunity. The defendants, however, raised the issue at every stage of the case.[65] The court explained that sovereign immunity protects officials sued in their official capacities, while official immunity protects officials sued in their individual capacity.[66] Applying the doctrine of sovereign immunity, the court held that the actions were barred insofar as they were brought against various county officials in their official capacity.[67] Because sovereign immunity is not an affirmative defense, it need not be established by the party seeking protection.[68] Instead, sovereign immunity applies unless the party seeking the waiver establishes that the General Assembly specifically waived it.[69] Because Banks failed to show a specific waiver by the General Assembly, the power of sovereign immunity applied and barred all claims against the defendants in their official capacities.[70]

The court also held that the claims against the defendants in their individual capacities were barred.[71] Georgia law provides that a public

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62. *Id.* at 147, 608 S.E.2d at 743-44.
63. *Id*. at 146, 608 S.E.2d at 742-43.
64. *Id*. at 147, 608 S.E.2d at 743-44.
65. *Id*., 608 S.E.2d at 743.
66. *Id*., 608 S.E.2d at 743-44.
67. *Id*.
68. *Id*. at 148, 608 S.E.2d at 744.
69. *Id*.
70. *Id*.
71. *Id*.

officer may be personally liable only for "ministerial acts" negligently performed or acts performed with malice or intent to injure, but cannot be personally liable for "discretionary acts."[72] In the first appeal of this case, the court defined a ministerial act as "'one that is simple, absolute, and definite, arising under conditions admitted or proved to exist, and requiring merely the execution of a specific duty'" and a discretionary act as one that "'calls for the exercise of personal deliberation and judgment, which in turn entails examining the facts, reaching reasoned conclusions, and acting on them in a way not specifically directed.'"[73] Official immunity is intended "'to preserve the public employee's independence of action without fear of lawsuits and to prevent review of his or her judgment in hindsight.'"[74]

The plaintiff alleged that the defendants were negligent in allowing the road to remain at a width of less than the minimum twenty-foot standard set by the county. However, the minimum standard did not apply here because the road at issue was in existence before the minimum standards were enacted.[75] The court wrote, "[a]bsent such applicable standards [or procedures], plaintiffs [could not] establish that the defendants' actions were ministerial."[76] Instead, the lack of a standard or procedure demonstrated that the duty to repair the road was discretionary.[77] As a result, the county officials were protected by official immunity, and the actions against the officials in their individual capacities were barred.[78] The court noted that "[w]hile harsh rulings can result from the application of current Georgia law in cases like this, it is for the legislature to address such concerns, not this [c]ourt."[79]

As is demonstrated by the next case, *Alverson v. Employees' Retirement System*,[80] the doctrine of sovereign immunity is not limited to tort actions. Instead, the General Assembly also provided limited forms of immunity to the state for certain contract actions and damages.[81] However, as shown in *Alverson*, it is often difficult to determine whether the action sounds in contract or tort. In *Alverson* the plaintiffs were a

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72. *Id.*; *see also* GA. CONST. art. I, § 2, para. 9(d).

73. *Banks*, 271 Ga. App. at 149, 608 S.E.2d at 744-45 (quoting Happoldt v. Kutscher, 256 Ga. App. 96, 98, 567 S.E.2d 380, 382 (2002)).

74. *Id.* at 148, 608 S.E.2d at 744 (quoting Cameron v. Lang, 274 Ga. 122, 123, 549 S.E.2d 341, 344 (2001)).

75. *Id*. at 149-50, 608 S.E.2d at 745.

76. *Id*. at 150, 608 S.E.2d at 745.

77. *Id*.

78. *Id*. at 153, 608 S.E.2d at 747.

79. *Id*., 608 S.E.2d at 747-48.

80. 272 Ga. App. 389, 613 S.E.2d 119 (2005).

81. *Id.* at 392, 613 S.E.2d at 122.

group of former State of Georgia employees who retired on or before July 1, 1998, after reaching the age of sixty but with less than thirty years of creditable service. The plaintiffs' pensions were being reduced by the Employees' Retirement System of Georgia ("ERS") based on each employee's age. The plaintiffs brought suit against the ERS claiming, among other things, breach and impairment of contract. The ERS asserted the plaintiffs' claims were barred by the GTCA. The trial court held that under the state official act or omission exception of the GTCA, the state agency was immune from liability.[82]

Relying on the supreme court's opinion in *Youngblood v. Gwinnett Rockdale Newton Community Service Board*,[83] the trial court reasoned that when distinguishing between a tort action and an action for breach of contract, "'[t]he focus . . . is not on the duty allegedly breached by the State but on the act causing the underlying loss.'"[84] The court wrote that "[b]ecause [the] plaintiffs' claims [were] based on the actions of the members of [the] Board of Trustees of the ERS in executing state retirement statutes, the trial court concluded that the state [agency was] exempt from liability under" the state official act or omission exception to the GTCA.[85]

The court of appeals determined that the trial court's reliance on *Youngblood* was misplaced.[86] The plaintiff in *Youngblood* alleged his daughter was assaulted while in a home for the mentally disabled operated by private individuals under a contract with a government agency. The plaintiff claimed that the government agency was liable under the GTCA's waiver of sovereign immunity.[87] However, O.C.G.A. section 50-21-24(7) provides that the state shall have no liability for losses resulting from assault and battery.[88] Unlike other exceptions to the waiver, this exception is not limited to acts of state officers or employees.[89] Instead, it is a blanket exception that protects the state from liability for all losses resulting from the torts enumerated therein,

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82. *Id.* at 389, 613 S.E.2d at 120.

83. 273 Ga. 715, 545 S.E.2d 875 (2001).

84. *Alverson*, 272 Ga. App. at 390, 613 S.E.2d at 120 (quoting *Youngblood*, 273 Ga. App. at 717, 545 S.E.2d at 878).

85. *Id.*, 613 S.E.2d at 120-21. O.C.G.A. section 50-21-24(1) provides that the state is exempt from liability for losses resulting from "[a]n act or omission by a state officer or employee exercising due care in the executing of a statute, regulation, rule, or ordinance." O.C.G.A. § 50-21-24(1) (2002).

86. *Alverson*, 272 Ga. App. at 390, 613 S.E.2d at 121.

87. *Id*.

88. *Id.* (citing O.C.G.A. § 50-21-24(7) (2002)).

89. *Id.*

regardless of who commits them.[90] The court of appeals noted the court in *Youngblood* held that because "O.C.G.A. section 50-21-24[(7)] applies to specified torts regardless of whether a state officer or employee is the tortfeasor, the focus in determining the applicability of that subsection is the act causing the loss and not the duty breached."[91] However, the general rule in determining whether an action sounds in tort or contract provides that the focus must be on the duty breached.[92] Applying the general rule to the present case, the court of appeals held that the trial court should have focused on the nature of the duty breached in determining whether the claim is a contract or tort action.[93]

In addition, the court held that the trial court improperly concluded that the action was a tort action when the facts indisputably showed it was a breach of contract action.[94] The plaintiffs were a party to a written contract established by the retirement statutes in effect while they were employed by the state and contributing towards their retirement benefits.[95] At the time the GTCA was enacted, O.C.G.A. section 50-21-1,[96] which provides a waiver of sovereign immunity as to actions *ex contractu* for the breach of a written contract, was also enacted.[97] Because this code section is not part of the GTCA, the case falls within an exception to state sovereign immunity separate and apart from the GTCA.[98] As such, the trial court improperly ruled that the plaintiffs' claims were barred by the GTCA.[99]

The final case addresses the issue of qualified privilege, which attaches to the proceedings of news accounts of administrative agencies of the government and protects such statements from libel and slander suits. In *Cooper-Bridges v. Ingle*,[100] Cooper-Bridges, a former employee of the Sumter County jail, was notified that her employment would terminate on the last day of the then-current sheriff's term. While at the swearing-in ceremony for the new sheriff, Robert Ingle, Cooper-Bridges confronted Sheriff Ingle regarding his decision not to continue to employ her as a jailor under his administration. Subsequently,

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90. *Id*.
91. *Id*. at 390-91, 613 S.E.2d at 121 (citing *Youngblood*, 273 Ga. at 717, 545 S.E.2d at 878).
92. *Id*. at 391, 613 S.E.2d at 121.
93. *Id*.
94. *Id*. at 391-92, 613 S.E.2d at 121-22.
95. *Id*. at 392, 613 S.E.2d at 122.
96. O.C.G.A. § 50-21-1 (2002).
97. *Alverson*, 272 Ga. App. at 392, 613 S.E.2d at 122 (citing O.C.G.A. § 50-21-1).
98. *Id.*
99. *Id*.
100. 268 Ga. App. 73, 601 S.E.2d 445 (2004).

Cooper-Bridges applied for unemployment with the Department of Labor (the "DOL"). Upon the DOL's request, Sheriff Ingle drafted a memo outlining the reasons for Cooper-Bridges's termination, which included a statement that Cooper-Bridges was intoxicated at the swearing-in ceremony. Cooper-Bridges filed a slander action against Sheriff Ingle after an article published in *The Sumter Free Press* quoted Sheriff Ingle's memo regarding the reason she was not retained. The trial court granted summary judgment to Sheriff Ingle, finding that the comments he made to the paper from the DOL memo were privileged, and Cooper-Bridges appealed.[101]

The court of appeals held that a qualified privilege attaches to proceedings of administrative agencies of the government and the fair, impartial, and accurate news accounts of such proceedings.[102] Because Sheriff Ingle's memo to the DOL fell within this privilege, the court of appeals upheld the trial court's decision.[103]

IV. STANDARD OF REVIEW FOR AGENCY DECISIONS

A. *Evidentiary Standards*

The first two cases under this section concern education personnel who challenged their punishments given by the Professional Standards Commission (the "Commission"). In *Professional Standards Commission v. Valentine*,[104] a teacher, Valentine, was reprimanded and suspended for five days by local school officials because of his anger outbursts. An appeal reached the investigatory arm of the Commission, which conducted a hearing and found that Valentine's outbursts constituted a violation of standards relating to ethical conduct and assessed a one-year suspension of his teaching certificate.[105]

A further appeal was conducted at Valentine's request by an administrative law judge ("ALJ"), who made written findings of fact and conclusions of law. Valentine basically admitted to two confrontations, but said they were due to "emotional anger problems resulting in outbursts."[106] The ALJ found that there had indeed been two arguments and that the standard previously cited by the Commission

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101. *Id*. at 73-76, 601 S.E.2d at 445-47.
102. *Id*. at 76, 601 S.E.2d at 448.
103. *Id*.
104. 269 Ga. App. 309, 603 S.E.2d 792 (2004).
105. *Id*. at 309, 603 S.E.2d at 792-93. The ethical standard is found at GA. COMP. R. & REGS. 505-6-.01(3)(j) (Standard 10) (2004).
106. *Valentine*, 269 Ga. App. at 311, 603 S.E.2d at 793.

had been violated. However, citing mitigating factors, the ALJ shortened the suspension by reducing it to five days.[107]

When the Commission reviewed the decision, both the ALJ's findings of fact and his conclusions of law were accepted, but the Commission did not agree with all of the mitigating factors. The Commission increased Valentine's punishment to a six-month suspension, which was shorter than the Commission's original proposed ruling.[108]

The matter went to superior court where Valentine argued that the ALJ had been correct in assessing punishment. Citing the standard on unethical conduct allegedly violated by Valentine, the superior court noted that evidence of the two serious heated arguments was simply not enough. The record must also contain some evidence of adverse consequences to students or the schools stemming from the events. The Commission appealed the court's decision.[109]

The court of appeals, citing the any evidence rule, reversed the superior court.[110] The appellate court seems to have simply disagreed with the superior court as to whether evidence of adverse consequences stemming from the events was in the record. The superior court had been more exacting and found no such conclusion stated by the Commission.[111] The court of appeals made the following dispositive observation: "This evidence supports the finding by both the ALJ and the [Commission] that Valentine violated Standard 10, as such behavior forms a clear basis on which one could rationally conclude that Valentine's angry behavior seriously impaired his ability to function professionally as an educator."[112]

The second case concerning the Commission, *Professional Standards Commission v. Alberson*,[113] was no mere teacher argument; rather, it concerned the Superintendent of Schools of Turner County ("Superintendent"), whose conduct resulted in a charge of aggravated assault and terroristic threats. In *Alberson* the Superintendent was friends with an elderly couple whose home had recently been burglarized. They believed that a Department of Transportation employee, who was working at a road-side nearby, had been the perpetrator. The Superintendent and the husband went to where the employee was working and revealed to the

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107. *Id*. at 310-11, 603 S.E.2d at 793.

108. *Id*. at 311, 603 S.E.2d at 793-94.

109. *Id*. at 311-12, 603 S.E.2d at 794.

110. *Id*. at 313, 603 S.E.2d at 795. The Any Evidence Rule is from the Georgia Administrative Procedure Act ("GAPA") at O.C.G.A. section 50-13-19(h)(5) (2002 & Supp. 2005).

111. *Valentine*, 269 Ga. App. at 312, 603 S.E.2d at 794.

112. *Id*. at 313, 603 S.E.2d at 795.

113. 273 Ga. App. 1, 614 S.E.2d 132 (2005).

worker a pistol that the Superintendent was carrying. Threatening remarks were made about what would happen if the elderly couple's house was visited again. The Superintendent returned a second time and made similar warnings.[114]

The Commission issued its preliminary order that the Superintendent committed violations of ethics rules and revoked the Superintendent's teaching certificate.[115] The Superintendent sought and received a hearing before an administrative law judge. In addition to the basic facts, the Superintendent introduced evidence of his good character and the lack of adverse consequences to the students or school system as a result of his behavior. Even though the ALJ disagreed with the Superintendent's assessment, she changed the punishment to a three-month suspension. The Commission subsequently declined to accept that change, but it did adopt the remaining parts of the order in its decision and gave a one-year suspension instead of revocation.[116]

The Superintendent appealed to the superior court, which reversed the ruling of the Commission. Similar to *Valentine*, the court found no adverse consequences to the school system stemming from the actions of the Superintendent that were presented in the evidence. Seemingly, the superior court was saying that no violation occurred, unless evidence was produced to support a finding that there was a direct correlation between the Superintendent's brandishing a gun and making threats, and some quantifiable adverse effect on a student or the school system. Additionally, the court found that one of the provisions cited as a violation was unconstitutionally vague.[117]

Just as in *Valentine*, the Commission appealed to the court of appeals, which, again, reversed the order of the lower court.[118] Unquestionably, there was evidence of the egregious acts of the Superintendent.[119] However, unlike *Valentine*, there was also evidence that no direct adverse consequences had occurred to complete the violation.[120] Settling the question raised in *Valentine*, the court of appeals stated that "direct evidence affirmatively demonstrating" the existence of adverse

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114. *Id.* at 2-3, 614 S.E.2d at 134-35.

115. *Id.* at 2, 614 S.E.2d at 134. *See* GA. COMP. R. & REGS. 505-2-.03(1)(n), (o) (Interim Ethics Rules) (1999).

116. *Alberson*, 273 Ga. App. at 4, 614 S.E.2d at 135-36.

117. *Id.*, 614 S.E.2d at 136. The provision in question allowed adverse action against a certificate holder for "[a]ny other good and sufficient cause." GA. COMP. R. & REGS. 505-2-.03(1)(o) (Interim Ethics Rules) (1999).

118. *Alberson*, 273 Ga. App. at 1, 11, 614 S.E.2d at 134, 140.

119. *Id.* at 5, 614 S.E.2d at 136.

120. *Id.* at 6-7, 614 S.E.2d at 137.

consequences is not required.[121] This standard essentially converted the question from one of any evidence to one of conflicting evidence, which the superior court had no power to decide in its review.[122] For purposes of using this decision, the following language about inferences that can be drawn from the evidence of wrongdoing is important: "It is sufficient for an administrative record to contain evidence of conduct by a school official from which an adverse consequence on the student body can be inferred by the [Commission], given the grave nature of the conduct itself."[123]

The second item in the appeal was a ruling from the superior court that one of the provisions the Superintendent violated was void for vagueness because it permitted action against his teaching certificate based only upon "'good and sufficient cause.'"[124] Using a case-by-case approach to decide whether procedural due process was adequate, the court of appeals concluded that the alleged vague provision was "no more indefinite" than other similar types of cases.[125] Of particular importance was a case decided in the Federal District Court for the Southern District of Georgia that contained a review upholding a similar Georgia provision containing good and sufficient cause language. [126]

The next case to be discussed, *Hughey v. Gwinnett County*,[127] which was discussed last year,[128] was recently heard by the supreme court.[129] This case has been in the courts for five or six years and the central issue concerns the permit application of Gwinnett County (the "County") to release treated wastewater into Lake Lanier after it had been processed in the treatment plant.[130] When the authors last addressed this case, the court of appeals had reinstated discharge points relating to the permit as found by the ALJ and reversed the superior court.[131] Two noteworthy arguments were presented to the supreme court by the landowners challenging the County. First, the homeowners argued that the permit should not have been issued because the County

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121. *Id*. at 7, 614 S.E.2d at 137.
122. *Id*.
123. *Id*.
124. *Id*., 614 S.E.2d at 138.
125. *Id*. at 10, 614 S.E.2d at 139-40.
126. *Id*. at 9, 614 S.E.2d at 139. *See* Logan v. Warren County Bd. of Educ., 549 F. Supp. 145 (S.D. Ga. 1982).
127. 278 Ga. 740, 609 S.E.2d 324 (2004).
128. Martin, *supra* note 1, at 60.
129. In the court of appeals the case was titled *Gwinnett County v. Lake Lanier Ass'n*, 265 Ga. App. 214, 593 S.E.2d 678 (2004).
130. *Hughey*, 278 Ga. at 740, 609 S.E.2d at 326.
131. *Hughey*, 265 Ga. App. at 218, 593 S.E.2d at 683.

had not shown that it met the requirements necessary before a degradation of water quality would be allowed. The court listed two requirements under the applicable rules.[132] One requirement, which related to a finding that the wastewater discharges should be "justifiable to provide necessary social or economic development," had been met by the County.[133] However, the County also needed to prove that it would only discharge the water after the water had been treated in a manner that reflected the then-current state-of-the-art treatment processes.[134] The ALJ allowed an incrementally lower discharge standard so the County would not have the additional worry of constantly being in violation of its permit if the treatment plant facility did not operate in an optimal fashion at all times.[135] The supreme court determined this to be impermissible and contrary to the ALJ's factual findings.[136]

The supreme court also took issue with the opinion of the court of appeals concerning the notice and comment period for the public.[137] There had been a draft permit that was subject to public notice and comment, but the final permit issued was different because the discharge point was closer to the surface of Lake Lanier and a mile from the point in the draft permit. Before the ALJ, there was no presentation regarding whether those changes were of such significance that there should have been another notice and comment period.[138] The supreme court ruled that there should have been a hearing and determination of the matter as opposed to a summary disposition.[139]

Justice Hines, in a dissenting opinion on both of the noteworthy issues, chastised the majority.[140] First, he thought the any evidence rule required the court to review whether there was any evidence to support a ruling, not whether there was any evidence to support a contrary ruling.[141] By making such a determination, the court had essentially substituted its judgment for that of the ALJ and had rewritten the applicable regulations so that the term "practicable" was excised.[142] Under the majority's view, only the best current form of

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132. *Hughey*, 278 Ga. at 741-42, 609 S.E.2d at 327.
133. *Id*. at 742, 609 S.E.2d at 327 (quoting GA. COMP. R. & REGS. 391-3-6-.03(2)(b) (2002)).
134. *Id*.
135. *Id*. at 743, 609 S.E.2d at 328.
136. *Id*.
137. *Id*. at 744, 609 S.E.2d at 329.
138. *Id.*
139. *Id*.
140. *Id*. at 745, 609 S.E.2d at 329 (Hines, J., dissenting).
141. *Id*., 609 S.E.2d at 329-30 (Hines, J., dissenting).
142. *Id*. (Hines, J., dissenting).

water treatment would ever suffice, regardless of whether that was the practicable method.[143] Second, he thought that the supreme court was completely without foundation for its conclusion that another public notice and comment period might be warranted for the permit.[144] Using the existing regulation, he deduced that the reason for the original notice and comment period was so the draft permit could be reviewed and, under the wisdom of the agency and the comments received, any needed changes could be entered before the final permit was issued.[145] Accordingly, it now seems that unless an agency makes no changes to a draft permit, there would at least be the possibility of notice and comment periods ad infinitum as long as any changes were needed, according to who was passing judgment on whether it was a significant change.

The last case in this section is *Georgia Department of Agriculture v. Brown*.[146] Brown sold produce at a state farmer's market. Much to the chagrin of the market manager and others, Brown or persons at his stall played loud music, videotaped people at the farmer's market, washed their cars, cut firewood, and did other things for which Brown was cited as violating applicable regulations. Under the procedures applicable to the Department of Agriculture, an administrative order revoking Brown's license to sell produce at the farmer's market was issued.[147] The order contained all of the complaints, and it specified that the order would only become effective ten days after receipt by Brown, provided that he did not request a hearing. Brown did request a hearing, and the matter was heard before an administrative law judge. The findings of fact in the resulting order contained the previously mentioned complaints. The conclusions of law were that the applicable regulations had been violated. Instead of revoking Brown's license, the administrative law judge suspended it for six months.[148]

Brown appealed to the Commissioner of Agriculture (the "Commissioner"), who was the head of the agency. This was an unwise decision because the Commissioner accepted the ALJ's order, but reinstated the license revocation. Sensing some degree of latitude, Brown appealed to the superior court. Brown received a favorable ruling in that forum, as

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143. *Id*. (Hines, J., dissenting).

144. *Id*. at 745-46, 609 S.E.2d at 330 (Hines, J., dissenting).

145. *Id*. at 746, 609 S.E.2d at 330 (Hines, J., dissenting).

146. 270 Ga. App. 646, 607 S.E.2d 259 (2004).

147. *Id*. at 646, 607 S.E.2d at 260-61. The applicable procedure is derived from O.C.G.A section 2-10-60, which was subsequently rewritten. *See* O.C.G.A. § 2-10-60 (2000 & Supp. 2005).

148. *Brown*, 270 Ga. App. at 646, 607 S.E.2d at 261.

the court reversed the Commissioner and returned Brown's license. The two reasons for this reversal were purportedly that the complaints at the farmer's market were never brought to Brown's attention by written notice and that there was either no evidence or insufficient evidence that violations had occurred.[149]

The Department of Agriculture appealed to the court of appeals, which reversed the superior court.[150] At issue was a slight clash between the Georgia Administrative Procedure Act[151] ("GAPA") and the agency-specific provisions.[152] The GAPA specifies that prior notice by the agency of the complaints against a person would be necessary prior to any proceedings to revoke the license.[153] The agency-specific provisions allow the proceeding to be initiated by a conditional order that will only take effect if no hearing to contest the proposed findings, conclusions, and punishment is requested.[154] The latter procedure is a common item in statutes governing state agencies, and the court of appeals realized this.[155] Relying upon *Hinson v. Georgia State Board of Dental Examiners*,[156] the court reasoned that compliance with the GAPA provision basically depended upon notice of the violations and an opportunity to be heard.[157] Because the Department of Agriculture gave notice through its preliminary order of the complaints that had arisen, the punishment planned, and the right to have a hearing, the Department demonstrated compliance with O.C.G.A. section 50-13-18(c).[158]

The superior court additionally found that the evidence was insufficient for a revocation. However, the superior court had no such authority, and its review should have been confined to examining the record for any evidence to support the decision. The superior court lacked authority to assess the weight of the evidence through its analysis.[159]

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149. *Id*. at 646-47, 607 S.E.2d at 261.
150. *Id*. at 646, 650, 607 S.E.2d at 260, 263.
151. O.C.G.A. § 50-13-18(c) (2002).
152. *Brown*, 270 Ga. App. at 647, 607 S.E.2d at 262. The agency-specific provisions are codified under O.C.G.A. sections 2-10-60(1), (2) (2000 & Supp. 2005).
153. *Id*., 607 S.E.2d at 261; O.C.G.A.§ 50-13-18(c).
154. *Brown*, 270 Ga. App. at 647, 607 S.E.2d at 261; O.C.G.A. § 2-10-60(2).
155. O.C.G.A. section 33-2-24 (2000 & Supp. 2005) provides a good example applicable to the Commissioner of Insurance.
156. 135 Ga. App. 488, 218 S.E.2d 162 (1975).
157. *Brown*, 270 Ga. App. at 648, 607 S.E.2d at 262.
158. *Id.*
159. *Id*. at 648-49, 607 S.E.2d at 262.

B. Plain Meaning of Statutes

Over the years, these Authors have observed that whether a statute has a plain meaning depends upon who is performing the research and analysis. During this survey period, the only good "plain meaning" case involved none other than Mercer University ("University"). In *Corporation of Mercer University v. Barrett & Farahany, LLP*,[160] a former student who had been the victim of an assault sued the University claiming it was responsible. During discovery, the University refused to produce records of the Mercer University Police Department that related to victims of sexual assaults generally. In response, the law firm representing the former student brought an action to obtain those records under the theory that an Open Records Act[161] request would lie.[162]

The trial court analyzed the Open Records Act and found that the police department was subject to the Open Records Act because it was charged with the same law enforcement duties as other public police agencies. The University appealed.[163] The court of appeals first wrote that under the pertinent statutory scheme, there were three parts of the review:

> To be considered a "public office" or a "public agency" pursuant to the Open Records Act, an entity must generally either (1) be a political subdivision of the state, (2) be a city, county, regional or other authority established pursuant to law, or (3) receive a specified amount of funding from the state. [164]

The law firm seeking records had not argued that the University fell under any of these three categories. Instead, the firm claimed that the police department records could be obtained through the Open Records Act because the enabling statutes that had authorized the formation of the department delegated public law enforcement powers to the private police department. It was this delegation that made the police department, as opposed to the University itself, the public agency.[165]

The court of appeals disagreed, noting that although the law firm made a compelling argument, "there is nothing in the plain and

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160. 271 Ga. App. 501, 610 S.E.2d 138 (2005).

161. O.C.G.A. §§ 50-18-70 to -77 (2002 & Supp. 2005).

162. *Corp. of Mercer Univ.,* 271 Ga. App. at 501, 610 S.E.2d at 139-40.

163. *Id.* at 502, 610 S.E.2d at 140.

164. *Id*. (citing the statutory references regarding what entities or persons are subject to the Open Records Act under O.C.G.A. §§ 50-18-70(a) and 50-14-1(a)(1) (2002 & Supp. 2005)).

165. *Id*. at 502-03, 610 S.E.2d at 140.

unambiguous language of the Open Records Act that supports such an outcome."[166] A similar result was reached on the question of whether the records of the police department became public records because of the duty that the police department had to report certain types of criminal incidents to the Georgia Bureau of Investigation and other law enforcement agencies.[167] The law firm also argued that the police department maintained those required reports on behalf of the entities to whom it reported, so the police department itself should be a public office or agency.[168] The court concluded that nothing in the record supported this argument because there was no delegation of some publicly held power from any public office or agency.[169]

C. Agency Deference

Two cases reported during the survey period provide examples of the court of appeals using the hands-on, daily work of regulatory agencies to aid in decision-making. The first one, *Reheis v. Baxley Creosoting & Osmose Wood Preserving Co.*,[170] emphasized the day-to-day interpretations given to the Georgia Hazardous Site Response Act ("HSRA")[171] by the Environmental Protection Division ("EPD"). In that case, EPD used its enforcement powers under HSRA to gain a consent order with Baxley Creosoting and Osmose Wood Preserving Co. ("Baxley") signed by Morris, its president. The order was violated by Baxley's subsequent discharge of waste water, and Baxley notified EPD that the company could not comply with the terms imposed. The director of EPD filed an action against both Baxley and Morris for cleanup costs, punitive damages, costs, and attorney fees from the action. A subsequent summary judgment motion by EPD was denied, but one filed by Morris was granted.[172]

Reheis, the EPD director, sought review in the court of appeals.[173] On the question of whether Morris had correctly obtained a summary judgment, the court concluded that he had only signed the consent order in a representative capacity because he was a corporate officer.[174] Because the relevant statute required that a person receive notice and

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166. *Id.*, 610 S.E.2d at 140-41.
167. *Id.* at 504-05, 610 S.E.2d at 141-42.
168. *Id.*
169. *Id.*
170. 268 Ga. App. 256, 601 S.E.2d 781 (2004).
171. O.C.G.A. §§ 12-8-90 to -97 (2001 & Supp. 2005).
172. *Reheis*, 268 Ga. App. at 256-57, 601 S.E.2d at 784.
173. *Id.* at 257, 601 S.E.2d at 784.
174. *Id.* at 258, 601 S.E.2d at 785.

the opportunity to perform cleanup of a cited violation prior to the EPD taking over the remediation and because Morris had not signed the consent order in any individual capacity, he was not a party against whom the action could be brought.[175]

The second issue on appeal was whether Baxley could obtain a jury trial on the questions of reasonable cleanup costs and punitive damages.[176] Citing the history of jury trials and the grant thereof under the Georgia Constitution, the court held that the cleanup costs could be awarded without a jury because the HSRA enforcement provisions were a statutory enactment coming long after the expression of the right to jury trial from the Georgia Constitution, and for which no statutory right to a jury trial had been given.[177] This rationale is not true for punitive damages because those have been determined only by juries for as long as there has been such a right.[178]

The case was reversed because the trial court erred in its consideration of the summary judgment motion by Reheis, and the court of appeals gave specific instructions for the further actions of the trial court on remand.[179] Perhaps fearing a forthcoming finding that any amount of cleanup costs assessed by the EPD would be unreasonable, the court of appeals decision stated, "[W]e remind the court that decisions of a state agency are accorded a high level of deference."[180] The HSRA specifically gave the director of the EPD broad authority for the cleanup of environmental hazards, and the trial court's review should be limited to whether the EPD had followed its statutory authority and correctly exercised its discretion.[181]

The second case, *City of Griffin v. McDaniel*,[182] concerned deference to the administrative framework designed by the Department of Community Affairs to implement the Georgia Development Impact Fee Act ("DIFA"),[183] although the agency was not a party to the case. Spalding County (the "County") tapped into the sewer system of the City of Griffin (the "City") as part of the construction of a prison outside the city limits. The City sought a capacity recovery fee that it normally charges for each new customer, but the County only agreed to pay certain portions of the actual connecting costs. In the ensuing litigation,

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175. *Id*. at 258-59, 601 S.E.2d at 785.
176. *Id*. at 260-61, 601 S.E.2d at 786.
177. *Id*. at 261-62, 601 S.E.2d at 786-87.
178. *Id*. at 262-63, 601 S.E.2d at 787-88.
179. *Id*. at 263, 601 S.E.2d at 788.
180. *Id*.
181. *Id*.
182. 270 Ga. App. 349, 606 S.E.2d 607 (2004).
183. O.C.G.A. §§ 36-71-1 to -13 (2000).

the trial court granted the County's motion for summary judgment, stating that the capacity recovery fee was unlawfully required because the City had not complied with DIFA.[184] The City's assertion that DIFA contained an exemption covering this instance was unsuccessful.[185]

The court of appeals reversed, relying heavily on the publications that the Department of Community Affairs had put together to convey how DIFA should be interpreted by the various local government entities affected by it.[186] The department publication found internal differences in O.C.G.A. section 36-71-13 because of specific defined terms and interpreted the result of these differences as allowing a local government, in the situation faced by the City, to use a capacity recovery fee like the one at issue without going through the same procedural requirements that would normally apply to a water or water and sewer authority.[187]

V. EFFECT OF AGENCY ACTIONS

A. *Failure to Follow Agency Rules*

Determining a correct interpretation of the Open Records Act[188] continues to be a source of difficulty for agencies and local governments alike. In *Strange v. Housing Authority of Summerville*,[189] the seriousness of compliance issues was demonstrated. Basically, the Stranges were a nuisance to the Housing Authority ("Authority"). Since 1998 they filed numerous requests for documents and maintained social contacts with several persons living at the Authority projects. The Stranges, who were not residents of any of the housing projects, continuously interacted with the children living at properties owned by the Authority and displayed adverse reactions to limits the Authority placed on this interaction. Consequently, the Authority sought to enjoin the Stranges from coming onto Authority property and, in its original complaint, to keep them from making open records requests. The latter count was dropped, but the Stranges already filed a counterclaim alleging Open Records Act violations. The trial court gave the Authority an injunction

184. *McDaniel*, 270 Ga. App. at 350, 606 S.E.2d at 608.
185. *Id.* at 349-50, 355, 606 S.E.2d at 608, 611.
186. *Id*. at 352-53, 606 S.E.2d at 609-10.
187. *Id*. at 353, 606 S.E.2d at 610 (citing GEORGIA DEPARTMENT OF COMMUNITY AFFAIRS, A GENERAL OVERVIEW OF IMPACT FEES Vol. I, § C.14 (1992)).
188. O.C.G.A. §§ 50-18-70 to -77 (2002 & Supp. 2005).
189. 268 Ga. App. 403, 602 S.E.2d 185 (2004).

and denied relief to the Stranges.[190] The ensuing appeal by the Stranges to the court of appeals was successful.[191] The appellate court determined that no evidence authorizing the issuance of the injunction existed and also concluded that the Authority had remedies at law precluding equitable relief.[192]

The trial court also ruled on the Open Records Act violations cited in the Stranges' counterclaim, finding the issue moot because the Authority amended its complaint and no longer wanted an injunction against open records requests.[193] The court of appeals disagreed and declared the counterclaim still viable.[194] The Open Records Act contains its own private action for violations, and the record of the case did not contain evidence offered by the Authority sufficient to obtain a summary judgment in its favor.[195]

An ongoing dispute regarding airport business contracts was the setting for the Open Records Act problems in *City of Atlanta v. Corey Entertainment, Inc.*[196] Corey Entertainment, Inc. ("Corey") protested the award of a contract by the City of Atlanta ("City") to a winner containing a disadvantaged business enterprise ("DBE"). The basis for the protest was that the DBE did not meet the qualifications for such status. In furtherance of the protest, Corey unsuccessfully requested the tax returns of the head of the DBE, which incidentally had been made a part of the City's records as a result of the DBE filing.[197]

Corey filed a mandamus action in superior court, seeking compliance with the Open Records Act. The defense given by the City and Fauch, the head of the DBE who had intervened, was that provisions contained in governing federal regulations required confidentiality of the tax returns. The superior court found no such requirement and granted summary judgment to Corey, conditioned upon the stipulation that Corey protect the tax return documents from disclosure outside the case.[198]

Rather than comply, the City and Fauch appealed to the supreme court.[199] The argument made before the trial court was reiterated, along with the assertion that Fauch had privacy rights protecting the

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190. *Id*. at 403-05, 602 S.E.2d at 187-88.
191. *Id*. at 403, 409, 602 S.E.2d at 187, 190.
192. *Id*. at 408, 602 S.E.2d at 190.
193. *Id*. at 409, 602 S.E.2d at 190.
194. *Id*. at 409-10, 602 S.E.2d at 191.
195. *Id*.
196. 278 Ga. 474, 604 S.E.2d 140 (2004).
197. *Id*. at 475, 604 S.E.2d at 142.
198. *Id*. at 475-76, 604 S.E.2d at 142.
199. *Id*. at 474-75, 604 S.E.2d at 141.

documents from disclosure.[200] The supreme court examined all cited applicable federal provisions, but noted that none of them were persuasive.[201] Likewise, while both state law and the City's ordinances provided generally for tax returns to remain confidential, the Open Records Act and an order from the court thereunder were sufficient to overcome such authority.[202] The court also stated that Fauch's assertion of a personal right to privacy would not prevent inquiries into the propriety of her certification as a DBE.[203]

B. Validity of Rules

In *Torrente v. Metropolitan Atlanta Rapid Transit Authority*,[204] the issue was the availability of reimbursement for a business relocation. Torrente had to move because Metro Atlanta Rapid Transit Authority ("MARTA") acquired the business property. MARTA did not pay him all the amounts demanded, and Torrente appealed to superior court for a review. Obtaining no relief, Torrente brought his case to the court of appeals.[205]

MARTA relied on the relocation statutes, which placed limits upon how much MARTA was obligated to pay as relocation expenses, relocation search fees, and lost profits. MARTA argued that Torrente failed to show error from the trial court's order in this regard.[206] However, Torrente also presented a claim for inverse condemnation to cover business losses.[207] The trial court erred concerning this finding because such losses in Torrente's circumstances were not a part of the limitations on relocation expenses contained in the statutes.[208]

Additionally, Torrente asserted a separate misrepresentation claim, which the trial court found had been waived because it had not been presented to MARTA. Further, the actual statements alleged to have been misrepresentations were found by the trial court to be misstatements of law and not actionable.[209] Respecting the first proposition, the court of appeals characterized the misrepresentation claim as a separate one that did not have to be raised in the administrative

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200. *Id*. at 476, 604 S.E.2d at 142.
201. *Id*. at 476-77, 604 S.E.2d at 143.
202. *Id*. at 477-78, 604 S.E.2d at 143-44.
203. *Id*.
204. 269 Ga. App. 42, 603 S.E.2d 470 (2004).
205. *Id*. at 42, 603 S.E.2d at 472.
206. *Id*. at 44-45, 603 S.E.2d at 473-74.
207. *Id*. at 45, 603 S.E.2d at 474.
208. *Id*. at 46-47, 603 S.E.2d at 474-75.
209. *Id*. at 47, 603 S.E.2d at 475.

setting.[210] Why this conclusion was dictated is not explained, and it is difficult to understand why the claim was allowed to be combined with an appeal of an administrative case.[211] A subsequent subsidiary finding, regarding error in the trial court's conclusion that the misrepresentations were statements of law, may be a stronger basis for the ruling.[212] According to Torrente, "[A] MARTA employee falsely informed him that the relocation of his business would require no 'down time' and that he would be 'made whole' through the administrative process."[213] The court of appeals ruled that for purposes of granting a motion to dismiss, the trial court erred in its conclusion.[214]

It is not often that one sees the separation of powers doctrine asserted as an argument that a regulatory provision should be declared invalid, but that was the primary issue in *Albany Surgical, P.C. v. Georgia Department of Community Health*.[215] Albany Surgical, P.C. ("Albany Surgical") took issue with certain regulations promulgated by the Georgia Department of Community Health ("DCH") under the Certificate of Need statutes.[216] In a prior appeal of this case, the regulations were determined to be authorized by the governing statute, but the case had been remanded so that the trial court could attend to the claim that the Georgia Constitution had been violated.[217]

The trial court found no problem with the questioned regulations, and an appeal to the supreme court followed.[218] Albany Surgical first reiterated that the regulation was not authorized, but the supreme court noted that the court of appeals had previously settled that issue.[219] The primary thrust of the appeal, though, was that the procedure for adopting regulations by DCH violated the separation of powers doctrine because of the legislative oversight provisions contained in the Certifi-

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210. *Id*.

211. Nothing is mentioned in the opinion about the absence of an administrative remedy or why exhaustion of available administrative remedies would not be prerequisite to a court action.

212. *Torrente*, 269 Ga. App. at 47-48, 603 S.E.2d at 475-76.

213. *Id*. at 47, 603 S.E.2d at 475.

214. *Id*. at 48, 603 S.E.2d at 476.

215. 278 Ga. 366, 602 S.E.2d 648 (2004). Separation of powers is found at GA. CONST. art. I, § 2, para. 3.

216. *Albany Surgical*, 278 Ga. at 366, 602 S.E.2d at 649-50. The rules were GA. COMP. R. & REGS. 272-2-.01(19)(h)(3) and 272-2-.09(1)(b)(10) (repealed effective Jan. 5, 2005).

217. *See* Albany Surgical, P.C. v. Dep't of Cmty. Health, 257 Ga. App. 636, 572 S.E.2d 638 (2002).

218. *Albany Surgical*, 278 Ga. at 367, 602 S.E.2d at 650.

219. *Id*.

cate of Need laws.[220] Under those provisions, a proposed regulation does not go forward to adoption unless both health-related committees of the General Assembly fail to object.[221] If one of the committees does object, the subsequent promulgation of the regulation can be negated if a resolution is introduced in the General Assembly and passed by a two-thirds vote in both the house and senate.[222] If the resolution is approved in one chamber by less than a super-majority, it must go to the Governor for consideration, and only if the Governor signs the resolution would the promulgated regulation stand as negated.[223] The supreme court reduced the argument to the following analysis and ruling:

> Does the statute go further, and mix the legislature's power to make the laws, with the executive's power to enforce them? We think not. The statute does not invest the legislature with executive power; nor does it invest the executive with legislative power. These powers remain, for all practical purposes, separate and distinct.[224]

A separate argument concerning the legislative process was equally unsuccessful. Albany Surgical said, in effect, that the Certificate of Need laws authorized DCH to make laws, thereby violating constitutional provisions on governing processes of the Georgia General Assembly.[225] The supreme court, after earlier noting that the regulation in question had already been found to be reasonable and authorized by the Certificate of Need laws, disagreed that DCH had been given the authority to do anything more than promulgate regulations.[226]

When a rule allows an agency to exercise its discretion and grant a waiver from some act of compliance, that is not the same thing as granting a right to a waiver in any circumstance. In *White v. Georgia Peace Officers Standards & Training Council*,[227] former peace officer White was suspended from his job as a police officer for violations of work rules and later received a notice of investigation from the Georgia

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220. *Id*. at 367-68, 602 S.E.2d at 650-51. The rule-making directives are derived from O.C.G.A. section 31-6-21.1 (2001 & Supp. 2005). *Cf.* GAPA at O.C.G.A. § 50-13-4 (2002 & Supp. 2005) (containing similar general provisions).

221. *Albany Surgical*, 278 Ga. at 367, 602 S.E.2d at 650 (citing O.C.G.A. § 31-6-21.1(b) (2001 & Supp. 2005)).

222. *Id*. (citing O.C.G.A. § 31-6-21.1(d) (2001 & Supp. 2005)).

223. *Id*. (citing O.C.G.A. § 31-6-21.1(d)).

224. *Id*. at 368, 602 S.E.2d at 651 (citation omitted).

225. *Id*. Legislative procedure for the enactment of laws generally is found at GA. CONST. art. III, § 5. The supreme court noted that GA. CONST. art. III, § 5, para. 5 had been relied on by Albany Surgical. *Albany Surgical*, 278 Ga. at 367-68, 602 S.E.2d at 650-51.

226. *Albany Surgical*, 278 Ga. at 368, 602 S.E.2d at 651.

227. 269 Ga. App. 747, 605 S.E.2d 136 (2004).

Peace Officers Standards & Training Council ("Council") concerning his peace officer certification. He did not respond, and the Council sent him a certified letter containing administrative charges and a proposed revocation of his certification. The letter stated that it was up to White to request a hearing within fifteen days and to file a response with the Council within thirty days. Even though that certified letter was sent to the same address as the prior one, White allegedly did not receive it and did nothing until January 2003 when his police department fired him for failure to maintain his certification.[228]

White then asked the Council for an appearance before its executive committee to request a waiver in accordance with applicable rules.[229] The meeting with the executive committee took place, and it recommended to the full Council that a waiver allowing White to regain his certification without waiting the requisite time should be denied. Upon the Council's ratification of that recommendation, White appealed to the superior court. He argued: (1) that he had been denied due process because the certified mail never reached him; (2) that the mailing rule was unconstitutional; (3) that the full Council did not hear his application for waiver; and (4) that the denial of his waiver was an abuse of discretion. The superior court affirmed the Council's decision, and the matter was appealed to the court of appeals.[230]

Unfortunately, White had not raised the constitutional questions before the Council, so the appellate court refused to review these issues.[231] White also waived any issue raised by the initial hearing conducted by the executive committee because White never objected to the procedure.[232] The court noted that initial decision-making by a designee of the agency head is specially allowed under the GAPA.[233] Answering the assertion that the Council failed to consider a second request for waiver, the court mentioned that while there was no transcript, it was clear that the Council had denied White's requests in their entirety.[234] Apparently, it was up to White to prove such failure from the record of the matter, which he could not do.[235] Finally, White maintained that there had been an abuse of discretion by the Council because he did not receive the requested waiver after the presentation

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228. *Id*. at 747-48, 605 S.E.2d at 138.

229. *Id*. at 748, 605 S.E.2d at 138. The governing rule is GA. COMP. R. & REGS. 464-18-.02 (1998).

230. *White*, 269 Ga. App. at 749-50, 605 S.E.2d at 139.

231. *Id*. at 751-52, 605 S.E.2d at 140-41.

232. *Id*. at 750, 605 S.E.2d at 139.

233. *Id*., 605 S.E.2d at 140 (quoting O.C.G.A. § 50-13-13(a)(5) (2002)).

234. *Id*. at 751, 605 S.E.2d at 140.

235. *Id*.

of his case, but nothing before the court suggested that White's position had merit.[236]

The next case focusing on the validity of rules could also have been categorized under agency deference. In *Georgia Department of Revenue v. Georgia Chemistry Council, Inc.*,[237] the Georgia Chemistry Council filed a declaratory judgment action questioning an implementing regulation on research tax credits.[238] The Department of Revenue based eligibility of businesses for the tax credit on having Georgia taxable net income for the prior three years. Finding that the regulation was outside the agency's authority under the enabling statute, the superior court ruled for the Georgia Chemistry Council. An appeal followed, and the court of appeals reversed the trial court.[239]

After first stating that agency deference should be given in complicated matters such as implementing provisions on business taxation,[240] the court of appeals had little problem conveying the exact citation from which the agency gained authority to promulgate regulations.[241] Accordingly, the first prong of the court's analysis, finding that the regulation was authorized generally, was easily met.[242] However, the real issue was whether the interpretation given under the regulation was itself authorized because the statute upon which it was based did not address a requirement of three years of positive taxable net income if the research tax credit was to be taken.[243] The court interpreted the use of the term "Georgia taxable net income" in the authorizing statute to mean that there must be actual income, as opposed to a loss, before the credit could be claimed.[244] Additionally, legislative intent appeared to be fulfilled because a companion formula for performing comparison calculations would make no sense without the insertion of positive numbers.[245] Thus, the interpretation given under the regulation was reasonable and was also within the authorization that the specific statute provided.[246]

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236. *Id*. at 752, 605 S.E.2d at 141.

237. 270 Ga. App. 615, 607 S.E.2d 207 (2004).

238. The tax credits had been enacted as O.C.G.A. section 48-7-40.12 (2005) and implemented under GA. COMP. R. & REGS. 560-7-8.42(2) (2005).

239. *Ga. Dep't of Revenue*, 270 Ga. App. at 615-16, 607 S.E.2d at 208.

240. *Id*. at 616, 607 S.E.2d at 208 (quoting Hicks v. Fla. State Bd. of Admin., 265 Ga. App. 545, 547, 594 S.E.2d 745, 747 (2004)).

241. *Id*. at 616-17, 607 S.E.2d at 208-09 (citing O.C.G.A. § 48-2-12(a) (1999)).

242. *Id.*

243. *Id*. at 617, 607 S.E.2d at 209.

244. *Id*. at 617-18, 607 S.E.2d at 209.

245. *Id*. at 618, 607 S.E.2d at 209.

246. *Id*. at 618-19, 607 S.E.2d at 210.

The final case of this section is *Bradley Plywood Corp. v. Mayor & Aldermen of Savannah*.[247] In addition to upholding a city ordinance, this case provides insight for interpretations of the Open Meetings Act.[248] Bradley Plywood Corp.'s ("Bradley") property, along with other parcels, had been annexed by ordinance into the City of Savannah ("City"), which Bradley and others did not like. They filed in superior court for a declaratory judgment voiding the annexation ordinance.[249] The court granted summary judgment to the City, and Bradley appealed.[250]

The first error cited by Bradley was that the trial court failed to rule in its favor on an Open Meetings Act violation. Bradley argued generally that the act commands agencies, including the City, to set regular meetings and make sure that the public knows about them.[251] Because the City, in making its schedule of regular meetings for the calendar year 2002, noted that the schedule for every other Thursday would include Thanksgiving and Christmas, the announced "schedule" originally was to hold those two meetings on days other than the holidays. At its first meeting in October 2002, the City scheduled and posted its "regular" meeting for December 23, 2002, and that is when the annexation ordinance had been heard.[252] The court of appeals agreed with the trial court that the "regular" meeting of the City Aldermen had not been rescheduled for a different date and time; rather, it had not been scheduled originally until October 3, 2002.[253] Accordingly, no open meetings violation was shown.[254]

In a secondary argument, Bradley misconstrued the local government statute dealing with notices of annexation and claimed that Bradley and the others had not received the requisite thirty days notice provided by such statute.[255] They should have read the statute. As noted by the court of appeals, the applicable language said that the City Aldermen had to act *within* thirty days after sending written notice in order to carry out the annexation.[256]

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247. 271 Ga. App. 828, 611 S.E.2d 105 (2005).
248. O.C.G.A. §§ 50-14-1 to -6 (2002).
249. *Bradley*, 271 Ga. App. at 828-29, 611 S.E.2d at 106-07.
250. *Id.*, 611 S.E.2d at 107.
251. *Id.* at 829, 611 S.E.2d at 107. The argument was based on O.C.G.A. section 50-14-1.
252. *Id.* at 828-29, 611 S.E.2d at 106.
253. *Id.* at 829, 611 S.E.2d at 107.
254. *Id.* at 829-30, 607 S.E.2d at 107.
255. *Id.* at 830, 611 S.E.2d at 107; *see also* O.C.G.A. § 36-36-92(b) (2000 & Supp. 2005).
256. *Bradley*, 271 Ga. App. at 830, 611 S.E.2d at 107; *see also* O.C.G.A. § 36-36-92(b).

VI. DIRECT APPEAL OR APPLICATION TO APPEAL

The discretionary appeal procedures contained in O.C.G.A. section 5-6-35[257] continue as a fertile source for discussions in appellate opinions. *Best Tobacco, Inc. v. Department of Revenue*[258] serves as yet another classic example of how litigants get tripped up by the code provision. After paying excise taxes and affixing stamps, Best Tobacco, Inc. ("Best Tobacco") got stuck with a huge load of cigarettes because an intervening legislative enactment rendered them illegal for sale. Of course, Best Tobacco wanted to sell the cigarettes elsewhere and asked the Department of Revenue (the "Department") for assistance. Not only did the Department not help them, the Department seized a portion of the cigarettes because of the illegal status.[259]

Best Tobacco went straight to superior court for declaratory relief, but the complaint was dismissed because Best Tobacco failed to avail itself of the administrative remedies through the Department. Best Tobacco then sought review in the court of appeals by filing a direct appeal from the judgment of the superior court.[260] The Department moved to dismiss the appeal because no application had been filed, and the court of appeals agreed.[261]

Citing *Ferguson v. Composite State Board of Medical Examiners*,[262] the court held that the underlying subject matter forming the problems from which Best Tobacco suffered was an administrative decision by a state agency, which falls within the discretionary appeal procedure regardless of the prior complaint and judgment in superior court.[263]

An important distinction from both the underlying subject matter test and the discretionary appeal procedure was given in *City of Rincon v. Couch*.[264] The City of Rincon ("City") and the director of the Environmental Protection Division ("EPD") agreed to a consent order about some elements of the operation of the water system of the City.[265] After the time expired for an appeal of an administrative order, EPD filed the

257. O.C.G.A. § 5-6-35 (1995 & Supp. 2005).
258. 269 Ga. App. 484, 604 S.E.2d 578 (2004).
259. *Id*. at 484, 604 S.E.2d at 578-79.
260. *Id*., 604 S.E.2d at 578.
261. *Id*.
262. 275 Ga. 255, 564 S.E.2d 715 (2002).
263. *Best Tobacco*, 269 Ga. App. at 486, 604 S.E.2d at 580.
264. 272 Ga. App. 411, 612 S.E.2d 596 (2005).
265. *Id*. at 411, 413, 612 S.E.2d at 597, 598.

consent order in superior court and obtained a judgment so that the prior consent order could be enforced judicially.[266]

Believing its ensuing action to be an appeal from the review of an administrative agency decision, the City filed an application to appeal from the superior court's order.[267] The court of appeals could not discern any appellate precedent interpreting the underlying statute, O.C.G.A. section 12-5-189,[268] and thus, analogized the case to one under O.C.G.A. section 34-9-106[269] because of similar language.[270] Once the order of the administrative agency became final, the purpose of the proceeding in superior court was only to obtain judicial enforcement, not review.[271] Accordingly, it was appealable as any other final judgment, and the application process for a discretionary appeal was not the correct method.[272]

Because there was already a final agency order, the court of appeals limited the City's appeal to whether it was correct for the superior court to have entered a judgment.[273] The City tried to mount a collateral attack on the substance of the consent order provisions through the appeal, but the court already limited the considerations it would entertain because the administrative order already became final.[274] The only argument presented by the City that did not relate to the substance of the consent order was a motion to set aside presented by the City to the superior court that was denied without a presentation of the facts of the matter.[275] Unfortunately, the City alleged that the consent order should be set aside because of some type of misconduct by EPD, and that is not a reason under the governing statute that would permit a court to rule in the City's favor.[276]

The last case discussed in this section focuses on zoning. The plaintiffs in *Harrell v. Fulton County*[277] were a determined group, filing five lawsuits against various defendants to keep a private school from being built on a parcel of land in their area. Of the plethora of actions, the fourth and fifth actions were noteworthy parts of this case.

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266. *Id*. at 411-12, 612 S.E.2d at 597.
267. *Id*. at 411, 612 S.E.2d at 597.
268. O.C.G.A. § 12-5-189 (2001).
269. O.C.G.A. § 34-9-106 (2004).
270. *Couch*, 272 Ga. App. at 412, 612 S.E.2d at 597.
271. *Id*.
272. *Id*.
273. *Id*.
274. *Id*. at 413, 612 S.E.2d at 598.
275. *Id*.
276. *Id*. at 413-14, 612 S.E.2d at 598 (citing O.C.G.A. § 9-11-60(d) (1993)).
277. 272 Ga. App. 760, 612 S.E.2d 838 (2005).

The pertinent fourth action sought a declaratory judgment regarding the validity of an amendment to the governing zoning resolution of the county providing for the approval of ancillary uses of property. After the superior court consolidated the actions and ruled in favor of the county, the plaintiffs filed direct appeals.[278]

Although the whole fight instigated by the plaintiffs was a determined effort to assure that the developers of the private school could not attain proper zoning orders, the court of appeals denied a motion to dismiss the cases for failure to file an application for a discretionary appeal.[279] The court reasoned that the underlying subject matter contained no review of a contested zoning decision.[280] Rather, the action for a declaratory judgment questioned the validity of the county's ancillary use provisions and how the provision would be used when making a determination regarding the permitted uses for the proposed school site.[281] Because no administrative agency decision had been reviewed, the final judgment of the superior court was directly appealable.[282]

VII. RECENT LEGISLATION

For the first time during his term of office, Governor Perdue worked with a Republican majority in both the House and Senate. The results were several far-reaching enactments shaping the apportionment of powers among state departments, the creation of new departments, and several alterations to the structure of existing departments. Among the more noteworthy enactments were the following:

1. The composition of the Georgia Medical Center Authority has been changed;[283]

2. A State Commission on the Efficacy of the Certificate of Need Programs has been created;[284]

3. A Commission on the Georgia Health Insurance Risk Pool has been created;[285]

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278. *Id*. at 760-62, 612 S.E.2d at 839-40.

279. *Id*. at 763, 612 S.E.2d at 841.

280. *Id.*

281. *Id*.

282. *Id*.

283. 2005 Ga. H.R. Bill 298, § 6, Reg. Sess. (2005) (amending O.C.G.A. § 20-15-3 (2005)).

284. 2005 Ga. H.R. Bill 390, § 1, Reg. Sess. (2005) (enacting new O.C.G.A. §§ 31-6-90 to -95).

285. 2005 Ga. H.R. Bill 320, § 1, Reg. Sess. (2005) (enacting new O.C.G.A. §§ 33-29A-20 to -22).

4. A Georgia Land Conservation Council, along with a Georgia Land Conservation Trust Fund and a Georgia Land Conservation Revolving Loan Fund are now in the statute books;[286]

5. The new Department of Driver Services takes over the responsibility for licensing from the Department of Motor Vehicle Safety;[287]

6. A Georgia Driver's Education Commission was enacted to oversee and recommend provisions on training and education;[288]

7. A Commercial Transportation Advisory Committee has been created;[289]

8. The composition of the State Board of Accountancy has been changed;[290]

9. The terms of the office of the members of the Georgia Athletic and Entertainment Commission have been changed, along with alterations to matters falling under its jurisdiction;[291]

10. The Georgia Board of Massage Therapy, regulating the practice of massage therapy, is now reality;[292]

11. The State Licensing Board for Residential and General Contractors will have all members appointed by the Governor;[293]

12. The Hotel Motel Tax Performance Review Board was changed;[294]

13. The State Advisory Committee on Rural Development is gone and, in its place, there is a Georgia Rural Development Council;[295]

14. State property, purchasing, and procurement undergoes radical changes affecting a variety of state agencies and resulting in the creation of the State Accounting Officer;[296] and

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286. 2005 Ga. H.R. Bill 98, § 2, Reg. Sess. (2005) (enacting new O.C.G.A. §§ 36-22-1 to -15).

287. 2005 Ga. H.R. Bill 501, § 1-1, Reg. Sess. (2005) (enacting new O.C.G.A. §§ 40-16-1 to -7).

288. 2005 Ga. S. Bill 226, § 2, Reg. Sess. (2005) (enacting new O.C.G.A. §§ 15-21-170 to -181).

289. 2005 Ga. H.R. Bill 458, § 1, Reg. Sess. (2005) (enacting new O.C.G.A. § 40-16-8).

290. 2005 Ga. S. Bill 55, § 1, Reg. Sess. (2005) (amending O.C.G.A. § 43-3-3).

291. 2005 Ga. S. Bill 224, § 1, Reg. Sess. (2005) (amending O.C.G.A. § 43-4B-1).

292. 2005 Ga. S. Bill 110, § 1, Reg. Sess (2005) (enacting new O.C.G.A. §§ 43-24A-1 to -24).

293. 2005 Ga. S. Bill 124, §§ 1-2, Reg. Sess. (2005) (amending O.C.G.A. §§ 43-41-3 and -4).

294. 2005 Ga. H.R. Bill 505, §§ 1-2, Reg. Sess. (2005) (amending O.C.G.A. § 48-13-51 and enacting new O.C.G.A. § 48-13-56.1(f)).

295. 2005 Ga. S. Bill 144, § 1, Reg. Sess. (2005) (amending O.C.G.A. § 50-4-7).

296. 2005 Ga. S. Bill 158, § 9, Reg. Sess. (2005) (enacting new O.C.G.A. § 50-16-32); 2005 Ga. H.R. Bill 312 § 11, Reg. Sess (2005) (enacting new O.C.G.A. § 50-5-52); 2005 Ga. H.R. Bill 293 § 1, Reg. Sess. (2005) (enacting new O.C.G.A. §§ 50-5B-1 to -5).

15. The Department of Economic Development will now have, for administrative purposes, assignments of several authorities, and a new Georgia Tourism Foundation.[297]

297. 2005 Ga. H.R. Bill 125, §§ 1-2, Reg. Sess. (2005) (enacting new O.C.G.A. § 50-7-17 and amending O.C.G.A. § 50-7-8).