

Local Government Law

by R. Perry Sentell, Jr.*

This particular [City Commission] meeting had drawn on for quite some time, until it was getting fairly late. We heard someone knocking very rapidly on the plate glass window. As I turned around, I observed an elderly woman, the wife of the Mayor. The Mayor appeared to ignore his wife and continued to conduct the meeting. Not getting any response from her knocking, the wife then walked into the building, grabbed the Mayor by the arm, and scolded him that it was ridiculous that the City Commission was meeting so late at night. “You,” she informed the Mayor, “are going home.” With that, the wife intensified her hold on the Mayor’s shirt sleeve, dragged him out of the building, and took him home. This obviously broke up the City Commission meeting, and we all left for the night.¹

Oh, for more *sine die* adjournments in the nocturnal administration of local government!

I. MUNICIPALITIES

A. *Officers and Employees*

The period’s litigation concerning municipal officers and employees reflected intriguing variety on two fronts: the range of benefits claimed

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1. R. PERRY SENTELL, JR., LOCAL GOVERNMENT LAW: LITE 42-43 (1997). For a more substantive “profile” of local government law—those who practice it and the practice itself—see R. PERRY SENTELL, JR., A PROFILE: THE PEOPLE AND THE PRACTICE OF GEORGIA LOCAL GOVERNMENT LAW (1996). See also R. Perry Sentell, Jr., *Lawyers Who Represent Local Governments*, 23 GA. ST. B.J. 58 (1986); R. Perry Sentell, Jr., *Georgia Local Government Law: A Reflection on Thirty Surveys*, 46 MERCER L. REV. 1 (1994); R. Perry Sentell, Jr., *Local Government Litigation: Some Pivotal Principles*, 55 MERCER L. REV. 1 (2003); R. Perry Sentell, Jr., *Appellate Conflicts in Local Government Law: The Disagreements of a Decade*, 56 MERCER L. REV. 1 (2004).

by the plaintiffs and the legal theories under which they proceeded. Mandamus² and estoppel³ served as the theories of choice in *Dukes v. Board of Trustees*,⁴ a retired police officer's challenge to his pension reduction.⁵ Tracing the pension board's actions in originally approving—then reducing—the plaintiff's retirement amount,⁶ a narrowly divided court held estoppel ineffectual: because the plaintiff failed to satisfy a pension act requirement for crediting prior service,⁷ “his entitlement . . . never vested.”⁸ The court distinguished a prior decision⁹ by reasoning that “[w]hen the pension decision goes to entitlement, as opposed to calculation of benefits, the . . . estoppel doctrine does not apply.”¹⁰ Accordingly, the plaintiff's petition to mandamus reinstatement of his prior retirement amount suffered adamant rejection.¹¹

Absence of a “vested right” also imperiled the retired employees' claim to a cost-free Preferred Provider Organization (“PPO”) form of health

2. On the problems encountered with the remedy of mandamus in local government law, see R. PERRY SENTELL, JR., *MISCASTING MANDAMUS IN GEORGIA LOCAL GOVERNMENT LAW* (1989).

3. For background on the action, see R. PERRY SENTELL, JR., *THE DOCTRINE OF ESTOPPEL IN GEORGIA LOCAL GOVERNMENT LAW* (1985).

4. 280 Ga. 550, 629 S.E.2d 240 (2006).

5. See *id.* at 550-51, 629 S.E.2d at 240.

6. *Id.* One year after approving the plaintiff's receiving credit for prior service with the county, the board rescinded its decision and reduced the plaintiff's retirement benefits. *Id.*

7. *Id.* at 551, 629 S.E.2d at 241. The plaintiff had not filed his application for prior credit with the board five years prior to his retirement, *id.* at 551 n.1, 629 S.E.2d at 241 n.1, as required by the 1978 Atlanta Pension Act. ATLANTA, GA., CODE OF ORDINANCES § 6-222(k)(1) (2007).

8. *Dukes*, 280 Ga. at 553, 629 S.E.2d at 242. The court relied upon section 45-6-5 of the Official Code of Georgia Annotated (“O.C.G.A.”): “The public may not be estopped by the acts of any officer done in the exercise of an unconferrred power.” 280 Ga. at 552, 629 S.E.2d at 242 (emphasis omitted) (quoting O.C.G.A. § 45-6-5 (2002)).

9. *Quillian v. Employees' Ret. Sys. of Ga.*, 259 Ga. 253, 379 S.E.2d 515 (1989). “In so ruling, the Court made a distinction ‘between an irregular exercise of a granted power, and the total absence or want of power. . . .’” *Dukes*, 280 Ga. at 552, 629 S.E.2d at 242 (quoting *Quillian*, 259 Ga. at 254, 379 S.E.2d at 517).

10. *Dukes*, 280 Ga. at 553, 629 S.E.2d at 242. “Here [the plaintiff's] entitlement to the prior service credit never vested; thus, the board lacked any ‘power which is expressly conferred by law’ to award a pension based on that prior service. Accordingly, [the plaintiff] may not avail himself of the doctrine of estoppel. . . .” *Id.* at 554, 629 S.E.2d at 242-43.

11. See *id.* at 554, 629 S.E.2d at 243. The court thus affirmed the trial judge's grant of summary judgment to the defendant pension board. *Id.* Three justices dissented on the ground that “the Board's recognition of [the plaintiff's] prior service was not an ‘ultra vires’ act.” *Id.* at 556, 629 S.E.2d at 244 (Sears, C.J., dissenting).

insurance in *Unified Government of Athens-Clarke County v. McCrary*.¹² Observing that the plaintiffs had paid for their PPO coverage while employed,¹³ the supreme court could find no “impairment of contract” by the local government in offering only HMO cost-free insurance upon retirement.¹⁴ “Requiring [the plaintiffs] to elect the HMO option if they wish to receive cost-free coverage does not violate the impairment clause of the Georgia Constitution, since they never had a vested right to maintain in retirement the precise health-care delivery system by which they received their coverage while employed.”¹⁵

A salary difference claim comprised the employee’s complaint in *Williams v. City of Atlanta*,¹⁶ consisting of actions against the municipality for both mandamus and quantum meruit.¹⁷ As for the former, the supreme court discounted the plaintiff’s reliance upon a prior grievance decision by the city’s Bureau of Labor Relations which simply declared no bureau objections to city rectification of the problem.¹⁸ That “decision,” the court emphasized, established no “clear legal right” necessary for a mandamus.¹⁹ Yet another decision—this one by the trial court—doomed the plaintiff’s claim for quantum meruit: “[T]he trial court’s finding that [the plaintiff] had a contract with the city . . . precludes [the plaintiff’s] action for quantum meruit.”²⁰

12. 280 Ga. 901, 901-04, 635 S.E.2d 150, 151-53 (2006).

13. *Id.* at 901, 635 S.E.2d at 151. “While employed, [the plaintiffs] selected the PPO option and paid the premiums. After they retired, however, they sought to retain their PPO coverage without paying any premiums.” *Id.*

14. *Id.* at 904, 635 S.E.2d at 153. The plaintiffs contended that requiring them to pay for PPO coverage after retirement impaired their previously vested rights and, thus, violated the constitution’s mandate that “[n]o . . . laws impairing the obligation of contract . . . shall be passed.” *Id.* at 901, 635 S.E.2d at 151 (second and third alterations in original) (quoting GA. CONST. art. I, § 1, para. 10).

15. *Id.* at 904, 635 S.E.2d at 153. Reversing the trial court’s order of lifetime no-cost PPO coverage, the court reasoned as follows: “A more limited right to choose where and how to access medical services is not the equivalent of a reduction in the level of coverage provided for medical expenses.” *Id.*

16. 281 Ga. 478, 640 S.E.2d 35 (2007).

17. *Id.* at 478-79, 640 S.E.2d at 36. The plaintiff alleged that the city had refused to pay him agreed-upon wages and to give him credit for former service as it had promised when he returned to work. *Id.* at 479, 640 S.E.2d at 36.

18. *Id.* at 480, 640 S.E.2d at 37. “[T]he grievance decision stated that the bureau had no ‘objection to any accommodation’ the sewer department would make to rectify [the plaintiffs] situation.” *Id.*

19. *Id.* “Thus, [the plaintiff] did not have a clear legal right to the relief he sought, and the trial court properly granted summary judgment to the city on [the plaintiff’s] mandamus claim.” *Id.*

20. *Id.* For yet another survey period failure of quantum meruit, see *Brown v. Penland Construction Co.*, 281 Ga. 625, 641 S.E.2d 522 (2007). There, the supreme court focused

Finally, *Merry v. Williams*²¹ presented an intriguing issue of local government legislative process²²—specifically, how abstentions by the consolidated government commissioners were to be counted in determining vote results.²³ Initially, the court looked to the government's charter requirement that at least six members vote in the affirmative for commission action.²⁴ That mandate “clearly prohibits counting an abstention or refusal to vote as affirmative action.”²⁵ Additionally, in formulating its rules of procedure, the commission had “rejected a rule requiring that abstentions be counted as negative votes.”²⁶ Accordingly, the court concluded, “[A]bstentions by commissioners must not be counted as either affirmative or negative votes.”²⁷

upon a high school baseball coach involved in discussions for constructing an indoor hitting facility. *Id.* at 625, 641 S.E.2d at 523. Reversing the court of appeals decision that the coach might be liable in quantum meruit to the construction company, *id.* at 627, 641 S.E.2d at 524, the court took refuge in immunity: “[The company’s] action for quantum meruit against [the coach] individually would be barred by official immunity,” *id.* at 626, 641 S.E.2d at 523.

Finally, *State v. West*, 283 Ga. App. 302, 641 S.E.2d 289 (2007), concerned instances in which public officials charged with certain offenses are entitled to the protections of receiving a copy of the indictment and appearing before the grand jury. *See id.* at 302, 641 S.E.2d at 289. Here, the court of appeals held those protections applicable only when charges are made under the statute, O.C.G.A. section 45-11-4(b) (2007), expressly granting the protections, *West*, 283 Ga. App. at 304, 641 S.E.2d at 290. Because, in the case at bar, the mayor was charged with other offenses (but could have been charged under the above statute), the court held him devoid of the protections provided. *Id.* Otherwise, said the court, “[it] would render meaningless [statutory] language specifying that [t]his Code section shall not apply when a public official is charged with any other crime alleged to have occurred while such official was in the performance of an official duty.” *Id.* (quoting O.C.G.A. § 45-11-4(d)) (third brackets in original) (emphasis omitted). For treatment of the grand jury protection, see R. Perry Sentell, Jr., *Georgia Local Government Officials and the Grand Jury*, 26 GA. ST. B.J. 50 (1989).

21. 281 Ga. 571, 642 S.E.2d 46 (2007).

22. *See generally* R. Perry Sentell, Jr., *The Legislative Process in Georgia Local Government Law*, 5 GA. L. REV. 1 (1970).

23. *Merry*, 281 Ga. at 572, 642 S.E.2d at 48. The case arose from a controversy over electing a mayor pro tem, a controversy rendered moot by subsequent developments. *Id.* at 571-72, 642 S.E.2d at 47-48. Yet, the court maintained, “[A]lthough the particular dispute regarding the 2006 election is over, we cannot conclude that the more general issue of the appropriate method for counting abstentions is moot.” *Id.* at 573, 642 S.E.2d at 48.

24. *Id.* at 573, 642 S.E.2d at 48. “The departure from the common law [rule of a simple majority of a quorum] is even more clear where, as here, the charter requires the affirmative vote of a specific minimum number of commissioners.” *Id.*

25. *Id.* at 575, 642 S.E.2d at 50 (quoting *City of Haven v. Gregg*, 766 P.2d 143, 147 (Kan. 1988)).

26. *Id.* at 576, 642 S.E.2d at 50.

27. *Id.*

B. Elections

Two city council candidates challenged election results during the survey period, receiving contrasting dispositions by the supreme court.²⁸ *Brodie v. Champion*²⁹ featured an unsuccessful (by five votes) candidate's constitutional attack upon a state statute³⁰ prohibiting the counting of write-in ballots for ineligible candidates.³¹ Affording the complaint fairly short shrift, the court noted the constitution's delegation of legislative power to provide for the eligibility of write-in candidates.³² "The legislature properly exercised [that] power," the court asserted, "when it limited the counting of write-in votes to votes cast for qualified write-in candidates."³³

The unsuccessful (by one vote) candidate in *Allen v. Yost*³⁴ alleged votes by ineligible voters, only to suffer the trial judge's dismissal for failing to challenge those votes prior to the election.³⁵ Conceding the statutory provision for a pre-election challenge of voter qualifications,³⁶ the supreme court denied that statute to constitute "the only procedure available to a candidate who wishes to challenge the results of an election."³⁷ Other statutes, the court delineated, plainly "permit[] a post-election challenge" in the manner sought by the plaintiff.³⁸ Accordingly, "[T]here is simply no statutory provision or case law to support the proposition that a candidate must challenge the illegal votes

28. See *Brodie v. Champion*, 281 Ga. 105, 636 S.E.2d 511 (2006); *Allen v. Yost*, 281 Ga. 102, 636 S.E.2d 517 (2006).

29. 281 Ga. 105, 636 S.E.2d 511 (2006).

30. O.C.G.A. § 21-2-494 (2003).

31. *Brodie*, 281 Ga. at 105, 636 S.E.2d at 511-12. The plaintiff contended that had the nine uncounted write-in votes been tabulated, a run-off election would have been required. *Id.* at 105 n.1, 636 S.E.2d at 512 n.1.

32. *Id.* at 106, 636 S.E.2d at 512 (citing GA. CONST. art. II, § 2, para. 3).

33. *Id.* at 107, 636 S.E.2d at 513. "Because unqualified write-in candidates cannot assume office, counting the write-in votes for these unqualified candidates would be a futile act by the Board. The legislature is not required to impose such a meaningless function on the election superintendent." *Id.* at 106, 636 S.E.2d at 512.

34. 281 Ga. 102, 636 S.E.2d 517 (2006).

35. *Id.* at 103, 636 S.E.2d at 518. The plaintiff alleged the casting of at least four illegal votes and had previously requested and received a vote recount, but the results remained the same. *Id.*

36. O.C.G.A. § 21-2-230 (2003 & Supp. 2006).

37. *Allen*, 281 Ga. at 103-04, 636 S.E.2d at 518 (emphasis omitted).

38. *Id.* at 104, 636 S.E.2d at 518. The court emphasized that the plaintiff brought her action under O.C.G.A. sections 21-2-521 and 21-2-522. *Allen*, 281 Ga. at 104, 636 S.E.2d at 518; O.C.G.A. §§ 21-2-521 to -522 (2003).

prior to the election or else be foreclosed from bringing an election contest.³⁹ Indeed, the court wryly concluded, “Election results can only be obtained after the election is held.”⁴⁰

C. Powers

A municipality’s construction of a land application system (“LAS”) brought *City of Cairo v. Hightower Consulting Engineers, Inc.*⁴¹ before the Georgia Court of Appeals. The city claimed the defendant’s negligent misrepresentation in plans submitted for the system and economic loss from the system’s 1998 malfunction.⁴² Responding to this 2001 lawsuit, the defendant argued the four-year statute of limitation’s commencement in 1994 when the city received the defendant’s report on the land’s suitability for the system.⁴³ Rejecting the defendant’s position, the court viewed “[t]he evidence [to] show that not until after it activated its LAS, in March 1998, did the City incur pecuniary losses due to misrepresentations in [the defendant’s] report.”⁴⁴ Thus, “The City suffered pecuniary losses with certainty at the earliest in March 1998, when its LAS was activated and immediately malfunctioned.”⁴⁵ Having filed its suit “well within four years of that time,” the court concluded, “the [city’s] negligent misrepresentation claim was not time-barred.”⁴⁶

D. Regulation

“Regulation” litigation populated the period under scrutiny with a standoff between governmental regulatory efforts and constitutional

39. *Allen*, 281 Ga. at 104, 636 S.E.2d at 519.

40. *Id.* Thus, the court reversed the trial judge’s dismissal of the plaintiff’s challenge. *Id.*

41. 278 Ga. App. 721, 629 S.E.2d 518 (2006). The court described the LAS as “an irrigation system for disposal of the City’s wastewater.” *Id.* at 721, 629 S.E.2d at 520. Its success depended upon the location of “suitable land that would allow the wastewater to permeate the soil without significant runoff.” *Id.* at 721-22, 629 S.E.2d at 520.

42. *Id.* at 723-24, 629 S.E.2d at 521-22. The system malfunctioned immediately upon activation, sending streams of runoff in all directions with significant erosion and causing the city to be cited by the Georgia Environmental Protection Division. *Id.*

43. *Id.* at 726-27, 629 S.E.2d at 523. The court designated the applicable period of limitations as that provided by O.C.G.A. section 9-3-30(a): “within four years after the right of action accrues.” *City of Cairo*, 278 Ga. App. at 727, 629 S.E.2d at 524 (quoting O.C.G.A. § 9-3-30(a) (1982 & Supp. 2006)).

44. 278 Ga. App. at 728, 629 S.E.2d at 524.

45. *Id.*

46. *Id.* Additionally, the court held the city’s claim to fall within the “misrepresentation exception” to the economic loss rule and affirmed the trial judge’s award of damages to the city. *Id.* at 729, 629 S.E.2d at 525.

freedoms.⁴⁷ In the main, the freedoms prevailed. In *Fulton County v. City of Atlanta*,⁴⁸ the county challenged the city's solid waste disposal efforts⁴⁹ by brandishing a state statute prohibiting the transportation of waste to landfills across county lines unless authorized by the originating and receiving counties.⁵⁰ Receptive to the city's defensive attack, the Georgia Supreme Court relied squarely upon an admonition by the United States Supreme Court.⁵¹ "[O]ur prior cases teach that a State (or one of its political subdivisions) may not avoid the strictures of the Commerce Clause by curtailing the movement of articles of commerce through subdivisions of the State, rather than through the State itself."⁵² The statute "gives Georgia counties the power to veto the importation of solid waste," the court reasoned, and "[t]his it cannot do."⁵³

Commerce Clause protection likewise surmounted municipal taxicab regulation. *Atlanta Taxicab Co. Owners Ass'n v. City of Atlanta*⁵⁴ featured an ordinance requiring a Certificate of Public Necessity and Convenience ("CPNC") for taxi operators and owners and that the holder be a Georgia resident for at least one year.⁵⁵ In appraising the challengers' Commerce Clause attack, a majority of the supreme court carefully delineated between taxicab operators and owners.⁵⁶ As for the former, "a residency requirement may be justified on the grounds that

47. For treatment of municipal regulatory power in an assortment of contexts, see R. Perry Sentell, Jr., "Ascertainable Standards" versus "Unbridled Discretion" in *Local Government Regulation*, 41 GA. COUNTY GOV'T MAG. 19 (Dec. 1989); R. Perry Sentell, Jr., *Discretion in Georgia Local Government Law*, 8 GA. L. REV. 614 (1974); R. Perry Sentell, Jr., *Local Government Law and Liquor Licensing: A Sobering Vignette*, 15 GA. L. REV. 1039 (1981); R. Perry Sentell, Jr., *Reasoning by Riddle: The Power to Prohibit in Georgia Local Government Law*, 9 GA. L. REV. 115 (1974).

48. 280 Ga. 353, 629 S.E.2d 196 (2006).

49. *Id.* at 353, 629 S.E.2d at 196-97. The municipality had contracted with a private disposal service for solid waste transportation to landfills in neighboring counties. *Id.*

50. *Id.* (citing O.C.G.A. § 36-1-16(a) (2006)).

51. *Id.* at 353-54, 629 S.E.2d at 197; *Fort Gratiot Sanitary Landfill, Inc. v. Mich. Dep't of Natural Res.*, 504 U.S. 353 (1992).

52. *Fulton County*, 280 Ga. at 353-54, 629 S.E.2d at 197 (brackets in original) (quoting *Fort Gratiot*, 504 U.S. at 361).

53. *Id.* at 354, 629 S.E.2d at 197. The court thus affirmed the trial judge's decision of unconstitutionality. *See id.*

54. 281 Ga. 342, 638 S.E.2d 307 (2006).

55. *Id.* at 342, 638 S.E.2d at 310 (citing ATLANTA, GA., CODE OF ORDINANCES §§ 162-57, -62 (2007)).

56. *Id.* at 344, 638 S.E.2d at 311-12. "However, the City, through its ordinances, does not limit its regulation of the taxi business to those who actually provide the local services. It also exercises control over who can own and operate a local taxi business." *Id.*, 638 S.E.2d at 311.

it enhances public safety and fosters more efficient service.⁵⁷ Regarding those engaged in the taxi business, however, the city advanced no “legitimate local purpose served by the residency requirement,”⁵⁸ thus rendering the measure one of “economic protectionism which creates an artificial barrier to commerce and violates the Commerce Clause.”⁵⁹

Shifting from commerce to expression, *State v. Fielden*⁶⁰ focused upon a state statute proscribing the knowing or reckless commission of “any act which may reasonably be expected to prevent or disrupt a lawful meeting, gathering, or procession.”⁶¹ The challengers were two defendants who had stood silently as a show of support for another citizen refusing to yield the podium at a municipal council meeting.⁶² In review, a majority of the supreme court distinguished between the defects of vagueness and overbreadth.⁶³ As for the former, the statute provided “a sufficiently definite warning to a person of ordinary intelligence of the prohibited conduct” and appeared “clear and unambiguous.”⁶⁴ Conversely, the measure failed a valid balance between the fundamental right of assemblage and that of free speech, thus violating the First Amendment proscription of overbreadth.⁶⁵ Under the statute’s reach, the court cautioned,

Any recklessly or knowingly committed act that could reasonably be expected to prevent or disrupt a lawful meeting, gathering or procession is a misdemeanor, regardless where it is committed, how trivial

57. *Id.* at 346, 638 S.E.2d at 313.

58. *Id.* at 347, 638 S.E.2d at 313.

59. *Id.* (quoting *Wometco Servs., Inc. v. Gaddy*, 616 S.W.2d 466, 469 (Ark. 1981)). The court thus reversed the trial judge’s refusal “to find that the one-year Georgia residency requirement violates the Commerce Clause of the United States Constitution.” *Id.* Three justices dissented in part from the decision. *Id.* at 352, 638 S.E.2d at 317 (Benham, J., concurring in part and dissenting in part). The court also rejected the plaintiff’s due process contention that suspension or revocation of the owner’s CPNC for his drivers’ failure to obtain valid insurance or obtain a driving permit imposed unlawful vicarious liability. *Id.* at 347-49, 638 S.E.2d at 313-14 (majority opinion). The court distinguished vicarious criminal liability from vicarious civil sanctions and found no violations of the owner’s due process. *Id.*

60. 280 Ga. 444, 629 S.E.2d 252 (2006).

61. *Id.* at 444, 629 S.E.2d at 254 (quoting O.C.G.A. § 16-11-34(a) (2003)).

62. *Id.* The defendants had been arrested and charged with the statute’s violation. *Id.*

63. *Id.* at 444-45, 629 S.E.2d at 254.

64. *Id.* The court thus disagreed with the trial judge’s decision of vagueness. *Id.* at 445, 629 S.E.2d at 254.

65. *Id.* at 445-46, 629 S.E.2d at 254-55. “A statute that is clear about what it prohibits can nevertheless be unconstitutionally overbroad if it stifles expression or conduct that is otherwise protected by the Constitution.” *Id.* at 445, 629 S.E.2d at 254.

the act, its impact, or the intent of the actor other than the intent to commit the act itself.⁶⁶

E. Contracts

Generally, a municipality's contracting capabilities are governed by intermeshing state and city legislative strictures,⁶⁷ as instructively indicated by *Griffin Bros. v. Town of Alto*.⁶⁸ There, an unsuccessful bidder on a pipeline project, suing the city for damages and injunctive relief, argued its submission of the lowest bid for the project.⁶⁹ In response, the court of appeals noted an exception⁷⁰ in the state statute requiring contract awards to the lowest bidder:⁷¹ "[T]hese requirements do not apply to projects [such as the present] that can be performed for less than \$100,000."⁷² Alternatively, the plaintiff urged that the mayor's preliminary actions in ordering project materials estopped the town from denying a valid purchase contract.⁷³ Rejecting this position

66. *Id.* at 447, 629 S.E.2d at 256. Thus, the court affirmed the trial judge's decision of unconstitutional overbreadth. *Id.* at 448, 629 S.E.2d at 257. A dissenting opinion for two justices urged error in the court's broad connotation of overbreadth: "Disturbances of lawful assemblages, with the requisite statutory intent, that are not constitutionally protected are those which either cause the termination of the assemblage in an untimely manner or substantially impair the conduct of the lawful meeting." *Id.* at 451, 629 S.E.2d at 258-59 (Carley, J., dissenting).

Yet another case of the period, *Simmons v. State*, 281 Ga. App. 252, 635 S.E.2d 849 (2006), queried only whether a state regulatory measure applied in the municipal context—defendant's "sole enumeration of error [contended] that golf carts driven on a municipal trail system are outside the DUI provisions of [O.C.G.A. section] 40-6-391(a)." 281 Ga. at 252, 635 S.E.2d at 849 (citing O.C.G.A. § 40-6-391(a) (2004)). Affording the issue the briefest of shrift, the court of appeals emphasized that "the DUI statute by its plain language applies to 'any moving vehicle,'" *id.*, 635 S.E.2d at 850 (quoting O.C.G.A. § 49-6-391(a)) and "anywhere in Georgia, whether on a street, highway, or private property," *id.* at 254, 635 S.E.2d at 850-51. Thus, no hole-in-one for the defendant.

67. See generally R. Perry Sentell, Jr., *The Legislative Process in Georgia Local Government Law*, 5 GA. L. REV. 1 (1970); R. Perry Sentell, Jr., *Local Governments and Contracts that Bind*, 3 GA. L. REV. 546 (1969); R. Perry Sentell, Jr., *Local Government Litigation: Some Pivotal Principles*, 55 MERCER L. REV. 1 (2003).

68. 280 Ga. App. 176, 633 S.E.2d 589 (2006).

69. *Id.* at 177, 633 S.E.2d at 590. Actually, the court explained, although the winning bid was higher, that bid included a more extensive scope of work which better met the town's needs. *Id.* at 177-78, 633 S.E.2d at 590.

70. *Id.* at 177, 633 S.E.2d at 590 (citing O.C.G.A. § 36-91-22(a) (2006)).

71. O.C.G.A. § 36-91-21 (2006).

72. *Griffin Bros.*, 280 Ga. App. at 177, 633 S.E.2d at 590 (citing O.C.G.A. § 36-91-22(a)). Here the winning bid was in the amount of \$89,989. *Id.*

73. *Id.* at 178, 633 S.E.2d at 590. Prior to the bidding procedure, the mayor had telephoned the plaintiff and, due to rising costs of materials, had requested the plaintiff to order the necessary pipe for the project. *Id.* at 177, 633 S.E.2d at 590.

as well, the court relied upon a town resolution limiting to \$2000 the mayor's unilateral authority to obligate the town.⁷⁴ Because any contract asserted by the plaintiff was thus unauthorized, he was foreclosed from invoking the argument of municipal estoppel.⁷⁵

F. Roads

The survey period unfolded a rather unique facet of municipal law—a proceeding under the sidewalk abandonment statute⁷⁶—in *A A OK, Ltd. v. City of Atlanta*.⁷⁷ When the plaintiff sought to register title to the allegedly abandoned roadway,⁷⁸ the trial court appointed an examiner who conducted a hearing and issued a report denying that any abandonment had occurred. Upon the court's adoption of the report, the plaintiff objected that no transcript had been submitted by the examiner and, thus, the court's approval constituted error.⁷⁹ Reviewing the issue, the supreme court determined that the statute's prescribed procedures⁸⁰ envisioned either “a brief or a stenographic report of the evidence.”⁸¹ Here, “rather than a stenographic report, the examiner filed a brief of the evidence taken by him.”⁸² That, the court concluded, “fully complied with the alternative mandate” of the abandonment statute.⁸³

74. *Id.* at 178, 633 S.E.2d at 590. “However, by a resolution approved by the Town council, the mayor's authority to obligate the Town without consent of the Town council was limited to \$2,000.” *Id.*

75. *Id.* The court relied upon O.C.G.A. section 45-6-5: “The public may not be estopped by the acts of any [public] officer done in the exercise of an unconferrred power.” *Griffin Bros.*, 280 Ga. App. at 178, 633 S.E.2d at 590 (quoting O.C.G.A. § 45-6-5 (2002)). Accordingly, the court affirmed the trial judge's award of summary judgment for the municipality. *Id.* at 179, 633 S.E.2d at 591. For extensive treatment of local government estoppel, see R. PERRY SENTELL, JR., *THE DOCTRINE OF ESTOPPEL IN GEORGIA LOCAL GOVERNMENT LAW* (1985).

76. O.C.G.A. §§ 44-2-64 to -84 (1991 & Supp. 2007).

77. 280 Ga. 764, 632 S.E.2d 633 (2006).

78. *Id.* at 764, 632 S.E.2d at 634. The plaintiff claimed that the city had abandoned one-half of a named street and sought to register title to it. *Id.*

79. *Id.*

80. O.C.G.A. § 44-2-103(b) (1991 & Supp. 2007).

81. *A A OK, Ltd.*, 280 Ga. at 764, 632 S.E.2d at 634 (emphasis omitted) (quoting O.C.G.A. § 44-2-103(b)).

82. *Id.*, 632 S.E.2d at 635.

83. *Id.* (citing O.C.G.A. § 44-2-103(b)). “Under the circumstances, the trial court did not err in basing its judgment upon the report filed by the examiner, without conducting any review of a stenographic report of the oral testimony.” *Id.* at 765, 632 S.E.2d at 635. The court also upheld the trial judge in assessing costs against the plaintiff. *Id.* at 766, 632 S.E.2d at 635.

G. Taxation

In earlier litigation, legal practitioners in the municipality successfully challenged the city's occupation tax on attorneys.⁸⁴ Subsequently, the trial court divided the affected attorneys into Class I (who had made no claim for refunds) and Class II (who had previously made such demands).⁸⁵ Still later, the trial court held members of Class I obligated to exhaust their administrative remedies before making refund claims for the years not barred by the limitation period.⁸⁶

In *Barnes v. City of Atlanta*,⁸⁷ the supreme court reviewed the litigation's history and concluded that the ruling of unconstitutionality should be applied retroactively to all viable class action tax refund claims.⁸⁸ "The [municipality] unconstitutionally collected taxes from all of these individuals,"⁸⁹ said the court, without discriminating between those who demanded a refund and those who did not.⁹⁰ "Limiting recovery only to those taxpayers with the foresight to have demanded a refund is 'untenable in a case such as this, where the matter is of constitutional import and where, in practical consequence, the purpose of the [ordinance] was realized.'"⁹¹

H. Liability

The municipal liability issue reared its countenance throughout the survey period and concerned several facets—some peculiar to the context and others of a more general liability complexion.⁹² Among the latter,

84. *City of Atlanta v. Barnes*, 276 Ga. 449, 449, 578 S.E.2d 110, 111-12 (2003), *superseded by statute*, O.C.G.A. § 48-2-35(c)(5) (Supp. 2007), *as recognized in Barnes v. City of Atlanta*, 281 Ga. 256, 637 S.E.2d 4 (2006).

85. *Barnes v. City of Atlanta*, 275 Ga. App. 385, 385-86, 620 S.E.2d 846, 847 (2005), *rev'd*, 281 Ga. 256, 637 S.E.2d 4.

86. *Id.* at 386, 620 S.E.2d at 848. The court of appeals affirmed the trial court's actions. *Id.* at 395, 620 S.E.2d at 854.

87. 281 Ga. 256, 637 S.E.2d 4 (2006).

88. *Id.* at 259, 637 S.E.2d at 7.

89. *Id.*, 637 S.E.2d at 6 (emphasis omitted) (quoting *Bailey v. State*, 500 S.E.2d 54, 75 (N.C. 1998)).

90. *Id.*

91. *Id.*, 637 S.E.2d at 6-7 (brackets in original) (quoting *Bailey*, 500 S.E.2d at 75).

92. For perspective on all municipal liability issues, see R. PERRY SENTELL, JR., *THE LAW OF MUNICIPAL TORT LIABILITY IN GEORGIA* (4th ed. 1988); R. Perry Sentell, Jr., *Georgia Local Government Tort Liability: The "Crisis" Conundrum*, 2 GA. ST. U. L. REV. 19 (1985); R. Perry Sentell, Jr., *Local Government Tort Liability: The Summer of '92*, 9 GA. ST. U. L. REV. 405 (1993); R. Perry Sentell, Jr., *Local Government Liability Litigation: Numerical Nuances*, 38 GA. L. REV. 633 (2004).

*Georgia Department of Transportation v. Strickland*⁹³ featured a motorist's claim against a municipality for injuries suffered when she parked her car on Main Street and then fell when she stepped into a pothole.⁹⁴ Emphasizing the plaintiff's acknowledged status as a "licensee" at the time of her injury (and thus entitled only to conduct not wilful or wanton),⁹⁵ the court of appeals stressed her general awareness "of the potholes in the parking area."⁹⁶ Indeed, "she had previously parked in the same parking space where her fall occurred and . . . nothing obstructed her view of the potholes in that area."⁹⁷ Accordingly, the plaintiff's "knowledge of the hazard was at least equal to that of the City," and she merited no recovery.⁹⁸

Falling within the more specialized context of sovereign immunity, *Scott v. City of Valdosta*⁹⁹ presented an action for false arrest based on mistaken identity.¹⁰⁰ Although conceding negligence on the part of law enforcement officers, the court of appeals saw no viable avenue to the claimant's avoidance of the immunity bar.¹⁰¹ The plaintiff had produced no policy of municipal insurance,¹⁰² and "a determination of a

93. 279 Ga. App. 753, 632 S.E.2d 416 (2006).

94. *Id.* at 753, 632 S.E.2d at 417. The plaintiff also sued the State Department of Transportation, but likewise to no avail. *Id.*

95. *Id.* at 754, 632 S.E.2d at 418. "Because [the plaintiff] was a licensee, the City . . . 'owed only the duty not to injure her wilfully and wantonly.'" *Id.* (quoting *Spear v. Calhoun*, 261 Ga. App. 835, 837, 584 S.E.2d 71, 73 (2003)).

96. *Id.* at 755, 632 S.E.2d at 419.

97. *Id.*

98. *Id.* The court reversed the trial judge's denial of summary judgment to the municipality. *Id.* at 753, 632 S.E.2d at 417.

Yet another slip-and-fall complaint received disposition on general litigation principles in *Williams v. City of Atlanta*, 280 Ga. App. 785, 635 S.E.2d 165 (2006). There, the plaintiff sued for injuries suffered in a fall at the municipal airport; the city mailed the complaint to its insurer, but it was never received, and no answer was filed. *Id.* at 785-86, 635 S.E.2d at 166. Reversing the trial judge's setting aside of the plaintiff's default judgment on the grounds of excusable neglect, the court reasoned as follows: "The City did not rely on assurances from the insurer that it had received the complaint and was preparing an answer. And 'it is undisputed that [the City] did nothing to ensure that the complaint had been received by the insurance company or that an answer would be filed.'" *Id.* at 787, 635 S.E.2d at 167 (brackets in original) (footnote omitted) (quoting *Wright v. Mann*, 271 Ga. App. 832, 833, 611 S.E.2d 118, 120 (2005)). The court thus concluded on an emphatic note: "Such inaction, especially by a law department, cannot constitute excusable neglect." *Id.*

99. 280 Ga. App. 481, 634 S.E.2d 472 (2006).

100. *Id.* at 481, 634 S.E.2d at 474. The plaintiff suffered arrest and incarceration on the basis of an outstanding warrant for someone else. *Id.*

101. *See id.*

102. *Id.* at 485, 634 S.E.2d at 477. Relying upon O.C.G.A. section 36-33-1, the court reasoned that the plaintiff must show that the city's sovereign immunity had been waived

waiver of immunity cannot be established if an insurance policy has not been furnished.”¹⁰³ Indeed, “without a waiver of sovereign immunity,” the court concluded, “the City cannot be held liable for the actions of the arresting officer because no evidence shows that the officer was not ‘engaged in the discharge of the duties imposed on [him] by law.’”¹⁰⁴

The municipality may also escape liability on the basis of immunity not inhering in its sovereignty but rather in its capacity as a landowner.¹⁰⁵ In *Carroll v. City of Carrollton*,¹⁰⁶ a motorcyclist was injured when he skidded on roadway debris and crashed into a cable fence at a city park.¹⁰⁷ To the plaintiff’s charges of negligence in both road maintenance and fence construction, the city defended under the Recreational Property Act¹⁰⁸ (“RPA”), a statute encouraging “property owners to make their property available to the public for recreational purposes by limiting the owners’ liability.”¹⁰⁹ Sustaining that defense, the court of appeals discounted the fact that the claimant’s accident originated on the public road rather than recreational property; the RPA’s applicability “hinges on where [the plaintiff] sustained his injuries, not on where the accident started.”¹¹⁰ Equally immaterial was the absence of any intent by the rider to use the park at the time

by insurance and that the city “has the discretion to decide whether to purchase liability insurance.” *Scott*, 280 Ga. App. at 485, 634 S.E.2d at 477 (citing O.C.G.A. § 36-33-1 (2006)).

103. *Id.* (citing *City of Lawrenceville v. Macko*, 211 Ga. App. 312, 314, 439 S.E.2d 95, 98 (1993)).

104. *Id.* at 485-86, 634 S.E.2d at 477 (brackets in original) (quoting O.C.G.A. § 36-33-3 (2006)). “Therefore, in the absence of any evidence as to the existence and extent of liability insurance, the trial court did not err by granting judgment to the City.” *Id.* at 486, 634 S.E.2d at 477. The court, along similar lines of analysis, also affirmed the trial court’s dismissal of the plaintiff’s claim against the county. *Id.*

105. *See, e.g.*, *Carroll v. City of Carrollton*, 280 Ga. App. 172, 173-76, 633 S.E.2d 591, 593-95 (2006).

106. 280 Ga. App. 172, 633 S.E.2d 591 (2006).

107. *Id.* at 173, 633 S.E.2d at 593. The plaintiff alleged that municipal trucks “had tracked mud, dirt, and gravel [from a city playground parking lot] into the roadway,” causing his motorcycle to slide and to enter onto city property where it struck a cable fence around the playground. *Id.*

108. *Id.*; O.C.G.A. §§ 51-3-20 to -26 (2000). “If the RPA applies in a given case, it ‘shields [the] landowner [] from liability arising under a negligence cause of action.’” *Carroll*, 280 Ga. App. at 174, 633 S.E.2d at 593 (brackets in original) (quoting *Julian v. City of Rome*, 237 Ga. App. 822, 823, 517 S.E.2d 79, 80 (1999)).

109. *Carroll*, 280 Ga. App. at 173-74, 633 S.E.2d at 593 (quoting *Cooley v. City of Carrollton*, 249 Ga. App. 387, 388, 547 S.E.2d 689, 690-91 (2001)).

110. *Id.* at 175, 633 S.E.2d at 594. The court emphasized that “it is undisputed that [the plaintiff’s] injuries were sustained when he collided with the cable fence on the City’s recreational property [and] the RPA clearly is applicable.” *Id.*

he was injured.¹¹¹ “Since it is undisputed on appeal that the City permitted the general public to use the park and open field for recreational purposes without charge, the RPA applies here.”¹¹²

Finally, the supreme court confronted a novel issue regarding the “ante litem notice” mandate—the prohibition of claims for money damages unless written notice is provided to the municipality within six months of the offending event.¹¹³ In *Atlanta Taxicab Co. Owners Ass’n v. City of Atlanta*,¹¹⁴ the claimant sought damages for an alleged procedural due process violation inflicted by an ordinance requiring taxicab certificates.¹¹⁵ The plaintiff filed its complaint in July 2004 without having provided the city with the necessary notice. Subsequently, it amended its complaint, withdrawing all claims for damages, and in October 2004, it provided the notice. In November 2004, having received no city response, the plaintiff again amended its complaint and reasserted the claim for damages.¹¹⁶

111. *Id.* Rather, “the central focus is on how the landowner permits the general public to use the property; if the landowner ‘directly or indirectly invites or permits [others] to use the property for recreational purposes’ without charge, the owner is afforded the protection[] of the RPA.” *Id.*, 633 S.E.2d at 594-95 (first brackets in original) (emphasis omitted) (quoting *Ga. Dep’t of Transp. v. Thompson*, 270 Ga. App. 265, 267, 606 S.E.2d 323, 326 (2004)).

112. *Id.* at 175-76, 633 S.E.2d at 595. In yet another claim falling under the RPA, *Collins v. City of Summerville*, 284 Ga. App. 54, 643 S.E.2d 305 (2007), a child injured on a city park swing sought to avail himself of the Act’s immunity exception for the city’s wilful or malicious failure to warn. *Id.* at 54, 643 S.E.2d at 306-07. Rejecting that effort—based on the plaintiff’s charge of a defective chain “S-hook”—the court held that written installation instructions are “not sufficient to create a jury issue as to whether the City had actual knowledge of these dangers, as no evidence was presented that any employee of the City read these instructions.” *Id.* at 57, 643 S.E.2d at 308. As the court concluded, “Given the constraints of the Recreational Property Act’s actual knowledge requirement, we cannot infer actual knowledge under these circumstances.” *Id.*

113. See O.C.G.A. § 36-33-5 (2006). For treatment of the mandate, its history, and the circumstances of its applicability, see R. PERRY SENTELL, JR., *THE LAW OF MUNICIPAL TORT LIABILITY IN GEORGIA* 145-74 (4th ed. 1988); R. Perry Sentell, Jr., *Georgia Municipal Tort Liability: Ante Litem Notice*, 4 GA. L. REV. 134 (1969); R. Perry Sentell, Jr., *Ante Litem Notice: Cause for Pause*, URBAN GA. MAG., Oct. 1978, at 24. For a recent analysis of modern developments, see monograph, R. PERRY SENTELL, JR., *ANTE LITEM NOTICE: RECENT PERSPECTIVES* (2006).

114. 281 Ga. 342, 638 S.E.2d 307 (2006).

115. *Id.* at 342, 638 S.E.2d at 310-11. For discussion of substantive aspects of the case, see *supra* text accompanying notes 54-59.

116. *Atlanta Taxicab*, 281 Ga. at 351, 638 S.E.2d at 316. The trial court held the plaintiffs’ actions procedurally invalid under the ante litem mandate and dismissed the claim for damages. *Id.* at 351-52, 638 S.E.2d at 316.

Appraising the plaintiff's efforts, a majority of the court stressed the impermissible in order to delineate the permissible.¹¹⁷ "Because the giving of ante-litem notice is a condition precedent to bringing suit against a municipality, the notification itself cannot be accomplished by amendment after suit has been filed."¹¹⁸ Here, however, the plaintiff dismissed its original claim by amendment to the complaint, "gave the City pre-litigation notice and then again amended [its] complaint to reallege the claim."¹¹⁹ This tactic "satisfied the procedural requirement of giving the City an opportunity to investigate the claim so as to determine whether to settle it without resort to litigation."¹²⁰ Accordingly, the court held the plaintiff procedurally free to pursue damages for alleged violations occurring in the six months prior to the October ante-litem notice.¹²¹

I. Zoning

The issue of municipal zoning emerged in *City of Roswell v. Fellowship Christian School, Inc.*,¹²² concerning the city's refusal to grant a conditional use permit for the school's construction of a football stadium.¹²³ Reviewing the plaintiff's petition for mandamus, the supreme court employed a two-pronged justification for its denial.¹²⁴ First, a municipal ordinance expressly vested the city with discretion in

117. See *id.* at 350, 638 S.E.2d at 315.

118. *Id.* at 351, 638 S.E.2d at 315. "To the extent that *City of Atlanta v. Fuller* holds otherwise, it is hereby overruled." *Id.*, 638 S.E.2d at 316 (citation omitted) (citing *City of Atlanta v. Fuller*, 118 Ga. App. 563, 164 S.E.2d 364 (1968) overruled by *Atlanta Taxicab*, 281 Ga. 342, 638 S.E.2d 307).

119. *Id.*, 638 S.E.2d at 316.

120. *Id.*

121. See *id.* "The trial court erred in concluding that the [plaintiff] was procedurally barred from pursuing that claim for such alleged violations of due process as occurred in the six months prior to October 8, 2004 when the ante-litem notice was given." *Id.* A dissenting opinion for three justices viewed the plaintiff's ante litem efforts as ineffective: "I cannot endorse the [plaintiffs] sleight of hand." *Id.* at 359, 638 S.E.2d at 321 (Benham, J., dissenting).

122. 281 Ga. 767, 642 S.E.2d 824 (2007).

123. *Id.* at 767, 642 S.E.2d at 825. The school had sought the permit for construction of several new buildings, including the stadium, and following opposition from residents in the neighborhood, the city approved the permit minus the stadium. *Id.*

124. *Id.* "Mandamus will issue against a public official only where the petitioner has demonstrated a clear legal right to relief or a gross abuse of discretion." *Id.* (quoting *Gwinnett County v. Ehler Enters.*, 270 Ga. 570, 570, 512 S.E.2d 239, 240 (1999)); see also R. PERRY SENTELL, JR., MISCASTING MANDAMUS IN GEORGIA LOCAL GOVERNMENT LAW (1989).

acting on the application;¹²⁵ and second, “[t]here was evidence”¹²⁶ supporting the permit’s denial “based upon the negative impact the stadium would have on traffic in the area.”¹²⁷ As for the plaintiff’s equal protection contention, the court assumed an equally adverse position: “[T]he evidence that [the school’s] proposed stadium would exacerbate an already existing traffic problem in the area is a rational basis for the denial of the application.”¹²⁸

II. COUNTIES

A. *Officers and Employees*

Dissension among county officers and employees accounted for several instances of period litigation. In *Duggan v. Leslie*,¹²⁹ for example, the chair of the county commissioners sought a declaratory judgment acknowledging his sole authority to hire and fire county employees.¹³⁰ In reviewing the issue, the court of appeals found general law to permit local statute control of the matter¹³¹ and examined local legislation providing for the chair’s powers and duties.¹³² Those provisions, the court reasoned, rendered the power to hire and fire implicit.¹³³ “[T]he power to hire and fire is reasonably necessary for the chairperson to carry out [the] express authority to administer, supervise, operate, and

125. *Fellowship Christian Sch.*, 281 Ga. at 768, 642 S.E.2d at 825. Accordingly, the ordinance did not mandate approval of the application “as a matter of right.” *Id.*

126. *Id.* at 769, 642 S.E.2d at 826. Under its “any evidence” standard of review, the court explained, the issue “is whether there is any evidence supporting the decision of the local governing body.” *Id.* at 768, 642 S.E.2d at 825 (quoting *Fulton County v. Congregation of Anshei Chesed*, 275 Ga. 856, 859, 572 S.E.2d 530, 532 (2002)).

127. *Id.* at 769, 642 S.E.2d at 826. Reversing the trial judge, the court found no abuse of discretion on the part of the municipality. *Id.*

128. *Id.* at 770, 642 S.E.2d at 826. “The superior court erred in finding that [the plaintiff] had a viable equal protection claim based upon denial of its application to build the stadium.” *Id.*, 642 S.E.2d at 827.

129. 281 Ga. App. 894, 637 S.E.2d 428 (2006).

130. *Id.* at 894, 637 S.E.2d at 429.

131. *Id.* “By local law, a county may delegate power over any of these issues to the chairperson or chief executive officer of the county governing authority.” *Id.* (quoting *Krieger v. Walton County Bd. of Comm’rs*, 269 Ga. 678, 680, 506 S.E.2d 366, 368 (1998)).

132. *Id.* at 894-95, 637 S.E.2d at 429 (citing 1984 Ga. Laws 3815).

133. *Id.* at 895-96, 637 S.E.2d at 430. “While the local laws governing [the] County do not explicitly address whether the board or chairperson has general power to hire and fire county employees, we find it is implicit in the statute read as a whole.” *Id.*

control the county departments, agencies, and offices.”¹³⁴ Accordingly, the court reversed the trial judge’s decision against the chairman.¹³⁵

*Putnam County v. Adams*¹³⁶ featured a county’s effort to require the former county attorney to return all its files,¹³⁷ only to suffer the trial court’s order that the county pay for copies of closed files.¹³⁸ Reversing, the court of appeals determined there was “no distinction in Georgia law between closed and open files.”¹³⁹ Rather, “[t]he client is presumptively entitled to have both types returned absent ‘good cause.’”¹⁴⁰ Indeed, “where there are no unpaid legal services the client is entitled to the return of his or her papers and property, as well as documents created by the attorney in the course of representing the client.”¹⁴¹

Aspects of law enforcement prompted the dissension in *Hill v. Clayton County Board of Commissioners*,¹⁴² with the commissioners protesting the sheriff’s unauthorized modifications to his vehicles and suite of offices.¹⁴³ Splitting the issues, the court of appeals first concluded that the county’s police vehicles were assigned to the sheriff’s exclusive use.¹⁴⁴ The new markings conformed to the governing statute,¹⁴⁵ and “the Sheriff was entitled to determine that the law enforcement

134. *Id.* at 896, 637 S.E.2d at 430. “[W]e find that the local laws vest the chairperson with authority to hire and fire county employees without the approval of the board.” *Id.* The court held that a 2004 board resolution changing that authority was invalid because it was not effected by ordinance. *Id.*, 637 S.E.2d at 430-31.

135. *Id.*, 637 S.E.2d at 431. “Since the trial court concluded erroneously that the chairman ‘does not have the sole authority to hire and fire county employees,’ we must reverse.” *Id.*

136. 282 Ga. App. 226, 638 S.E.2d 404 (2006).

137. *Id.* at 226, 638 S.E.2d at 405. The defendant had served as the county attorney for roughly three years, “and a dispute arose as to the procedure for transferring the files to a new county attorney.” *Id.*

138. *Id.* at 226-27, 638 S.E.2d at 405. The trial court held the county entitled to all open files and that “the County was entitled to copy any closed files at its own expense.” *Id.*

139. *Id.* at 228, 638 S.E.2d at 406.

140. *Id.* (quoting *Swift, Currie, McGhee & Hiers v. Henry*, 276 Ga. 571, 573, 581 S.E.2d 37, 39 (2003)).

141. *Id.*

142. 283 Ga. App. 15, 640 S.E.2d 638 (2006).

143. *Id.* at 15, 640 S.E.2d at 640. The commissioners sought a declaratory judgment that any modifications to the motor vehicles or to the office facilities were subject to the board’s prior approval. *Id.*

144. *Id.* at 17, 640 S.E.2d at 641-42. Additionally, the sheriff is not an employee of the county commissioners. *Id.* at 16, 640 S.E.2d at 641.

145. *Id.* at 15-16, 640 S.E.2d at 640. “The new decals and the old decals conformed to the requirements of [O.C.G.A. section] 40-8-91, which sets the criteria for marking official vehicles used for traffic enforcement.” *Id.* at 15, 640 S.E.2d at 640 (citing O.C.G.A. § 40-8-91 (2004)).

functions to which the vehicles were assigned would be more competently performed if the vehicles were repainted and remarked.¹⁴⁶ Contrarily, modifications to the sheriff's offices within the county Justice Center entailed different principles. The sheriff enjoyed no exclusive use of the Center, and statutes vested the commissioners with control over county buildings.¹⁴⁷ Thus, "material alterations and structural changes to a county building such as the Justice Center must be made at the Board's direction and not on the Sheriff's independent initiative."¹⁴⁸

The survey period by no means omitted typical issues of workers' compensation and health benefits. As for the former, *Goswick v. Murray County Board of Education*¹⁴⁹ featured an appeal from the Administrative Law Judge's ("ALJ") suspension of disability benefits when the employee refused to undergo a physical examination.¹⁵⁰ Noting the workers' compensation board's adoption of the ALJ's decision, its affirmance by the superior court, and the "any evidence" standard of

146. *Id.* at 18, 640 S.E.2d at 642. This included the addition of the sheriff's name to the new markings. *Id.* As for the sheriff's paying for the changes with forfeited drug funds distributed to him by federal agencies, the court held that "local legislation must yield to the general law requiring that funds forfeited under federal law be utilized by the law enforcement agency to which it is transferred." *Id.* at 19, 640 S.E.2d at 643 (citing O.C.G.A. § 16-13-48.1 (2007)).

147. *Id.* at 20, 640 S.E.2d at 643; O.C.G.A. § 36-9-5(b) (2006).

148. *Hill*, 283 Ga. App. at 20, 640 S.E.2d at 643. The court thus reversed the trial judge's decision for the commissioners regarding the vehicles but affirmed the decision regarding the offices. *See id.* at 15, 640 S.E.2d at 640.

Law enforcement also provided context for *Davis v. Pinson*, 279 Ga. App. 606, 631 S.E.2d 805 (2006), a rather peripheral decision of the period in which a county police officer escorting a funeral procession sued the defendant who motioned a car to turn in such fashion as to strike the officer. *Id.* at 606, 631 S.E.2d at 805-06. Rejecting the defendant's employment of the "Fireman's Rule" (public officers "cannot complain of negligence in the creation of the very occasion" for their presence), *id.*, 631 S.E.2d at 806 (quoting *Kapherr v. MFG Chem., Inc.*, 277 Ga. App. 112, 115, 625 S.E.2d 513, 516 (2005)), the court reasoned as follows: "Here [the defendant's] alleged negligence in motioning a car to turn into the cemetery had nothing to do with [the officer's] presence at the scene." *Id.* at 608, 631 S.E.2d at 806. On grounds that the Fireman's Rule should be narrowly construed, the court held the police officer free to sue for the defendant's alleged negligence. *Id.*

149. 281 Ga. App. 442, 636 S.E.2d 133 (2006). For an overview of workers' compensation in the local government law context, see R. Perry Sentell, Jr., *Workers' Compensation in Georgia Municipal Law*, 15 GA. L. REV. 57 (1981).

150. *Goswick*, 281 Ga. App. at 442, 636 S.E.2d at 134. The plaintiff had received disability payments since 2001, underwent extensive treatment by a specialist, and was finally advised to return to his original doctor when he thought it necessary. Some eighteen months later, the employer requested the plaintiff to return to that doctor for examination to determine his current medical status. The plaintiff refused to do so. *Id.* at 442-43, 636 S.E.2d at 134.

review, the court of appeals scrutinized the governing statute.¹⁵¹ Denying the statute to require examination by an “independent” physician (rather than the plaintiff’s treating doctor),¹⁵² the court was adamant: “[T]he plain language of the statute . . . only requires that the examining physician be duly qualified, not that the physician be independent nor that the physician not be treating the claimant.”¹⁵³ Accordingly, the court affirmed suspension of the plaintiff’s benefits.¹⁵⁴

As for health insurance, *Benefit Support, Inc. v. Hall County*¹⁵⁵ focused upon the county’s procedure for finding an insurance provider. That procedure included the county’s employment of a consultant¹⁵⁶ and its later rejection of the plaintiff provider’s lowest bid. The plaintiff charged that the consultant lacked a proper license, a charge causing the county to declare the bidding process tainted and to throw out all bids. Subsequently, the plaintiff sued the county for wrongful rejection of its low bid, seeking bid preparation costs, and alleging, *inter alia*, a violation of equal protection.¹⁵⁷ Rejecting the plaintiff’s arguments, the court of appeals noted the plaintiff’s “disappointment that it shot itself in the foot by pointing out [the consultant’s] lack of a license and thereby had its bid also rejected.”¹⁵⁸ That, however, “is hardly grounds for a viable complaint against the county, which simply reacted to this news in a prudent and cautious manner by exercising its right set forth in the [request for proposals] to reject all bids.”¹⁵⁹ Similarly unyielding to the

151. *Id.* at 443, 636 S.E.2d at 135; O.C.G.A. § 34-9-202 (2004).

152. *Goswick*, 281 Ga. App. at 444, 636 S.E.2d at 135. The plaintiff “maintains that traditionally, such exams are done by ‘independent’ physicians who are not treating the claimant, and that in the past the Board has not relied on this statute to compel an exam by the claimant’s treating physician.” *Id.*

153. *Id.* “This accords with our obligation to strictly construe the workers’ compensation statute.” *Id.*

154. *Id.* at 442, 636 S.E.2d at 134. Additionally, the court held that the plaintiff’s “blatant defiance of an ALJ order which he chose not to appeal was some evidence that [the plaintiff] defended the proceedings in part without reasonable grounds,” thereby justifying the award of attorney fees. *Id.* at 447, 636 S.E.2d at 137.

155. 281 Ga. App. 825, 637 S.E.2d 763 (2006).

156. *See id.* at 826, 637 S.E.2d at 767. The county publicized a “Request for Proposals” and invited sealed bids on the county’s health insurance needs, reserving the right to reject any or all bids. *Id.*

157. *Id.* at 826-27, 637 S.E.2d at 767.

158. *Id.* at 828, 637 S.E.2d at 768.

159. *Id.* at 828-29, 637 S.E.2d at 768. “[T]he county had ample if not overwhelming reason to conclude that the entire process was tainted and unreliable and should therefore be rejected.” *Id.* at 828, 637 S.E.2d at 768. Thus, “[t]he trial court did not err in granting the county summary judgment on [the plaintiff’s] ‘frustrated bidder’ claim in its complaint alleging that the county violated its bidding rules and regulations.” *Id.* at 829, 637 S.E.2d at 768.

plaintiff's equal protection complaint, the court determined its "rational basis" standard of review to be well satisfied.¹⁶⁰ "Here, because of the taint to the process, all bids were rejected, and thus no classification was created at all. There could hardly be a clearer example of similarly situated persons being treated alike."¹⁶¹

B. Powers

Perhaps the most noteworthy "power" case of the period, *Walker County v. Tri-State Crematory*¹⁶² arose from the gruesome discovery that a crematorium had failed to bury hundreds of corpses over a period of many years.¹⁶³ The county sued the crematorium (and certain funeral homes and directors), asserting both negligence and public nuisance, and claiming "the expenses it [had] incurred in recovering, identifying, and properly disposing of the human remains."¹⁶⁴ Reviewing the trial judge's dismissal, the court of appeals canvassed authorities from both Georgia¹⁶⁵ and elsewhere.¹⁶⁶ "[W]e conclude," the court announced, "that Georgia, like many jurisdictions, has adopted the common-law free public services doctrine,"¹⁶⁷ a doctrine under which "a county cannot recover the costs of carrying out public services from a tortfeasor whose conduct caused the need for the services."¹⁶⁸ So

160. *Id.* at 829-30, 637 S.E.2d at 769.

161. *Id.* "The county did not exercise arbitrary power but acted rationally and reasonably in rejecting all bids across the board." *Id.* at 830, 637 S.E.2d at 769.

162. 284 Ga. App. 34, 643 S.E.2d 324 (2007).

163. *Id.* at 34-35, 643 S.E.2d at 325-26. Responding to the emergency, the county "established a crisis center, morgue, and other facilities and took steps to recover, move, store, and identify human remains and provide for their burial and proper disposition." *Id.* at 35, 643 S.E.2d at 326.

164. *Id.* at 34, 643 S.E.2d at 325. The county also sought punitive damages and attorney fees and costs. *Id.*, 643 S.E.2d at 325-26. The county "alleged multiple negligence claims and further alleged that the presence of uncremated human remains scattered in, on, or around the crematorium property constituted a public nuisance for which all the defendants could be held liable." *Id.* at 35, 643 S.E.2d at 326.

165. *Id.* at 36, 643 S.E.2d at 327 (citing *Torres v. Putnam County*, 246 Ga. App. 544, 541 S.E.2d 133 (2000)).

166. *Id.* at 37, 643 S.E.2d at 327. "The seminal case in this area of the law is *City of Flagstaff v. Atchison, Topeka & Santa Fe Rly. Co.*, 719 F.2d 322, 323-24 (9th Cir. 1983). . . ." *Tri-State Crematory*, 284 Ga. App. at 37 n.2, 643 S.E.2d at 327 n.2.

167. *Tri-State Crematory*, 284 Ga. App. at 36-37, 643 S.E.2d at 327 (footnote omitted).

168. *Id.* at 37, 643 S.E.2d at 327. This doctrine operated, said the court, "absent specific statutory authorization or damage to government-owned property." *Id.* Necessarily, the county's claims for punitive damages and attorney fees failed as well. *Id.* at 40, 643 S.E.2d at 329.

adopted, the “free public services doctrine” barred the county’s action.¹⁶⁹

Litigation touched an assortment of other county powers during the survey period, generally with discouraging results.¹⁷⁰ In *Fulton County v. Perdue*,¹⁷¹ the Georgia Supreme Court rejected the county’s effort to cabin the reach of a 2005 statute¹⁷² imposing “new requirements upon counties that have created [special taxing and spending districts (“SSD”)] for the provision of services to their unincorporated areas.”¹⁷³ More specifically, the court rejected the county’s position that the statute applies “only when noncontiguous areas are first created by the incorporation of a new municipality.”¹⁷⁴ Taking a broader view, the court found “nothing in the language of [the statute] indicating a legislative intent that it apply only to SSDs with newly created noncontiguous areas.”¹⁷⁵ Rather, “any special district taxes, fees, and assessments collected in such a noncontiguous area shall be spent to provide services in that noncontiguous area.”¹⁷⁶

County fortunes did not improve in *Forsyth County v. Georgia Transmission Corp.*,¹⁷⁷ where the supreme court invalidated an ordinance purporting to require electric power utility companies (“EPUC”) to obtain county approval before constructing high voltage transmission lines.¹⁷⁸ First, the court emphasized the following

169. *Id.* In mitigation, the court maintained that “[t]he statutory framework set forth in [O.C.G.A.] Title 41 provides a means for counties to recoup the costs of abating a public nuisance, albeit indirectly, through obtaining a lien and instituting an enforcement proceeding.” *Id.* at 39, 643 S.E.2d at 329 (citing O.C.G.A. §§ 41-2-7(b), -9(a)(7), (b) (1997 & Supp. 2007)).

170. *E.g.*, *Fulton County v. Perdue*, 280 Ga. 807, 631 S.E.2d 362 (2006).

171. 280 Ga. 807, 631 S.E.2d 362 (2006).

172. *Id.* at 807, 631 S.E.2d at 363; O.C.G.A. § 36-31-12 (2006).

173. *Perdue*, 280 Ga. at 807, 631 S.E.2d at 363. Previously, the county had not “limited the expenditure of such revenue to the area in which it was collected.” *Id.*

174. *Id.* at 808, 631 S.E.2d at 364.

175. *Id.*

176. *Id.* (quoting O.C.G.A. § 36-31-12(b) (2006)). The court likewise rejected the county’s argument that the statute unconstitutionally encroached on the county’s exclusive authority derived from a 1972 local amendment to the constitution. *Id.* at 810, 631 S.E.2d at 365; 1972 Ga. Laws 1481. “[W]e hold that the 1972 amendment did not grant [the county] exclusive authority to control the expenditure of revenue collected in its SSD.” *Perdue*, 280 Ga. at 810, 631 S.E.2d at 365.

177. 280 Ga. 664, 632 S.E.2d 101 (2006).

178. *Id.* at 664, 632 S.E.2d at 102. The utility had initiated plans to construct a high voltage transmission line along a fifteen to twenty mile corridor through the county in 2002, and the county had adopted its ordinance in 2004. *Id.* “Under the new ordinance, [the utility] must apply for a zoning map amendment for its proposed power line corridor, and obtain overlay zoning approval from the county for its construction or operation.” *Id.*

exception contained in the constitution's county home rule provision: "[P]owers granted to counties . . . 'shall not be construed to extend to' . . . [any] [a]ction affecting the exercise of the power of eminent domain."¹⁷⁹ Secondly, the court highlighted a general statute¹⁸⁰ authorizing "an EPUC to exercise the power of eminent domain to effectuate the purpose of furnishing electric power and service."¹⁸¹ Necessarily, the court concluded, "the [county] ordinance must fail."¹⁸² Finally, the court likewise rebuffed the county's contention that the constitution's expansive grant of county zoning power prevailed over the home rule proscription.¹⁸³ Both provisions appear in the same article and section of the constitution, said the court, and such provisions "must be construed in *pari passu*."¹⁸⁴ Accordingly, the zoning power enjoyed no "greater dignity" than the home rule exclusion.¹⁸⁵

The county fared better—still falling short of complete success—in *Johnson v. Fayette County*,¹⁸⁶ concerning the validity of its "County Marshal's Department."¹⁸⁷ On the one hand, the supreme court affirmed summary judgment that the county had validly created the department in 1983 without a referendum as it was then authorized to do.¹⁸⁸ On the other hand, the court reversed a decision that the

at 665, 632 S.E.2d at 102.

179. *Id.* at 666, 632 S.E.2d at 103 (second and third brackets in original) (emphasis omitted) (quoting GA. CONST. art. IX, § 2, para. 1(c)(6)). For background on the history and operation of local government home rule in Georgia, see R. Perry Sentell, Jr., *Home Rule Benefits or Homemade Problems for Georgia Local Government?*, 4 GA. ST. B.J. 317 (1968); R. Perry Sentell, Jr., "Home Rule": *Its Impact on Georgia Local Government Law*, 8 GA. ST. B.J. 277 (1972); R. Perry Sentell, Jr., *Local Government "Home Rule": A Place to Stop?*, 12 GA. L. REV. 805 (1978); R. Perry Sentell, Jr., *The Georgia Home Rule System*, 50 MERCER L. REV. 99 (1998).

180. *Ga. Transmission Corp.*, 280 Ga. at 666, 632 S.E.2d at 102; O.C.G.A. § 46-3-201(b)(9) (2004).

181. *Ga. Transmission Corp.*, 280 Ga. at 666, 632 S.E.2d at 103.

182. *Id.* at 667, 632 S.E.2d at 104. "The ability to deny power line corridor applications and halt projects means that the county would be empowered to frustrate [the utility's] purpose by affecting its power of eminent domain." *Id.*

183. *Id.* at 667-68, 632 S.E.2d at 104; GA. CONST. art. IX, § 2, para. 4.

184. *Ga. Transmission Corp.*, 280 Ga. at 667, 632 S.E.2d at 104.

185. *Id.* at 667-68, 632 S.E.2d at 104. The court thus affirmed the trial judge's decision favoring the utility and holding the county ordinance unconstitutional. *Id.* at 664, 632 S.E.2d at 102.

186. 280 Ga. 493, 635 S.E.2d 35 (2006).

187. *Id.* at 493-94, 635 S.E.2d at 36. The county sheriff had refused to jail persons detained by marshals from the Department, challenging the validity of its existence as an authorized county police force. *Id.*

188. *Id.* at 494, 635 S.E.2d at 36. "It is undisputed that the County, acting by and through its Board of Commissioners and pursuant to the authority of [O.C.G.A. section] 36-8-1, established the [department] in 1983." *Id.* (citing O.C.G.A. § 36-8-1 (2006)).

department was operational in 1992 and thus validly “grandfathered” under a general statute so as to escape the referendum requirement.¹⁸⁹ On this latter issue, the court noted evidence authorizing “an inference that the [department], although authorized to operate as a county police force on January 1, 1992, was not in operation and existence as such police force as of January 1, 1992.”¹⁹⁰ This evidence created genuine issues of material fact not amenable to summary judgment.¹⁹¹

C. Openness

County open meeting complaints arose in distinctive contexts during the survey period—and garnered contrasting receptions by the supreme court.¹⁹² *EarthResources, LLC v. Morgan County*¹⁹³ presented a challenge to the county’s actions in denying a verification of zoning compliance for a proposed landfill.¹⁹⁴ First, the court determined there was no error in the county’s posting notice of the meeting at its regular meeting place, such notice advising that the meeting would be held at an alternate site.¹⁹⁵ It was “plain,” said the court, “that the notice sufficiently complied with the [open meetings] statute.”¹⁹⁶ Second, the court reviewed the commissioners’ posting of the meeting agenda at their offices but not at the alternate site where the meeting was held.¹⁹⁷ Although terming these actions “a technical violation of the statute,” the court determined there was no evidence that it “deprived [the plaintiff] of a fair and open consideration of its request or in any way impeded the remedial and protective purposes of the Open Meetings Act.”¹⁹⁸

189. *Id.* “The General Assembly amended [O.C.G.A. section] 36-8-1 in 1992 . . . to require voter approval of a resolution or ordinance creating a county police force before it can become effective.” *Id.* That amendment, however, “includes a ‘grandfather’ clause rendering the referendum requirement . . . inapplicable” to a previously created department remaining in existence and operational in 1992. *Id.*

190. *Id.* at 495, 635 S.E.2d at 37. That evidence consisted of testimony by two previous county officials that the department was not operating as a valid police force in 1992. *Id.*

191. *See id.*, 635 S.E.2d at 36-37.

192. For perspective, see R. Perry Sentell, Jr., *The Omen of “Openness” in Local Government Law*, 13 GA. L. REV. 97 (1978).

193. 281 Ga. 396, 638 S.E.2d 325 (2006).

194. *Id.* at 398, 638 S.E.2d at 327-28. “On appeal, [the plaintiff] raises two Open Meetings Act issues. . . .” *Id.*, 638 S.E.2d at 328 (citing O.C.G.A. §§ 50-14-1 to -6 (2006)).

195. *Id.* at 398-99, 638 S.E.2d at 328. The plaintiff charged a violation of O.C.G.A. section 50-14-1(d). *EarthResources*, 281 Ga. at 398, 638 S.E.2d at 328.

196. *EarthResources*, 281 Ga. at 399, 638 S.E.2d at 328.

197. *Id.* O.C.G.A. section 50-14-1(e)(1) requires that the meeting agenda “shall be posted at the meeting site.” O.C.G.A. § 50-14-1(e)(1).

198. *EarthResources*, 281 Ga. at 399, 638 S.E.2d at 328-29. Indeed,

The county claimed an exception to the Open Meetings Act in *Decatur County v. Bainbridge Post Searchlight, Inc.*¹⁹⁹ a closed meeting to consult with legal counsel “‘pertaining to pending or potential litigation.’”²⁰⁰ There, the grand jury had found presentments questioning the propriety of certain commissioners’ actions and sent those presentments to the county attorney.²⁰¹ At their regular meeting, the commissioners retired into executive session with the attorney to discuss their response.²⁰² A majority of the court made short work of rejecting the county’s claim to the attorney-client exception: “[I]t is clear that the topic of the meeting related to the manner in which the county’s business was being conducted and, as such, the purpose was to fashion a political response, not to prepare a legal defense.”²⁰³ “Indeed,” the court emphasized, “there was not even a threat of any litigation.”²⁰⁴

Under the unusual circumstances of the present case, in which [the plaintiff] first advocated a closed meeting and later objected to permitting public participation in the consideration of its request, we consider the posting of the agenda at the regular meeting place of the Board of Commissioners rather than at the actual meeting site to be sufficient compliance with the statute’s requirements.

Id. at 399-400, 638 S.E.2d at 329. The court thus affirmed the trial judge’s grant of summary judgment to the county on the open meetings issue. *Id.* at 401, 638 S.E.2d at 329.

199. 280 Ga. 706, 632 S.E.2d 113 (2006).

200. *Id.* at 707, 632 S.E.2d at 115 (quoting O.C.G.A. § 50-14-2(1)).

201. *Id.* at 706, 632 S.E.2d at 114-15. The presentments questioned the manner in which the commissioners handled employees’ vacation and overtime policies, and the district attorney sent the presentments to the county attorney to give the commissioners an opportunity to respond prior to the documents being filed with the superior court and their publication. *Id.*

202. *Id.* Subsequently, the plaintiff newspaper sent an open records request to review the documents referred to by the minutes of the closed meeting, and the commissioners claimed those documents not available for public inspection because the session came under the attorney-client exception to the Open Meetings Act. *Id.*

203. *Id.* at 708, 632 S.E.2d at 116. “In this case, there was no ‘pending or potential litigation.’” *Id.* (quoting O.C.G.A. § 50-14-2(1)).

204. *Id.* “[T]he trial court properly rejected the Commissioners’ claim of ‘attorney-client’ privilege as ‘remote and speculative,’ rather than ‘realistic and tangible.’” *Id.* (quoting *Claxton Enter. v. Evans County Bd. of Comm’rs*, 249 Ga. App. 870, 874, 549 S.E.2d 830, 834-35 (2001)). The court also rejected the commissioners’ reliance on the grand jury secrecy provision, O.C.G.A. section 15-12-80 (2005): “The Commissioners cannot evade the obligation to conduct an open meeting by relying upon a veil of secrecy which the grand jury itself disregarded” when it sent the presentments to the county attorney. *Bainbridge*, 280 Ga. at 709, 632 S.E.2d at 116.

A two-justice dissent maintained that the responses prepared by the commissioners in the meeting in issue would be used to determine what charges the grand jury might pursue against them. *Id.*, 632 S.E.2d at 117 (Melton, J., dissenting). “These acts are directly analogous to discovery in a pending suit. As such, it cannot be maintained that the Commissioners were not subject to potential litigation. Therefore, their decision to conduct

Emphasis shifted to the Open Records Act²⁰⁵ in *Athens Newspapers, LLC v. Unified Government of Athens-Clarke County*,²⁰⁶ regarding the plaintiff's request for police records on an unsolved 1992 rape and murder.²⁰⁷ Rejecting the county's reliance upon the Act's "pending investigation" exemption,²⁰⁸ the court of appeals explicated its findings as follows:

[T]he undisputed evidence in this case shows that there has been no progress in solving the . . . murder for several years, there is no ongoing, active investigation of the case by the county, there are no suspects or evidence that will likely lead to identifying a suspect, and there is only a slight possibility that the county's submission of the DNA to a database will ever result in progress in solving the case.²⁰⁹

Accordingly, the court directed the trial judge to grant summary judgment for the newspaper.²¹⁰

D. Contracts

The scrutinized period's contracts controversy materialized in *Harden v. Clarke County Board of Education*,²¹¹ a former high school teacher's quantum meruit suit against the county school board and officials, claiming compensation for additional duties assigned to him.²¹² The

a closed meeting was proper under the attorney-client exception" *Id.*

205. O.C.G.A. §§ 50-18-70 to -77 (2006 & Supp. 2007).

206. 284 Ga. App. 465, 643 S.E.2d 774 (2007).

207. *Id.* at 465, 643 S.E.2d at 775. Although the crime had occurred in 1992, no one had been arrested, no possible perpetrator had been identified, and no new evidence had been discovered in several years. *Id.*

208. *Id.* at 466-67, 643 S.E.2d at 775-76 (citing O.C.G.A. § 50-18-72(a)(4)). O.C.G.A. section 50-18-72(a)(4) exempts "[r]ecords of law enforcement, prosecution, or regulatory agencies in any pending investigation." O.C.G.A. § 50-18-72(a)(4). Said the court: "Essentially, the county argues that, as long as there is no arrest or prosecution in the . . . case, its investigation will remain 'pending' . . . indefinitely." *Athens Newspapers*, 284 Ga. App. at 468, 643 S.E.2d at 777.

209. *Athens Newspapers*, 284 Ga. App. at 469, 643 S.E.2d at 778. The court noted the statute's direction that exemptions be narrowly construed. *Id.* at 469-70, 643 S.E.2d at 778 (citing O.C.G.A. § 50-18-72(a)(4)).

210. *Id.* at 470, 643 S.E.2d at 778. Additionally, the court held that "the three business day response clock starts running upon delivery of the records request to the government agency [rather than] upon delivery to the individual in charge of the records." *Id.* at 471-72, 643 S.E.2d at 779.

211. 279 Ga. App. 513, 631 S.E.2d 741 (2006).

212. *Id.* at 513, 631 S.E.2d at 742. The plaintiff had sued for breach of contract and later amended his complaint to add a claim in quantum meruit. When the trial court granted adverse summary judgment, the plaintiff appealed only the court's judgment on his quantum meruit claim. *Id.*

Georgia Court of Appeals rejected the action on two substantive fronts.²¹³ First, the court highlighted the venerable statutory command that all county contracts “shall be in writing and entered on its minutes.”²¹⁴ Because “quantum meruit is another name for an implied contract,” the court reasoned, by definition “quantum meruit is not available when a county is a defendant.”²¹⁵ Additionally, the court drew governmental immunity into the quantum meruit context as well: “Sovereign immunity bars [the plaintiff’s] claim in quantum meruit against a political subdivision of the state, ‘including counties, county boards of education and county school districts.’”²¹⁶ As for actions against officials in their individual capacities—not alleging negligence, malice, or intent—these were precluded by the concept of “official immunity.”²¹⁷

E. Roads

Given the historic prominence of rural roads in Georgia county government and the early preoccupation of county commissioners with maintaining them, the period’s subject cases bode somewhat ironic: both contests featured a county’s denial of road ownership. *Shearin v. Wayne Davis & Co.*²¹⁸ highlighted two procedures dealing with a county

213. *See id.* at 513-14, 631 S.E.2d at 742.

214. *Id.* at 513, 631 S.E.2d at 742 (citing O.C.G.A. § 36-10-1 (2006)). For an analysis of this statute, its history, and application by the courts, see R. Perry Sentell, Jr., *County Contracts in Georgia: “Written and Entered,”* 32 MERCER L. REV. 283 (1980).

215. *Harden*, 279 Ga. App. at 513-14, 631 S.E.2d at 742 (quoting *Brown v. Penland Constr. Co.*, 276 Ga. App. 522, 524, 623 S.E.2d 717, 719 (2005)).

216. *Id.* at 514, 631 S.E.2d at 742 (quoting *Coffee County Sch. Dist. v. Snipes*, 216 Ga. App. 293, 295, 454 S.E.2d 149, 150 (1995)). Sovereign immunity also protected the defendant officials sued in their official capacities. *Id.*

217. *Id.* (citing GA. CONST. art. I, § 2, para. 9). The court thus affirmed the trial judge’s summary judgment in favor of the defendants. *Id.* at 513, 631 S.E.2d at 742.

In an additional contracts case of the period, *McArthur Electric, Inc. v. Cobb County School District*, 281 Ga. 773, 642 S.E.2d 830 (2007), the supreme court ruled adversely to a subcontractor’s action against a school district for an equitable lien on funds owed by the district to the general contractor on a school construction project. *Id.* at 775, 642 S.E.2d at 832. Noting the statutory requirement that a general contractor on a public works project provide a payment bond, the court deemed that bond “a remedy which is at least as practical and efficient” as lien rights. *Id.* Accordingly, the plaintiff “could not assert an equitable lien against the School District as an additional remedy to the adequate legal remedies it has against the General Contractor and the sureties on the payment bond.” *Id.*

218. 281 Ga. 385, 637 S.E.2d 679 (2006). The case featured an effort by property owners to mandamus the county to maintain the un paved road in issue. *Id.* at 385, 637 S.E.2d at 679. On the problems of the mandamus action, see R. PERRY SENTELL, JR., MISCASTING MANDAMUS IN GEORGIA LOCAL GOVERNMENT LAW (1989).

obtaining prescriptive title to a road: (1) by possession for twenty years while meeting stated requirements²¹⁹ and (2) by unlimited public use for at least seven years.²²⁰ The county maintained that these “two methods of prescription . . . are not two methods, either of which would result in prescription, but are two parts of the only method.”²²¹ Rejecting that position, a majority of the supreme court read statutory language of the second (and later) method “to provide a more expeditious and less burdensome alternative means” and not simply “to add another requirement.”²²² Expressly disapproving prior decisions,²²³ the court held county compliance with the first method to trigger the road’s prescriptive acquisition.²²⁴

In *Rabun County v. Mountain Creek Estates, LLC*,²²⁵ a developer sought both mandamus and inverse condemnation relief for the county’s refusal to accept dedication of subdivision roads. The county defended on grounds that the road shoulders failed the width requirements of a county ordinance.²²⁶ Reversing a jury verdict of inverse condemnation,²²⁷ the supreme court viewed the case to present “not a taking of property, but a refusal to take property.”²²⁸ That claim suffered the

219. *Shearin*, 281 Ga. at 385, 637 S.E.2d at 679-80 (citing O.C.G.A. §§ 44-5-161, -163 (1991)).

220. *Id.*, 637 S.E.2d at 680 (citing O.C.G.A. § 32-3-3(c) (2006)).

221. *Id.* at 386, 637 S.E.2d at 680. The county conceded that it had met the requirements of the first method but insisted that it had not adversely acquired the road unless it met the second method as well. *Id.*

222. *Id.*

223. *Id.* at 387 n.5, 637 S.E.2d at 681 n.5 (citing *Chandler v. Robinson*, 269 Ga. 881, 882, 506 S.E.2d 121, 122 (1998); *Harbor Co. v. Copelan*, 256 Ga. App. 79, 82, 567 S.E.2d 723, 725-26 (2002); *Irwin County v. Owens*, 256 Ga. App. 359, 361, 568 S.E.2d 578, 581 (2002)).

224. *Id.* at 388, 637 S.E.2d at 681-82. Accordingly, the court affirmed the trial judge’s grant of the mandamus against the county. *Id.* Two justices dissented: “I . . . believe that this Court’s binding precedent demonstrates that compliance with the requirements of both [O.C.G.A. section] 32-3-3(c) and [section] 44-5-161 is necessary before a governmental body obtains prescriptive title to a road.” *Id.*, 637 S.E.2d at 682 (Carley, J., dissenting).

225. 280 Ga. 855, 632 S.E.2d 140 (2006).

226. *Id.* at 855, 632 S.E.2d at 142. “The County contends that [the plaintiff] did not prove that the shoulders of its roads were two-foot wide, as required by the Ordinance. . . .” *Id.* at 858, 632 S.E.2d at 144.

227. *See id.* at 855-56, 632 S.E.2d at 142-43.

[The plaintiff’s] contention about the roads it constructed is the opposite of a true claim for inverse condemnation. [The plaintiff’s] argument rests not on an act of commission resulting in a taking based on the diminishment of functionality of its land, but on an act of omission resulting in a failure to take or a “no-taking” which had no effect on functionality.

Id. at 856, 632 S.E.2d at 143.

228. *Id.* at 857, 632 S.E.2d at 143.

defeat of sovereign immunity.²²⁹ Contrarily, the plaintiff's mandamus action enjoyed a better fate.²³⁰ Emphasizing its "any evidence" standard of review,²³¹ the court canvassed sufficient testimony "to support the jury's finding of fact that [the plaintiff] had complied with the [ordinance's] shoulder requirement."²³² Accordingly, the court affirmed a mandamus that the county accept the roads.²³³

F. Taxation

No subject stirs more attention in local government circles than taxation, and two cases of the period tested the authority of county officials in administering the system. *Vesta Holdings, LLC v. Freeman*²³⁴ presented a scenario under which the plaintiff had purchased county tax executions,²³⁵ and the sheriff—having adjudged the executions invalid—refused to execute the levy.²³⁶ Reversing the trial judge's denial of the plaintiff's mandamus petition, the supreme court emphasized the sheriff's statutory duty "to execute and return the processes and orders . . . of officers of competent authority, if not void, with due diligence when delivered to him for that purpose."²³⁷ Even if ultimately correct on the point of invalidity, "the Sheriff is not a judicial officer, and he [was] therefore not entitled to make that determination."²³⁸ The tax execution appeared valid on its face, the

229. *Id.*, 632 S.E.2d at 144. "[T]he County was entitled to sovereign immunity against [the plaintiff's] claim for damages." *Id.*

230. *See id.* at 856, 632 S.E.2d at 143. "This is an archetypal mandamus claim, to which that area of the law is uniquely suited . . ." *Id.*

231. *See id.* at 858, 632 S.E.2d at 144. "[T]here is some evidence that the subdivision roads met the Ordinance's requirements for shoulders." *Id.*

232. *Id.* at 859, 632 S.E.2d at 145. The court relied on portions of testimony by the road builder and by the county's own expert. *See id.* at 858-59, 632 S.E.2d at 144.

233. *Id.* at 860, 632 S.E.2d at 146. Three justices concurred in part and dissented in part. *See id.* at 861, 632 S.E.2d at 146 (Sears, C.J., concurring in part and dissenting in part).

234. 280 Ga. 608, 632 S.E.2d 87 (2006).

235. *Id.* at 608-09, 632 S.E.2d at 87-88. The tax commissioner had issued the executions against a railroad for real estate located in the county. The plaintiff had purchased the executions and placed them in the hands of the sheriff for levy. *Id.*

236. *Id.* The sheriff contended that the railroad property was subject to taxation only by the state and that no county tax was owed on it. *Id.*

237. *Id.* at 609, 632 S.E.2d at 88 (quoting O.C.G.A. § 15-16-10(a)(1) (2005 & Supp. 2006)).

238. *Id.* at 610, 632 S.E.2d at 88. "The proper party to challenge the validity of the tax assessments, rather, is the taxpayer against whom the tax has been assessed, and the proper forum to do so is a judicial one." *Id.*

court asserted, and “the Sheriff [had] no discretion or authority to decline to enforce it.”²³⁹

The county tax commissioner enjoyed administrative success in *Mulligan v. Security Bank of Bibb County*.²⁴⁰ There, the plaintiffs had defaulted on a loan, the bank foreclosed on the subject property, and the sale proceeds paid all expenses.²⁴¹ The plaintiffs then challenged the tax commissioner’s authority to employ surplus sale funds to pay past due ad valorem taxes.²⁴² The court of appeals rejected that challenge: “[W]hile a tax commissioner retains a lien on the property that is enforceable against a subsequent purchaser of the property, the prior owner also remains liable for the taxes.”²⁴³ Accordingly, “the tax commissioner was authorized to seek payment of the outstanding taxes from the surplus proceeds.”²⁴⁴

Finally, *Johnstone v. Thompson*²⁴⁵ shifted attention to more substantive concerns surrounding a county’s special purpose local option sales tax (“SPLOST”).²⁴⁶ Initially, the supreme court quoted the statutory mandate that SPLOST proceeds be used “exclusively for the purpose or purposes specified in the resolution or ordinance calling for imposition of the tax.”²⁴⁷ Generalities in place, the court appraised a local taxpayer’s complaint by examining the county resolution reimposing the

239. *Id.*, 632 S.E.2d at 89. “It does not further the interests of justice and order to allow the Sheriff to act as a judicial officer in determining the validity of an execution that is issued by the Tax Commissioner and is valid on its face.” *Id.* The plaintiff, the court held, was entitled to a mandamus. *Id.*

240. 280 Ga. App. 248, 633 S.E.2d 629 (2006).

241. *Id.* at 248-49, 633 S.E.2d at 630. After payment of the secured debt and all sale expenses, there remained a surplus in an amount greater than the tax commissioner’s claim for ad valorem taxes on the property for the years 2001 to 2004. *Id.*

242. *Id.* at 249, 633 S.E.2d at 630-31. The plaintiffs contended that the purchaser of the property at sale incurred the tax liability as a part of his purchase. *Id.*

243. *Id.* at 250, 633 S.E.2d at 631 (emphasis omitted) (citing *Teachers Ret. Sys. of Ga. v. City of Atlanta*, 249 Ga. 196, 202 n.6, 288 S.E.2d 200, 204 n.6 (1982)). “Under Georgia law, ad valorem taxes are chargeable either as a personal debt of the taxpayer or as a lien ‘which extends not only to the property giving rise to the tax obligation, but also to all other property owned by the taxpayer.’” *Id.* at 249, 633 S.E.2d at 631 (quoting *Nat’l Tax Funding, L.P. v. Harpagon Co.*, 277 Ga. 41, 42, 586 S.E.2d 235, 237 (2003)).

244. *Id.* at 250, 633 S.E.2d at 631. The court also rejected the plaintiffs’ contention that the language of the notice of sale precluded collection of taxes from the surplus sales proceeds. *See id.*

245. 280 Ga. 611, 631 S.E.2d 650 (2006).

246. *See id.* at 611, 631 S.E.2d at 651. Such taxes find authorization in GA. CONST. art. VIII, § 6, para. 4(a).

247. *Johnstone*, 280 Ga. at 612, 631 S.E.2d at 651 (quoting O.C.G.A. § 48-8-121(a)(1) (2005)).

SPLOST,²⁴⁸ the ballot language for the measure,²⁴⁹ and the “notebook” distributed to obtain voter approval.²⁵⁰ None of those sources, the court concluded, supported the county school board’s decision to use \$59 million of the tax to provide a laptop computer for every middle and high school student in the school district.²⁵¹ Accordingly, “[t]he evidence authorized the trial court to find that [the defendants] failed to comply with their clear legal duties when they sought to ‘re-budget’ the original technology initiatives,” and entitled the plaintiff to a mandamus.²⁵²

G. Liability

Claimants sought county liability in diverse contexts during the survey period and received equally diverse responses from the appellate courts.²⁵³ In *Stanfield v. Glynn County*,²⁵⁴ homeowners claimed “nuisance” recovery for an adjacent waste transfer facility originally

248. *Id.* at 611-12, 631 S.E.2d at 650-51. The resolution specified the use of funds for system-wide technology improvements. *Id.*

249. *Id.* at 612, 631 S.E.2d at 651. The ballot language mentioned equipment and technology systems. *Id.*

250. *Id.* The notebook specified the refreshing of obsolete workstations. *Id.*

251. *Id.* at 611, 614, 631 S.E.2d at 651-52. The court viewed the evidence to authorize the trial court to find “that the general language in the referendum and ballot about technology improvements and technology systems referred to the proposed capital outlay projects detailed in the SPLOST notebook.” *Id.* at 613, 631 S.E.2d at 652. The court likewise approved the trial court’s rejection of the defendants’ argument that the computer project

was the functional equivalent of the SPLOST notebook project to “refresh obsolete workstations,” given that the [computer project] provided laptop computers only to middle and high school students, whereas the SPLOST notebook project specified it was for the purpose of updating computer laboratory workstations used by all of the school district’s students, elementary as well as middle and high schools.

Id. at 613-14, 631 S.E.2d at 652 (footnote omitted).

252. *Id.* at 614, 631 S.E.2d at 652-53. “[W]e reject [the defendants’] argument that [the plaintiff] had no clear legal right to the mandamus relief granted in this case.” *Id.*, 631 S.E.2d at 653. Two justices dissented: “Neither case law nor statutory authority supports a finding that the [county school board] abused its discretion by allocating SPLOST tax proceeds to a small pilot program of its Power to Learn initiative.” *Id.* (Melton, J., dissenting).

253. For perspective on county liability (and immunity), see R. Perry Sentell, Jr., *Georgia Local Government Tort Liability: The “Crisis” Conundrum*, 2 GA. ST. U. L. REV. 19 (1985); R. Perry Sentell, Jr., *Local Government Tort Liability: The Summer of ‘92*, 9 GA. ST. U. L. REV. 405 (1993); R. Perry Sentell, Jr., *Local Government Liability Litigation: Numerical Nuances*, 38 GA. L. REV. 633 (2004).

254. 280 Ga. 785, 631 S.E.2d 374 (2006).

constructed under county building permits.²⁵⁵ Explaining that a county nuisance must equate to “inverse condemnation” to entail responsibility, the supreme court could identify no such violation.²⁵⁶ “The County neither owns nor is charged with the ongoing maintenance of [the waste] facility,” observed the court, and its issuance of building permits “does not subject it to any liability for inverse condemnation or for any claim rising to that level.”²⁵⁷

The plaintiffs of the period directed a large majority of their actions directly against county officers or employees themselves.²⁵⁸ *Freeman*

255. *Id.* at 785, 631 S.E.2d at 377. The plaintiffs complained of odors, noise, dust, and other inconveniences resulting from the facility. *See id.* at 788, 631 S.E.2d at 379. The county had issued building permits for the facility’s construction “from 1992 to 1997.” *Id.* at 785, 631 S.E.2d at 377.

256. *Id.* at 786, 631 S.E.2d at 377-78. “Counties, unlike municipalities, can be liable for conditions created on private property only under the constitutional eminent domain provisions . . .” *Id.*, 631 S.E.2d at 377. “Thus, the trespass and nuisance claims are duplicative of the inverse condemnation claim.” *Id.* For analysis of a Georgia county’s unique nuisance responsibility, see R. Perry Sentell, Jr., *Georgia County Liability: Nuisance or Not?*, 43 MERCER L. REV. 1 (1991).

257. *Stanfield*, 280 Ga. at 786, 631 S.E.2d at 377 (citing *Morris v. Douglas County Bd. of Health*, 274 Ga. 898, 898, 561 S.E.2d 393, 395 (2002)). “Likewise, the County’s issuance of citations for violation of the nuisance ordinance does not show that it was responsible for maintaining a nuisance, but rather that it was enforcing that ordinance.” *Id.* The court thus affirmed the trial judge’s grant of summary judgment in favor of the county. *Id.* at 799, 631 S.E.2d at 379.

Lack of causation also doomed the plaintiff’s action in *Purvis v. Steve*, 284 Ga. App. 116, 643 S.E.2d 380 (2007), where the defendant county deputy’s “patrol car collided with a deer, apparently causing the deer’s severed head to strike [the plaintiff’s decedent] through the windshield of her oncoming vehicle.” *Id.* at 116, 643 S.E.2d at 382. According to the evidence, the court of appeals concluded, “[t]he sole proximate cause of the accident was the deer’s sudden appearance in the roadway, which was not foreseeable or avoidable by [the deputy] and was the cause of [the decedent’s] injuries.” *Id.* at 119, 643 S.E.2d at 384. The court held both deputy and county entitled to summary judgment. *Id.*

The court of appeals found the plaintiff’s claim equally illusive in *Johnson County School District v. Greater Savannah Lawn Care*, 278 Ga. App. 110, 629 S.E.2d 271 (2006), an action for a school district employee’s negligence in causing the plaintiff to wreck one of its trucks and to suffer a resulting loss of business profits. *See id.* at 110, 629 S.E.2d at 272-73. The court held that neither the profits history of the plaintiff’s predecessor nor evidence of the plaintiff’s scheduled receipts provided “the required specificity for calculating an amount of [the plaintiff’s] lost profits directly traceable to a wrongful act by the defendants.” *Id.* at 113, 629 S.E.2d at 274. The court thus reversed the trial judge’s denial of the defendant’s motion for partial summary judgment. *Id.* at 114, 629 S.E.2d at 275.

258. For treatment of personal liability litigation in local government law, see R. Perry Sentell, Jr., *Georgia Local Government Officers: Rights for their Wrongs*, 13 GA. L. REV. 747 (1979); R. Perry Sentell, Jr., *Individual Liability in Georgia Local Government Law: The Haunting Hiatus of Hennessy*, 40 MERCER L. REV. 27 (1988); R. Perry Sentell, Jr., *Local Government Tort Liability: The Summer of ‘92*, 9 GA. ST. U. L. REV. 405 (1993); R. Perry

*v. Barnes*²⁵⁹ featured a claim for the sheriff's gross security negligence leading to a superior court judge's murder while on the bench. The sheriff defended on grounds that he and the judge were co-employees of both the county and the state; thus, the tort action must bow to the exclusive remedy of workers' compensation.²⁶⁰ Rejecting that position, the court of appeals deemed the judge a state but not a county employee²⁶¹ and the sheriff a county but not a state official.²⁶² Accordingly, the court affirmed the trial judge's summary judgment for the plaintiff.²⁶³

*Clive v. Gregory*²⁶⁴ targeted the county building inspector for failing to inspect the plaintiffs' newly constructed barn which subsequently collapsed in a wind gust.²⁶⁵ Against the plaintiffs' complaint of resulting damages,²⁶⁶ the inspector sought protection by the "public duty doctrine"—a precept limiting an official's legal duty to the general public rather than to any particular individual.²⁶⁷ Reversing the trial

Sentell, Jr., "Official Immunity" in *Local Government Law: A Quantifiable Confrontation*, 22 GA. ST. U. L. REV. 597 (2006).

259. 282 Ga. App. 895, 640 S.E.2d 611 (2006).

260. *Id.* at 895, 640 S.E.2d at 612. The court of appeals agreed that "[u]nder [O.C.G.A. section] 34-9-11(a), the Georgia Workers' Compensation Act is the exclusive remedy for injuries sustained by an employee during the course of employment resulting from the negligence of a co-worker." *Freeman*, 282 Ga. App. at 896, 640 S.E.2d at 613 (citing O.C.G.A. § 34-9-11(a) (2004)).

261. *Freeman*, 282 Ga. App. at 898-99, 640 S.E.2d at 614-15. The court reasoned that superior court judges exercise state judicial power, are statutorily defined as state officials for compensation purposes, and serve a circuit and not simply a county in a circuit. *Id.* Finally, the judge's participation in a county pension and retirement plan does not constitute him a county employee. *Id.* Accordingly, the judge "was not a . . . County employee as well as a state employee." *Id.* at 899, 640 S.E.2d at 615.

262. *Id.* at 899, 640 S.E.2d at 615. The court reasoned that "the constitutional and statutory provisions relating to the office of sheriff . . . support[] the conclusion that he is not a state official, but a county official." *Id.*

263. *Id.* at 896, 640 S.E.2d at 613.

264. 280 Ga. App. 836, 635 S.E.2d 188 (2006).

265. *Id.* at 837-38, 635 S.E.2d at 191. The plaintiffs subsequently discovered that the barn had been constructed without the wall bracing required by the county code. *Id.* at 837, 635 S.E.2d at 191. "Apparently, it was not the practice of [the defendant's] office at that time to inspect barns, [sic] or to issue certificates of occupancy for barns." *Id.* at 838, 635 S.E.2d at 191.

266. *Id.* at 837, 635 S.E.2d at 191. Both plaintiffs had suffered both physical injury and property damage when the barn collapsed. *Id.*

267. *Id.* at 839, 635 S.E.2d at 192.

Under the public duty doctrine, "liability does not attach where the duty owed by the governmental unit runs to the public in general and not to any particular member of the public, except where there is a special relationship between the governmental unit and the individual giving rise to a particular duty owed to that

court's acceptance of that defense, the court of appeals emphasized the supreme court's limitation of the doctrine to the context of "police protection."²⁶⁸ Overruling its own previous extension of the principle to building inspectors,²⁶⁹ the court held the defendant in *Clive* devoid of "public duty" protection.²⁷⁰

Typically, most of the individual liability litigation implicated the doctrine of "official immunity."²⁷¹ Under that principle, officers sued in their "individual capacity" enjoy "qualified" or official immunity for "discretionary functions" performed without malice or intent. Officers sued in their individual capacity for "ministerial functions" enjoy no such immunity for their negligent conduct.²⁷²

Uniquely, the plaintiff park patron in *Norton v. Cobb*²⁷³ sought to hurdle both sovereign and official immunity, maintaining their "waiver" by the Recreational Property Act ("RPA"),²⁷⁴ a statute intended, ironically, "to encourage both public and private landowners to make their property available to the public for recreational purposes by limiting the owners' liability."²⁷⁵ Alleging injury resulting from a defective swing chain at a county park, the plaintiff sued both the

individual."

Id. (quoting *City of Rome v. Jordan*, 263 Ga. 26, 27, 426 S.E.2d 861, 862 (1993) (adopting the public duty doctrine)). For analysis, see R. Perry Sentell, Jr., *Georgia's Public Duty Doctrine: The Supreme Court Held Hostage*, 51 MERCER L. REV. 73 (1999).

268. See *Clive*, 280 Ga. App. at 840-41, 635 S.E.2d at 193. The court quoted from the supreme court's decisions in *Department of Transportation v. Brown*, 267 Ga. 6, 471 S.E.2d 849 (1996), and *Rowe v. Coffey*, 270 Ga. 715, 515 S.E.2d 375 (1999), where "the operative language in these Supreme Court decisions is 'police protection,' not police powers." *Clive*, 280 Ga. App. at 841, 635 S.E.2d at 193.

269. *Clive*, 280 Ga. App. at 841, 635 S.E.2d at 193 (citing *City of Lawrenceville v. Macko*, 211 Ga. App. 312, 439 S.E.2d 95 (1993), *overruled by Clive*, 280 Ga. App. 836, 635 S.E.2d 188)). "[N]o matter how well reasoned" its decision in *Macko* may have been, said the court, it is "inconsistent with these decisions of our Supreme Court, [and] it must be overruled." *Id.*

270. See *id.* The court thus reversed the trial judge's grant of summary judgement to the building inspector on the basis of the public duty doctrine. See *id.*

271. For background on that doctrine and analysis of its current status in the courts, see R. Perry Sentell, Jr., *Georgia Local Government Officers: Rights for their Wrongs*, 13 GA. L. REV. 747 (1979); R. Perry Sentell, Jr., *Individual Liability in Georgia Local Government Law: The Haunting Hiatus of Hennessy*, 40 MERCER L. REV. 27 (1988); R. Perry Sentell, Jr., *Local Government Tort Liability: The Summer of '92*, 9 GA. ST. U. L. REV. 405 (1993); R. Perry Sentell, Jr., "Official Immunity" in *Local Government Law: A Quantifiable Confrontation*, 22 GA. ST. U. L. REV. 597 (2006).

272. See sources cited *supra* note 271.

273. 284 Ga. App. 303, 643 S.E.2d 803 (2007).

274. *Id.* at 303, 643 S.E.2d at 805; O.C.G.A. §§ 51-3-20 to -26 (2000).

275. *Norton*, 284 Ga. App. at 305, 643 S.E.2d at 806 (citing O.C.G.A. § 51-3-20).

county and its maintenance employee²⁷⁶ and received summary disposition from the court of appeals.²⁷⁷ As for the county, “the trial court erred in finding that the RPA waived [its] sovereign immunity;”²⁷⁸ as for the employee’s inspection of the swing, he “was entitled to official immunity, which cannot be waived.”²⁷⁹ The court thus declared both defendants deserving of summary judgment.²⁸⁰

The court of appeals likewise applied official immunity in *Tant v. Purdue*,²⁸¹ an action against a county police officer whose investigation of a traffic accident resulted in charges against the plaintiff.²⁸² Although those charges were later dropped, the court characterized the officer’s conduct as “discretionary” when “he concluded from his investigation that [the plaintiff] had been driving recklessly and under the influence and when [the officer] signed the arrest warrant application to that effect.”²⁸³ Absent evidence of malice, the officer’s official immunity doomed the plaintiff’s action.²⁸⁴

276. *See id.* at 303, 643 S.E.2d at 805. The plaintiff alleged that, while a minor, he was using the park swing previously inspected by the defendant employee when the “S” hook attaching the swing chain to the seat broke and caused him to fall on his back. Upon attaining the age of eighteen, the plaintiff instituted an action against the county and the employee. *Id.* at 304, 643 S.E.2d at 805.

277. *Id.* at 306, 643 S.E.2d at 807. “[B]y its terms, [the RPA] limits liability of entities, private or public, which allow their property to be used without charge for recreational purposes.” *Id.*, 643 S.E.2d at 806-07 (citing O.C.G.A. § 51-3-20).

278. *Id.*, 643 S.E.2d at 807.

279. *Id.* at 307, 643 S.E.2d at 807 (citing GA. CONST. art. I, § 2, para. 9(d)). Even the trial court had determined the employee to be exercising a discretionary function in examining the swing and that he was not guilty of “actual malice.” *Id.* at 306, 643 S.E.2d at 807.

280. *Id.* at 307-08, 643 S.E.2d at 807-08. Additionally, the court held the defendants entitled to the protection proper of the RPA as well—the plaintiff did not trigger the statute’s exception in showing “that the condition is not apparent to those using the property.” *Id.* at 307, 643 S.E.2d at 807 (internal quotation marks omitted) (quoting *Ga. Marble Co. v. Warren*, 183 Ga. App. 866, 867, 360 S.E.2d 286, 287 (1987)). The defective “S” hook “would have been obvious to anyone using the equipment,” said the court, and the defendants were thus entitled to the immunity provided by the RPA. *Id.* at 308, 643 S.E.2d at 808.

281. 278 Ga. App. 666, 629 S.E.2d 551 (2006).

282. *Id.* at 666-67, 629 S.E.2d at 552. The plaintiff had struck another vehicle, killing his wife, and the defendant officer had originated charges of several traffic offenses including vehicular homicide and DUI. *Id.* at 667, 629 S.E.2d at 552-53. The plaintiff argued that the officer’s conduct consisted of “ministerial acts.” *Id.* at 668, 629 S.E.2d at 553.

283. *Id.* at 668, 629 S.E.2d at 553.

284. *See id.* The court held the record “devoid of any evidence suggesting that [the officer] acted with actual malice in the course of his duties” and affirmed the trial judge’s summary judgment against the plaintiff. *Id.* The court wasted no effort in reaching a

The court pursued a similar tact in *Daley v. Clark*,²⁸⁵ an action by parents of a high school student who suffered cardiac arrest during an after school fight.²⁸⁶ The plaintiffs sued first-responding law enforcement officers, alleging violation of a ministerial duty in failing to perform cardiopulmonary resuscitation (“CPR”).²⁸⁷ Following extensive review of the evidence, the court found “[n]o statute, legal precedent, or departmental policy [which] mandates the performance of CPR, however prudent it might be under the circumstances.”²⁸⁸ The defendants “were confronted with a possible homicide scene in addition to a medical emergency,” the court reasoned, and “[t]he manner in which they decided to assist the victim . . . was a judgment call.”²⁸⁹ “[O]n the basis of

similar conclusion in *Hersh v. Griffith*, 284 Ga. App. 15, 643 S.E.2d 309 (2007), an action against two off-duty county police officers operating police escort vehicles for a house mover. *Id.* at 15, 643 S.E.2d at 311. Responding to the plaintiff motorist who collided with the house and affirming directed verdicts for the officers, the court reasoned that the officers “exercised their own personal judgment deciding in what lanes to drive, how to signal oncoming traffic, when to stop oncoming traffic, etc.” *Id.* at 21, 632 S.E.2d at 315. As the court concluded, “[c]ontrolling traffic is a discretionary function,” there were no allegations of actual malice, and the defendant officers were entitled to official immunity. *Id.*

Finally, *Touchton v. Bramble*, 284 Ga. App. 164, 643 S.E.2d 541 (2007), yielded the same response concerning a county detective who exercised “personal judgment and deliberation,” *id.* at 167, 643 S.E.2d at 545 (quoting *Reed v. DeKalb County*, 264 Ga. App. 83, 86, 589 S.E.2d 584, 587 (2003)), in arresting the plaintiff for indecent exposure at an amusement park. *Id.* at 164, 643 S.E.2d at 542. The court held the officer’s evidence sufficient to raise a jury question (although the jury ultimately found the plaintiff not guilty) and that the officer’s “failure to take additional investigative steps does not show the actual malice or intent to injure necessary to strip him of official immunity.” *Id.* at 168, 643 S.E.2d at 545.

285. 282 Ga. App. 235, 638 S.E.2d 376 (2006).

286. *Id.* at 235, 638 S.E.2d at 378. A fellow student punched the plaintiffs’ son in the back of the head, causing sudden cardiac arrest. *Id.*

287. *Id.* at 236, 238, 638 S.E.2d at 378, 380. The plaintiffs contended that this duty derived from department policies and procedures. *Id.* at 238, 638 S.E.2d at 380.

288. *Id.* at 245, 638 S.E.2d at 384.

289. *Id.*, 638 S.E.2d at 385. “The uncontradicted evidence showed that no defendant was certified at the time to perform CPR. Surely whether to perform CPR on a crime victim who has sustained a possible brain injury or whether to wait for better trained personnel calls for the exercise of personal deliberation and judgment.” *Id.*

Somewhat similarly, also see the period case of *Reece v. Turner*, 284 Ga. App. 282, 643 S.E.2d 814 (2007), a student’s action against school personnel for sexual molestation by a school employee with a prior record. *Id.* at 283, 643 S.E.2d at 816. The court of appeals appraised the crux of the plaintiff’s complaint to charge negligent supervision and observed that numerous previous decisions had established school supervision to be a discretionary function. *Id.* at 285-86, 643 S.E.2d at 816-17. “Thus, the fact that the supervisory duties placed upon appellants were incorporated into an internal school policy document—the 1992 Memorandum—does not transform those duties into ministerial ones.” *Id.* at 286, 643

official immunity,” therefore, the officers enjoyed a summary judgment.²⁹⁰

The supreme court adopted an analogous approach in *Phillips v. Hanse*,²⁹¹ an action for the death of a driver struck by a suspect fleeing a county police officer.²⁹² Reviewing prior cases,²⁹³ the court denominated the officer’s decision to engage in the high-speed chase “a discretionary act,” a characterization unchanged by his violations of the county police manual.²⁹⁴ Next, the court addressed the issue of “actual malice” by observing evidence that the officer “intentionally bumped the fleeing vehicle.”²⁹⁵ Although possibly “reckless,”²⁹⁶ the court delineated, that conduct revealed no intention “to physically harm the suspect or any bystander” and, thus, no “deliberate intent to do wrong within the meaning of the term ‘actual malice.’”²⁹⁷

In a different—and shaping—procedural context, the court of appeals drew the line in *Bajjani v. Gwinnett County School District*,²⁹⁸ an action against school officials and personnel for severe injuries inflicted by one high school student upon another.²⁹⁹ In considering the

S.E.2d at 817. The defendants were thus held entitled to official immunity. *Id.*

290. *Daley*, 282 Ga. App. at 247, 638 S.E.2d at 386. “Telling a student to ‘shut up’ does not evidence a deliberate intention to harm [the victim]. Even moving away persons who were trying to help does not show malice, given the undisputed testimony that they were afraid the persons might harm him . . .” *Id.*

291. 281 Ga. 133, 637 S.E.2d 11 (2006).

292. *Id.* at 133-34, 637 S.E.2d at 11-12. The trial court had denied the defendant officer’s motion for summary judgment, the court of appeals had reversed, and the supreme court granted certiorari. *See id.* at 133, 637 S.E.2d at 11-12.

293. *E.g.*, *Cameron v. Lang*, 274 Ga. 122, 549 S.E.2d 341 (2001); *Logue v. Wright*, 260 Ga. 206, 392 S.E.2d 235 (1990), *superseded by statute*, O.C.G.A. § 50-21-22(2) (2006), *as recognized in* *Brantley v. Dep’t of Human Res.*, 271 Ga. 679, 523 S.E.2d 571 (1999).

294. *Phillips*, 281 Ga. at 134, 637 S.E.2d at 12. Evidence showed that the officer did not come to a complete stop at stop signs and traffic lights and that he bumped the fleeing vehicle in violation of the county police manual. *Id.*

295. *Id.*

296. *Id.* at 136, 637 S.E.2d at 14. “[O]ur cases establish that actual malice requires more than reckless conduct.” *Id.*

297. *Id.* at 136-37, 637 S.E.2d at 14. Accordingly, “we conclude that the [c]ourt of [a]ppeals properly held that [the officer] was entitled to summary judgment on his claim of official immunity from liability.” *Id.*

298. 278 Ga. App. 866, 630 S.E.2d 103 (2006), *rev’d*, 282 Ga. App. 197, 647 S.E.2d 254.

299. *Id.* at 866, 630 S.E.2d at 105. The victim had angered the attacking student in the classroom, to the teacher’s knowledge, and immediately after class the assailant severely beat the victim, kicking him in the face and stomach and stomping on his head while he lay unconscious on the concrete floor. The school principal and his assistant took the victim to the school clinic where the school nurse cleaned his wounds, but no other medical assistance was requested until the victim’s mother arrived and demanded a 911 call. The victim’s injuries proved to be quite serious and required extensive surgery and

defendants' motion for a judgment on the pleadings, a majority of the court initially focused on the plaintiffs' assertion that the school's safety plan did not address security issues mandated by a Georgia statute.³⁰⁰ On this claim, "the absence of a [safety] plan in the record necessitates the reversal of the trial court's entry of judgment . . . against [the plaintiffs]."³⁰¹ Similarly, the defendants' observation of the victim's condition "gave them reasonable cause to believe that an aggravated battery had occurred, thereby giving rise to a ministerial duty to report the incident under [a statutory provision]."³⁰² Finally, the court appraised the personnel's alleged failure to obtain immediate medical care: "[A] jury could find either that the defendants failed to provide [the victim] with any medical attention in breach of a ministerial duty on their part to do at least that, or that the care provided was so inadequate as to amount to no care at all."³⁰³ Accordingly, the court reversed the trial court's grant of the defendants' motion for judgment on the pleadings.³⁰⁴

treatment. *Id.* at 867-69, 630 S.E.2d at 105-06.

300. *Id.* at 871, 630 S.E.2d at 108 (citing O.C.G.A. § 20-2-1185 (2005)). O.C.G.A. section 20-2-1185(a) requires that "[e]very public school shall prepare a school safety plan to help curb the growing incidence of violence in schools." O.C.G.A. § 20-2-1185(a). "Although [the plaintiffs] acknowledge that a safety plan was developed for [the high school], they alleged in their complaint and they assert on appeal that the plan does not address security issues mandated by [O.C.G.A. section] 20-2-1185." *Bajjani*, 278 Ga. App. at 871, 630 S.E.2d at 108.

301. *Bajjani*, 278 Ga. App. at 871, 630 S.E.2d at 108. The court relied upon its recent decision in *Leake v. Murphy*, 274 Ga. App. 219, 617 S.E.2d 575 (2005). *Bajjani*, 278 Ga. App. at 871, 630 S.E.2d at 108.

302. *Bajjani*, 278 Ga. App. at 873, 630 S.E.2d at 108-09 (citing O.C.G.A. § 20-2-1184(b) (2005)). "Therefore, the [plaintiffs'] claim against defendants for failure to comply with the statutory reporting requirements should not have been dismissed." *Id.* at 874, 630 S.E.2d at 109. Even if the defendants' decisions were classified as discretionary, the court reasoned, the plaintiffs had alleged "wilfulness and corruption as well as malice ('deliberate intention to do wrong')." *Id.* at 874-75, 630 S.E.2d at 110 (quoting *Morrow v. Hawkins*, 266 Ga. 390, 391, 467 S.E.2d 336, 337 (1996)).

303. *Id.* at 874, 630 S.E.2d at 109-10. A dissenting opinion argued that "the Superintendent and members of the Board of Education are clothed with official immunity because deciding on the contents of the plan is discretionary." *Id.* at 876, 630 S.E.2d at 111 (Andrews, P.J., dissenting). Additionally, there was no "allegation of deliberate intent to cause harm to [the victim] by the principal, assistant principal, and nurse." *Id.* at 877, 630 S.E.2d at 111. Finally, "the grant of the motion to dismiss on this ground was not error." *Id.*

304. *Id.* at 866, 630 S.E.2d at 105 (majority opinion). Yet another procedural aspect prompted the court's reversal of official immunity for a building inspector in *Clive v. Gregory*, 280 Ga. App. 836, 635 S.E.2d 188 (2006), who had failed to inspect the plaintiffs' newly constructed barn which then collapsed from a wind gust. *Id.* at 836-37, 635 S.E.2d at 191. Because the defendant contended that no one requested an inspection and the

The court yet again delineated concepts in *Hicks v. McGee*,³⁰⁵ a claim for a superior court clerk's negligence in failing to inform the Department of Corrections of a prisoner's sentence.³⁰⁶ Rejecting the clerk's plea of official immunity for individual liability, the court deemed it "clear that [the plaintiff] is asserting that the defendant[] failed to perform the ministerial act of communicating his sentence."³⁰⁷ In contrast, the plaintiff's complaint against the defendant in her official capacity could not hurdle the barrier of sovereign immunity, and suffered dismissal.³⁰⁸

H. Zoning

In *Stanfield v. Glynn County*,³⁰⁹ the supreme court denied homeowners' argument for deleting a solid waste transfer facility as a permissible use under the county's "General Industrial" zoning classification.³¹⁰ Initially, the court construed the county's zoning ordinance: "Waste transfer facilities come within the broad language therein permitting industrial uses involving processing operations."³¹¹ As for conditions in the ordinance prohibiting obnoxious noise, odors, and

plaintiffs alleged such a request, "a question of fact exists on whether a request was made. We find . . . that if the evidence establishes that a request was made, [the defendant] then had the ministerial duty to inspect the barn[] and thus would not be entitled to assert the defense of official immunity." *Id.* at 843, 635 S.E.2d at 195.

Subsequent to this survey period, the judgment in *Bajjani* was reversed by the Georgia Supreme Court in *Murphy v. Bajjani*, 282 Ga. 197, 647 S.E.2d 54 (2007).

305. 283 Ga. App. 678, 642 S.E.2d 379 (2007).

306. *Id.* at 678, 642 S.E.2d at 381. That failure resulted in the plaintiff's serving an additional twenty-two months in prison following his sentence expiration. *Id.* Initially, the court employed the "continuing tort doctrine" to reject the defendant's reliance upon the statute of limitations. *See id.* at 679, 642 S.E.2d at 381. Here, the defendant's violation of her "continuing duty to communicate [the plaintiff's] sentence to the Department of Corrections resulted in continuous injury to [the plaintiff] in the form of an ever-increasing illegal confinement that was not eliminated until [the plaintiff] was released from prison . . . [and] filed suit six months after his release." *Id.*

307. *Id.* at 680, 642 S.E.2d at 382. The court rejected the defendant's contention that the plaintiff was complaining of her discretionary act in failing to supervise. *See id.* The court thus affirmed the trial court's denial of this portion of the defendant's motion to dismiss. *Id.*

308. *See id.* at 681, 642 S.E.2d at 382-83. "We agree with the trial court's conclusion that the [defendant is] entitled to sovereign immunity to the extent [she was] sued in [her] official [capacity]." *Id.*, 642 S.E.2d at 382.

309. 280 Ga. 785, 631 S.E.2d 374 (2006).

310. *See id.* at 788, 631 S.E.2d at 378; GLYNN COUNTY, GA., ZONING ORDINANCES § 720.2.

311. *Stanfield*, 280 Ga. at 787, 631 S.E.2d at 378. The court emphasized that zoning ordinances must be strictly construed in favor of the property owner. *Id.*

the like, these did not render the waste facility an unlawful use,³¹² but rather placed the owner on notice “that such noxious results will not be allowed, and will be subject to regulation by the police power of the County.”³¹³

Two cases of the period involved county changes to residential zoning restrictions.³¹⁴ *Hollberg v. Spalding County*³¹⁵ featured an adjoining landowner’s challenge to the grant of a special zoning exception for one-acre lots in a proposed residential subdivision.³¹⁶ Observing the two-pronged test on standing—“substantial interest” and “special damage”³¹⁷—the court of appeals first confronted the novel issue of the plaintiff’s status as devisee at the time the exception was granted.³¹⁸ Looking to “probate rules for guidance,” the court found that an “inchoate title” to real property enjoyed legal protection³¹⁹ and, thus,

312. *Id.* at 787-88, 631 S.E.2d at 378. “Since the zoning ordinance here does not contain any requirement for a determination of compliance with performance standards prior to construction of an industrial facility, the language setting forth those standards is properly construed as relating to subsequent enforcement.” *Id.* at 787, 631 S.E.2d at 378.

313. *Id.* at 787-88, 631 S.E.2d at 378 (quoting the trial court’s opinion in the case). “Therefore, the trial court correctly held that a waste transfer facility is a permissible use in a [General Industrial] district.” *Id.* at 788, 631 S.E.2d at 378. Finally, the court rejected the transfer facility’s contention that the county nuisance ordinance’s reference to “anything having an offensive odor” was unconstitutionally vague. *Id.* at 789, 631 S.E.2d at 379 (quoting GLYNN COUNTY, GA., ORDINANCES § 2-16-237). The court said “the actual definition of ‘nuisance’ in the ordinance is taken from current and past Georgia statutes.” *Id.*

314. *BBC Land & Dev., Inc. v. Butts County*, 281 Ga. 472, 640 S.E.2d 33 (2007); *Hollberg v. Spalding County*, 281 Ga. App. 768, 637 S.E.2d 163 (2006).

315. 281 Ga. App. 768, 637 S.E.2d 163 (2006).

316. *See id.* at 768-69, 637 S.E.2d at 165-66. The plaintiff sought either certiorari or declaratory judgment declaring null and void the county commissioners’ grant of the special exception for an adjoining proposed residential subdivision. *Id.* at 769, 637 S.E.2d at 166.

317. *See id.* at 772-73, 637 S.E.2d at 168-69. “[The plaintiff] argues that the trial court erred in determining that he lacked standing to challenge the Board’s approval of the special exception pursuant to the substantial interest-aggrieved citizen test.” *Id.* at 772, 637 S.E.2d at 168.

318. *Id.* at 772, 637 S.E.2d at 168. The plaintiff had inherited his property from his mother who had died in 2003, but the county approved the special exception in 2004, before the mother’s estate was settled in 2005. *Id.* at 768-70, 637 S.E.2d at 165-67. “Whether a devisee of real property has a substantial interest in a zoning decision so as to satisfy the first prong of the test is a matter of first impression in this state.” *Id.* at 772, 637 S.E.2d at 168.

319. *Id.* at 772-73, 637 S.E.2d at 168-69. The court observed that an inchoate title in realty can be voluntarily conveyed, can be the subject of a fraudulent conveyance, and is an assignable property right. *Id.* at 773, 637 S.E.2d at 169.

provided a substantial interest to the challenger in the case.³²⁰ On the remaining prong of special damage, however, the court stressed an admission by the plaintiff's own counsel that "his property values had actually increased since the grant of the special exception."³²¹ Accordingly, the court affirmed the plaintiff's lack of standing to challenge the county's actions.³²²

The supreme court proved equally hospitable to county changes in *BBC Land & Development, Inc. v. Butts County*,³²³ presenting the following scenario: developers purchased and developed lands in accordance with county zoning allowing homes of 1500 square feet; the county then amended its zoning ordinance to raise minimum home sizes to 2000 square feet; and developers subsequently sold lots to the plaintiff builders who sought permits to build the smaller homes. Upon the county's refusal to issue the permits, the plaintiffs contended that developers' vested rights in the property had been transferable to them.³²⁴ In response, the court rejected the plaintiffs' analogy of vested rights and nonconforming uses and upheld county refusal of the

320. *Id.* at 772-73, 637 S.E.2d at 168-69. "[W]e hold that such [inchoate] title is sufficient to give [the plaintiff] a 'substantial interest' in the grant of the special exception to [the adjoining owner]." *Id.* at 773, 637 S.E.2d at 169.

321. *Id.* at 774, 637 S.E.2d at 170. The court also noted greatly increased appraisals of the plaintiff's property. *See id.* at 775, 637 S.E.2d at 170.

322. *Id.* at 775, 637 S.E.2d at 170. "Given the expert testimony that the value of the land had appreciated considerably since the date the special exception was granted, we find no error in the trial court's ruling that [the plaintiff] failed to meet his burden of proving standing to challenge the special exception." *Id.*

The "substantial interest-special damage" standing requirement itself drew the supreme court's attention in *Massey v. Butts County*, 281 Ga. 244, 637 S.E.2d 385 (2006), more specifically the continuing appropriateness of that test in cases where a property owner seeks equitable means for attacking the county's issuance of a building permit. Here, a landowner sought declaratory and injunctive relief for a county board of zoning appeals' issuance of a building permit for a neighboring barn. *Id.* at 244-45, 637 S.E.2d at 386. The court traced two seemingly conflicting lines of decisions on the point and concluded that the judiciary's special damage requirement had emerged after legislative enactments and, despite subsequent inconclusive action in the constitution, continued in effect. *Id.* at 247-48, 637 S.E.2d at 388-89. "Accordingly, the trial court was correct when it dismissed [the plaintiff's] judicial appeal in light of [his] failure to establish 'special interest—aggrieved citizen' standing, and the [c]ourt of [a]ppeals correctly affirmed that decision." *Id.* at 248, 637 S.E.2d at 389.

323. 281 Ga. 472, 640 S.E.2d 33 (2007).

324. *Id.* at 472-73, 640 S.E.2d at 34. No one denied the developers' vested rights. *Id.* at 473, 640 S.E.2d at 34. "This appeal concerns the question whether vested rights to build in accordance with prior zoning requirements are transferable." *Id.* at 472, 640 S.E.2d at 34.

permits.³²⁵ “We conclude,” the court announced, “that vested rights to develop property in accordance with prior zoning are personal to the owner of them and are not transferable with the land.”³²⁶

In *EarthResources, LLC v. Morgan County*,³²⁷ the court reviewed a county’s refusal to verify zoning compliance for the plaintiff’s proposed landfill.³²⁸ Under the county’s applicable zoning ordinance, the plaintiff contended, the landfill would constitute a “public utility” as permitted in areas zoned for agriculture.³²⁹ Rejecting that position, the supreme court relied upon its prior decision that “the Public Service Commission, rather than any other agency of the executive branch, has authority to regulate public utilities.”³³⁰ That decision alone sufficiently excluded “[the plaintiff’s] landfill from the category of public utility,” likewise withdrawing it from the definition contained in the county zoning ordinance.³³¹ Accordingly, the trial court had correctly determined that “a privately-owned landfill is not a public utility,”³³² and the supreme court affirmed summary judgment for the county.³³³

III. LEGISLATION

The 2007 General Assembly’s lengthy session treated a vast array of subjects impacting the state’s local governments. Merely a hint of

325. *Id.* at 473-74, 640 S.E.2d at 34-35.

Thus, while vested rights to develop property in accordance with prior zoning come into being because of the investment of the owner and may thus appropriately be deemed the property of the owner, a nonconforming use develops because of actions of the governing authority and, not being due to any action of the owner, becomes part of the character of the property.

Id., 640 S.E.2d at 35.

326. *Id.* at 474, 640 S.E.2d at 35. The court thus affirmed the trial judge’s denial of the equitable and extraordinary relief sought by the plaintiff builders. *See id.*

327. 281 Ga. 396, 638 S.E.2d 325 (2006).

328. *See id.* at 396-97, 638 S.E.2d at 327. The plaintiff needed the county’s verification in order to pursue a state permit to build the landfill. *See id.* at 396, 638 S.E.2d at 327 (citing O.C.G.A. § 12-8-24(g) (2006)).

329. *Id.* at 397, 638 S.E.2d at 327. The plaintiff contended that its landfill would be a public utility because it would be regulated and controlled by the Environmental Protection Division of the Georgia Department of Natural Resources. *Id.*

330. *Id.* (quoting *Lasseter v. Ga. Pub. Serv. Comm’n*, 253 Ga. 227, 230, 319 S.E.2d 824, 827-28 (1984)).

331. *Id.* at 397-98, 638 S.E.2d at 327. “That holding alone is sufficient to exclude the Department of Natural Resources from the role of a state regulatory commission regulating and controlling public utilities and, therefore, to exclude [the plaintiff’s] landfill from the category of public utility.” *Id.* at 397, 638 S.E.2d at 327.

332. *Id.* at 397, 638 S.E.2d at 327.

333. *Id.* at 399, 638 S.E.2d at 329.

selected measures will confirm the reach and the range of targeted facets.³³⁴

Following a prolonged period of consideration, negotiation, and frustration, the session finally yielded a replacement for the nonbinding dispute resolution process regarding municipal annexation.³³⁵ The new procedure allots a county thirty days in which to object to a proposed municipal annexation,³³⁶ thereby triggering the appointment of a five-member arbitration panel (experts from outside the county) to hear the objections.³³⁷ The panel considers a number of noted factors and may set conditions on the city's proposed zoning and density.³³⁸ Should the city, county, and subject landowner reach agreement during the process, that agreement stands as the panel's conclusion.³³⁹ Otherwise, the panel's decision may be appealed to the superior court.³⁴⁰

Yet a second measure going to the heart of the governmental entity pertains only to counties—and then only counties having no cities within their boundaries.³⁴¹ The statute establishes a procedure via which such county may be classified as a “consolidated government.”³⁴²

Local government officers and employees found themselves popular targets of new legislation, several of the statutes affording various benefits and protections. One of those statutes extended “whistleblower” protection to city, county, and school board employees—the legislative authorization to sue their employer for retaliatory treatment resulting from the employee's reporting of governmental wrongdoing.³⁴³

334. Information on the measures summarized is drawn from a helpful paper, *Final Legislative Report: 2007 Session of the General Assembly, ASS'N COUNTY COMM'RS OF GA.*, June 2007.

335. Ga. H.R. Bill 2, Reg. Sess. (2007) (codified as amended at O.C.G.A. §§ 36-36-11 (2206 & Supp. 2007), -110 to -119 (Supp. 2007)).

336. *See id.* The county may object to such matters as a material change in zoning, land use, or infrastructure demands. *Id.* (codified at O.C.G.A. § 36-36-113(a)).

337. *Id.* (codified at O.C.G.A. § 36-36-114).

338. *Id.* The panel may set conditions on the proposed annexation which will have a binding effect for one year. *Id.* (codified at O.C.G.A. § 36-36-115).

339. *Id.* (codified at O.C.G.A. § 36-36-119).

340. *Id.* (codified at O.C.G.A. § 36-36-116). The statute provides for the court's expedited review. *Id.*

341. Ga. H.R. Bill 109, Reg. Sess. (2007) (codified as amended at O.C.G.A. § 36-68-4 (Supp. 2007)).

342. *Id.* (codified as amended at O.C.G.A. § 36-68-4(b)).

343. Ga. H.R. Bill 16, Reg. Sess. (2007) (codified as amended at O.C.G.A. § 45-1-4 (Supp. 2007)). The statute had previously applied only to state employees. O.C.G.A. § 45-1-4 (2002) (amended 2007). It authorizes suit if the employee is fired, demoted, suspended, or not hired. Ga. H.R. Bill 16.

A second protective measure declares confidential status for the “personal information” of non-elected local government employees.³⁴⁴ Accordingly, such information (for example, social security number, financial data, insurance, or medical information) is to be redacted from any records disclosed pursuant to the Open Records Act.³⁴⁵

Finally, local governments obtained statutory authority to establish a trust fund for post-employment benefits, a measure enabling those governments to comply with the financial reporting requirements of new governmental accounting standards.³⁴⁶

County tax commissioners received special legislative attention. One statute, for example, prohibits the commissioner (and the commissioner’s employee) from buying real property sold at a county public auction.³⁴⁷ A second measure addresses the commissioner’s arrangement to receive additional compensation for collecting municipal taxes.³⁴⁸ That arrangement may now be accomplished under a single contract between county and city, with the county receiving the compensation and then paying it to the tax commissioner.³⁴⁹

Local government elections drew statutory modification in at least two major respects. First, new legislation came down forcefully on a number of election offenses, including false registration, election interference, elector intimidation, unqualified voting, and fraud by poll workers.³⁵⁰ The statute drastically increased penalties for those offenses—indeed, changing their classification from misdemeanor to felony.³⁵¹ A second measure devoted extensive attention to the tabulation of absentee ballots—their safekeeping, certification, and validation.³⁵² It required the registrar to publish written notice one week in advance of the

344. Ga. S. Bill 212, Reg. Sess. (2007) (codified as amended at O.C.G.A. § 50-18-72 (11.3)(A) (Supp. 2007)).

345. *Id.*; O.C.G.A. §§ 50-18-70 to -77 (2006 & Supp. 2007).

346. Ga. S. Bill 156, Reg. Sess. (2007) (codified as amended at O.C.G.A. § 47-20-10(h) (Supp. 2007)).

347. Ga. H.R. Bill 222, Reg. Sess. (2007) (codified at O.C.G.A. § 48-4-23 (Supp. 2007)). There is an exception if the commissioner or employee possessed an interest in the property when the taxes became delinquent. *Id.*

348. Ga. H.R. Bill 486, Reg. Sess. (2007) (codified as amended at O.C.G.A. § 48-5-359.1 (Supp. 2007)).

349. *Id.* The statute applies to counties with 50,000 or more tax parcels. *Id.*

350. Ga. S. Bill 40, Reg. Sess. (2007) (codified as amended at O.C.G.A. § 21-2-384 (Supp. 2007)).

351. *Id.*

352. Ga. S. Bill 194, § 4, Reg. Sess. (2007) (codified as amended at O.C.G.A. § 21-2-386 (Supp. 2007)).

election should he or she plan to open absentee ballots prior to the close of the polls.³⁵³

The legislative session typically devoted considerable attention to issues of local government taxation and financial facets. Newly enacted statutes effected local sales tax exemptions in two socially important areas. The first exemption covered prepared food and beverages donated to a nonprofit agency for hunger relief and donations going to assist with natural disasters.³⁵⁴ A second statute crafted a sales tax exemption for construction materials used in alternative fuel facilities which derive those fuels from agricultural products and animal fats.³⁵⁵

As for financial power grants, local governments received authorization to collect storm-water impact fees upon their approval of development which authorizes site construction.³⁵⁶ The measure increased development interests' representation on the Development Impact Fee Advisory Committee³⁵⁷ and required detailed records on properties paying impact fees as well as those receiving exemptions.³⁵⁸

A second financial authorization focused upon the local government's 9-1-1 surcharge.³⁵⁹ The statute enlarged the definition of telephone service to include all technologies capable of delivering voice communications and accessing a 9-1-1 public safety answering point.³⁶⁰ Fees collected are remitted directly to the local government, except for pre-paid fees which go to the Department of Community Affairs for 9-1-1 improvements in needy areas.³⁶¹

The legislature effected a host of regulatory measures impacting local governments. Importantly, a reform of the cable franchise law enabled cable or video providers to apply, through the secretary of state's office,

353. *Id.*

354. Ga. H.R. Bill 169, Reg. Sess. (2007) (codified as amended at O.C.G.A. § 48-8-3(57.2)(A) (Supp. 2007)). The statute contains a sunset provision of June 30, 2009. *Id.*

355. Ga. H.R. Bill 186, Reg. Sess. (2007) (codified as amended at O.C.G.A. § 48-8-3(34.4)(A) (Supp. 2007)). The statute contains a sunset provision for June 30, 2012. *Id.*

356. Ga. H.R. Bill 232, §§ 1-2, Reg. Sess. (2007) (codified as amended at O.C.G.A. §§ 36-71-2, -4 (2006 & Supp. 2007)).

357. Ga. H.R. Bill 232, § 3, Reg. Sess. (2007) (codified as amended at O.C.G.A. § 36-71-5 (2006 & Supp. 2007)). An increase from forty percent to fifty percent. *Id.*

358. Ga. H.R. Bill 232, § 4, Reg. Sess. (2007) (codified as amended at O.C.G.A. § 36-71-8 (2006 & Supp. 2007)). The detailed records required include the property address, the amount of fees collected, and any reasons for exemptions. *Id.*

359. Ga. H.R. Bill 394, Reg. Sess. (2007) (codified as amended at O.C.G.A. § 16-11-39.2 (2007)).

360. *Id.*

361. *Id.* Grant applications for those areas will be approved by the Governor's 9-1-1 Advisory Council. *Id.*

for a state franchise to provide cable services statewide.³⁶² The providers will still pay the five percent franchise fee directly to the local government,³⁶³ and customer service will still be locally enforced.³⁶⁴

New legislation empowered counties and municipalities to require taxicab owners or operators to obtain a certificate of public necessity in order to operate inside the local government.³⁶⁵ The government may formulate certificate requirements (allowable under Georgia law) and issue certificates that are transferable to new taxicab owners or operators.³⁶⁶

Local governments also suffered regulatory prohibitions; specifically, on the issue of water connections.³⁶⁷ The subject statute prohibited counties and municipalities from requiring a water connection—or charging a water availability fee—of any existing single family residence or farm which is obtaining its water from a safe private well.³⁶⁸ The local government must notify the property owner of the right to opt out of the connection or availability fee.³⁶⁹ The statute expressly continued the local government's power to require water connections for new residences or subdivisions.³⁷⁰

Finally, the legislature addressed the instance of a governmental entity's taking bids on public works projects.³⁷¹ Should it elect to do so, the measure provides, the entity may accept in lieu of a bid bond for the project an irrevocable letter of credit up to a threshold of \$750,000.³⁷²

IV. CONCLUSION

Oh, for more *sine die* adjournments in the nocturnal administration of local government!

362. Ga. H.R. Bill 227, Reg. Sess. (2007) (codified at O.C.G.A. §§ 36-76-1 to -11 (Supp. 2007)). Providers may continue under existing agreements with local governments or immediately opt into the state agreement. *Id.* (codified at O.C.G.A. § 36-76-4 (Supp. 2007)).

363. *Id.* (codified at O.C.G.A. § 36-76-6 (Supp. 2007)).

364. *Id.* (codified at O.C.G.A. § 36-76-7 (Supp. 2007)). Until competition exists in at least fifty percent of the jurisdiction. *Id.*

365. Ga. H.R. Bill 519, Reg. Sess. (2007) (codified at O.C.G.A. § 36-60-25 (Supp. 2007)).

366. *Id.* Upon the new owner or operator meeting all requirements. *Id.*

367. Ga. H.R. Bill 247, § 2, Reg. Sess. (2007) (codified at O.C.G.A. § 36-60-17.1 (Supp. 2007)).

368. *Id.* Unless the well's water is demonstrably unfit for human consumption. *Id.*

369. *Id.*

370. *Id.* The statute exempts public water systems serving over 70,000 connections or averaging more than 200 connections per square mile. *Id.*

371. Ga. H.R. Bill 134, Reg. Sess. (2007) (codified as amended at O.C.G.A. § 36-91-71 (2006 & Supp. 2007)).

372. *Id.* This represents an increase from the previous \$300,000 threshold, and the government entity still possesses sole discretion as to accepting a letter of credit. *Id.*