Local Government Law

by James E. Elliott Jr.*

I. INTRODUCTION

Because each and every tort occurs somewhere "in a county" and frequently "within the city limits," local governments often find themselves to be reluctant guests in the litigation resulting from such events. Likewise, citizens and public sector employees seem less hesitant to *fight city hall* than in days past. For these reasons (and others), litigation involving municipalities, counties, and their related entities enjoyed another banner year in Georgia, affording multiple opportunities for the appellate courts to establish new rules of law in the area or to reaffirm (and, occasionally, fine-tune) long-standing rules.

II. SOVEREIGN IMMUNITY: RUMORS OF ITS DEMISE HAVE BEEN GREATLY EXAGGERATED

During the survey period, claimants and their appellate counsel fought fiercely to survive analysis of their cases under various nuances on the theme of governmental immunity. Government actors and their attorneys worked just as aggressively to define their actions as coming within the protections of immunity, thus avoiding the risk of having jurors determine the outcome of their cases. Overall, the common law rule fared well.

"The doctrine of official immunity provides that although a public officer or employee may be held personally liable for his negligent ministerial acts, 'he may not be held liable for his discretionary acts unless such acts are wilful [sic], wanton, or outside the scope of his authority.'"[1] Thus, determinative of whether official immunity will provide

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1. Kennedy v. Mathis, 297 Ga. App. 295, 297, 676 S.E.2d 746, 748 (2009) (quoting Gilbert v. Richardson, 264 Ga. 744, 752, 452 S.E.2d 476, 482 (1994)).

a shield for the actions of a public actor is first whether the action was ministerial or discretionary in nature.[2] For the former, a cause of action will lie for the negligent performance thereof, but for the latter, there is generally protection unless the action is accompanied by malice or is ultra vires on the part of the actor.[3]

In *Kennedy v. Mathis*,[4] the road superintendent for Fannin County, Georgia was required, in the scope of his employment, to follow an unwritten county policy to have his employees mow vegetation along county roadways from "ditch to ditch." Kennedy was injured when his motorcycle collided with a vehicle that was backing out of a residence on a county road. The vehicle driver contended that her view was partially obstructed by vegetation growing along the roadway. Based upon this contention, the government employee was invited to become a part of the litigation.[5]

In its analysis of Mathis's role with the county government, the Georgia Court of Appeals noted that Mathis supervised a crew of approximately fifty employees and was charged with maintenance of the county's rights-of-way, albeit with few, if any, written rules, regulations, or policies.[6] It was the responsibility of the department to mow the roadways twice per year.[7] There was apparently no further direction from the governing authority of the county.[8]

The court acknowledged its duty to determine whether Mathis's actions were ministerial or discretionary in nature and that the answer to this question would be determinative of the claim.[9] The court explained:

> "A ministerial act is . . . one that is simple, absolute, and definite, arising under conditions admitted or proved to exist, and requiring merely the execution of a specific duty. A discretionary act calls for the exercise of personal deliberation and judgment, which in turn entails examining the facts, reaching reasoned conclusions, and acting on them in a way not specifically directed. Procedures or instructions adequate to cause an act to become merely ministerial must be so clear, definite

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2. *See id.* (citing Banks v. Happoldt, 271 Ga. App. 146, 149, 608 S.E.2d 741, 744 (2004)).
3. *See id.* (citing *Banks*, 271 Ga. App. at 149, 608 S.E.2d at 744).
4. 297 Ga. App. 295, 676 S.E.2d 746 (2009).
5. *Id.* at 296–97, 676 S.E.2d at 747.
6. *Id.* at 296, 676 S.E.2d at 747.
7. *Id.* at 297, 676 S.E.2d at 747.
8. *See id.* at 296–97, 676 S.E.2d at 747.
9. *See id.* at 297, 676 S.E.2d at 748.

> and certain as merely to require the execution of a relatively simple, specific duty."[10]

The court determined that Mathis should be afforded the protection of immunity because of the broad discretion given him to accomplish the semi-annual mowing of county road shoulders, including the plan for doing so,[11] the ability to determine what type of equipment to use, and how best to use the resources given by the county.[12] The court stated that "[i]n the absence of any standards or guidelines dictating the manner, method, and time limit for completing the task, Mathis necessarily was vested with discretion."[13]

The court provided insight into factors it seemed to believe necessary to find a duty ministerial in nature, primarily the existence of a policy requiring specific actions under certain situations including time, manner, or method of execution limitations.[14] Because Fannin County gave no such specific instructions to its roads department and superintendent, the court held that the grant of summary judgment to Mathis was proper.[15]

An injured party in *Todd v. Brooks*[16] believed he found a sufficiently specific provision under section 4-3-4 of the Official Code of Georgia Annotated (O.C.G.A.):[17] "It shall be the duty of the sheriff, his deputies, or any other county law enforcement officer to impound livestock found to be running at large or straying."[18] In *Todd* the plaintiff asserted a claim against a sheriff's deputy who shot and killed a bull found wandering near a public road.[19] Brooks, the deputy, was dispatched to impound the animal, but when he and a passerby attempted to corral the bull into a fenced area, "the bull turned and began to advance toward Brooks with its head lowered, [and] Brooks shot the bull in the head and killed it."[20]

Holding that the statute in question did not provide a specific manner in which a law enforcement officer must impound a stray animal with

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10. *Id.* (alteration in original) (quoting *Banks*, 271 Ga. App. at 149, 608 S.E.2d at 744).
11. Mathis testified that his "crews would start 'at one end of the county and go all the way through the county.'" *Id.*, 676 S.E.2d at 747.
12. *Id.* at 298, 676 S.E.2d at 748.
13. *Id.* (citing Murray v. Ga. Dep't of Transp., 284 Ga. App. 263, 269, 644 S.E.2d 290, 296 (2007)).
14. *See id.* at 298–99, 676 S.E.2d at 748–49.
15. *Id.* at 299, 676 S.E.2d at 749.
16. 292 Ga. App. 329, 665 S.E.2d 11 (2008).
17. O.C.G.A. § 4-3-4 (1995).
18. *Id.* § 4-3-4(a); *Todd*, 292 Ga. App. at 331, 665 S.E.2d at 13.
19. 292 Ga. App. at 329, 665 S.E.2d at 12.
20. *Id.* at 329–30, 665 S.E.2d at 12.

clear, definite, and certain procedures, and noting that the duty to impound "was not simple or specific," the court of appeals held that the duty imposed upon the government employee was discretionary and not ministerial, thus affording immunity to the shooting sheriff.[21] In its analysis, the court reiterated a long-standing principle that immunity is necessary "'to preserve the public employee's independence of action without fear of lawsuits and to prevent a review of his or her judgment in hindsight.'"[22] It further recognized that the Georgia Supreme Court had previously held that simply because an action is required by statute, it "is not necessarily 'the equivalent of a ministerial act that deprives the actor of official immunity if done negligently.'"[23]

As noted above, even a discretionary act, done with an improper motive or by an unauthorized actor, may lead to liability for the government.[24] However, to enable law enforcement officers to perform their duties without the constant threat of lawsuits, it is well-established that public policy considerations often weigh against the imposition of liability for foreseeable harms.[25] A lawsuit was filed against an officer in *Selvy v. Morrison*[26] under the belief that the officer's action evidenced an appropriate circumstance to waive this protection.[27] Believing that the profane language used by the officer at the time of her arrest[28] sufficiently showed actual malice or intent to cause injury, Anita Selvy asserted her claim that immunity would not protect the officer in a discretionary action (namely, making the decision to arrest her), which would be protected but for the egregious behavior of the officer.[29]

In upholding the grant of summary judgment to the officers, the court of appeals noted that "[e]ven when an arresting officer operates on a mistaken belief that an arrest is appropriate, official immunity still

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21. *Id.* at 331, 665 S.E.2d at 13–14.

22. *Id.* at 330, 665 S.E.2d at 12–13 (quoting Cameron v. Lang, 274 Ga. 122, 123, 549 S.E.2d 341, 344 (2001)).

23. *Id.* at 331, 665 S.E.2d at 13 (quoting Murphy v. Bajjani, 282 Ga. 197, 199, 674 S.E.2d 54, 57 (2007)).

24. *See supra* text accompanying notes 1–3.

25. *See* Ansley v. Heinrich, 925 F.2d 1339, 1344 (11th Cir. 1991); 16A EUGENE MCQUILLIN, MUNICIPAL CORPORATIONS § 45.20 (3d ed. 2002 & Supp. 2008).

26. 292 Ga. App. 702, 665 S.E.2d 401 (2008).

27. *Id.* at 702, 665 S.E.2d at 403.

28. In deference to the dignity of the Author's Southern Baptist mother, the actual language used during the arrest, quoted by the court in the opinion, is being omitted. However, readers are urged to access the opinion to get the full flavor.

29. *Selvy*, 292 Ga. App. at 704, 665 S.E.2d at 404.

applies."[30] Moreover, it held that official immunity survives even when an officer's actions may include slamming against a vehicle, making threats, and using profanity.[31] The court noted, "'[E]vidence demonstrating frustration, irritation, and possibly even anger is not sufficient to penetrate official immunity.'"[32] Having failed to show that Morrison "deliberately intended to commit a wrongful act,"[33] Selvy was unable to pursue her claim.[34]

The Georgia Supreme Court offered a different perspective in *Georgia Department of Transportation v. Heller*.[35] Heller's wife was killed when the taxicab in which she was traveling spun out of control on a rain-slick highway. Her suit against the City of Atlanta's vehicle-for-hire inspector and other defendants was based upon the inspector giving the vehicle a passing grade despite its tires having little or no tread. Allegedly, the inspector's supervisor knew the inspector had improperly inspected tires, and this constituted a nuisance.[36]

Discerning the inspector's job duties, the supreme court determined that the duty to inspect the condition of taxi tires was ministerial in nature.[37] Because of the inspector's

> unauthorized and inadequate inspection that allowed the taxi in question to be cleared for operation, and because [his] actions in this regard violated ministerial duties, [the supreme court held] that the Court of Appeals correctly concluded that [the inspector] was not shielded from potential liability by the doctrine of official immunity.[38]

III. ON THE ONE HAND, BEWARE THE RULES OF LAW; ON THE OTHER, EMBRACE THEM

Even with a cause of action that can successfully be asserted against a local government, its officers, or its employees, a claimant must be cognizant of procedural rules that can determine the success or failure of a claim. "'[O]ur Constitution and law give great protection to counties

30. *Id.* at 706 n.17, 665 S.E.2d at 406 n.17 (quotation marks omitted) (quoting Reed v. DeKalb County, 264 Ga. App. 83, 86, 589 S.E.2d 584, 587 (2003)).

31. *Id.* at 706, 665 S.E.2d at 406.

32. *Id.* (alteration in original) (quoting Tittle v. Corso, 256 Ga. App. 859, 862, 569 S.E.2d 873, 877 (2002)).

33. *Id.*

34. *Id.* at 707, 665 S.E.2d at 406.

35. 285 Ga. 262, 674 S.E.2d 914 (2009).

36. *Id.* at 262, 674 S.E.2d at 916.

37. *Id.* at 267, 674 S.E.2d at 918.

38. *Id.* at 267–68, 674 S.E.2d at 919. Note to city and county attorneys: beware of job descriptions.

and cities. As a result, claims . . . sometimes fail because of the technical difficulties associated with prosecuting a claim against a governmental entity.'"[39]

The purpose of ante litem notice requirements is to afford governments the opportunity to resolve claims without the necessity and expense of litigation, when appropriate.[40] Such notices serve as a "mini" statute of limitations, and the failure to timely and appropriately submit a notice will result in the dismissal of a claim in its entirety.[41] Enacted many years ago,[42] the ante litem notice requirement is still alive and well.

The failure to submit a timely claim was fatal in *Meadows v. Houston County*.[43] In 1999 a property owner discovered county employees performing drainage work on privately owned property. The work was allegedly done for the purpose of addressing problems related to flooding on an adjacent public right-of-way. When the owner demanded that the county employees restore the property to its original condition, they left the site instead. Complaints about the incident led to the execution of an agreement between the county and the owner in 2001 for related work to be performed by the county.[44] A dispute arising out of the agreement resulted in suit being filed against the county in 2006.[45]

The court of appeals affirmed the trial court's grant of summary judgment for the defendants.[46] "It is undisputed that no written notice was provided to the county of any claim in connection with any work performed by its workers until August 2003. By this time, any action either contesting or contrary to the terms of the settlement agreement was barred."[47]

Conversely, the court of appeals held in *Savage v. E.R. Snell Contractor, Inc.*[48] that substantial compliance (rather than hyper-technical compliance) with the requirements of an ante litem notice

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39. Watts v. City of Dillard, 294 Ga. App. 861, 864, 670 S.E.2d 442, 444 (2008) (second alteration in original) (quoting Scott v. City of Valdosta, 280 Ga. App. 481, 481, 634 S.E.2d 472, 474 (2006)).

40. Williams v. Ga. Dep't of Human Res., 272 Ga. 624, 625, 532 S.E.2d 401, 403 (2000).

41. *See id.* at 625–26, 532 S.E.2d at 403.

42. GA. CODE § 479 (1863) (current version at O.C.G.A. § 36-11-1 (2006)); *see* Georgia Tort Claims Act, 1992 Ga. Laws 1883, 1888–89 (codified as amended at O.C.G.A. § 50-21-26 (2009)).

43. 295 Ga. App. 183, 671 S.E.2d 225 (2008).

44. *Id.* at 183–84, 671 S.E.2d at 226–27.

45. *Id.* at 185–86, 671 S.E.2d at 227.

46. *Id.* at 186, 671 S.E.2d at 227, 228.

47. *Id.*, 671 S.E.2d at 228.

48. 295 Ga. App. 319, 672 S.E.2d 1 (2008).

statute is sufficient.[49] In *Savage* a property owner alleged that a 2004 or 2005 road-widening project caused flooding in her yard, house, and septic system. An ante litem notice asserting claims for damage was submitted to the State on July 25, 2006. Urging that the owner was aware of potential claims prior to July 25, 2005, the State moved at the trial court for dismissal of all claims because of the alleged untimeliness of the statutory notice.[50] The alleged failure of the notice to contain the specific dates on which flooding had occurred was also asserted as a defense under the notice requirement.[51]

Upholding the trial court's finding that claims for damage prior to July 25, 2005, were time barred—but that all others could proceed—the court of appeals held that an ongoing nuisance had occurred on the property and "a new cause of action arose with each loss."[52] As such, the notice was timely for all damage occurring after the twelve months preceding the date of the notice to the State.[53] In addition, the plaintiffs

> did not know the precise times of the reportedly nearly constant flooding events at the property. Given the contents of their notice, the continuing nature of their claims, and their inability to recall the specific times of the flooding incidents, [the court] conclude[d] that the [plaintiffs] complied with the plain language of the ante litem notice provisions.[54]

IV. LEGISLATIVE CONFLICTS, OR A LACK THEREOF

Confusion over statutory language was the issue in *Concerned Citizens of Willacoochee v. City of Willacoochee*.[55] Conflicts between the 1953 city charter and a 1980 charter amendment led to litigation over the method for filling vacancies on the city's governing authority.[56] The 1953 charter provided that vacancies could be "filled by appointment and selected by the mayor and aldermen."[57] The 1980 charter amendment

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49. *See id.* at 325–26, 672 S.E.2d at 7.

50. *Id.* at 320, 672 S.E.2d at 3. Notice of a claim against the State or one of its agencies is required under O.C.G.A. § 50-21-26 (2009) "within [twelve] months of the date the loss was discovered or should have been discovered." O.C.G.A. § 50-21-26(a)(1).

51. *Savage*, 295 Ga. App. at 322, 672 S.E.2d at 5.

52. *Id.* at 324–25, 672 S.E.2d at 5–6.

53. *See id.*

54. *Id.* at 326, 672 S.E.2d at 7.

55. 285 Ga. 625, 680 S.E.2d 846 (2009). Local government attorneys will readily admit that they become "concerned" when a "concerned citizens" group is created.

56. *Id.* at 625, 680 S.E.2d at 846.

57. Willacoochee Charter, 1953 Ga. Laws 3039, 3051, *quoted in Concerned Citizens of Willacoochee*, 285 Ga. at 625, 680 S.E.2d at 847.

provided that, in the case of a vacancy, "the mayor and council *have the power to call a special election ordered by the city council*."[58] The dispute arose when the elected officials chose to fill a vacancy with an appointment and declined requests to call a special election.[59] The supreme court held that the two charter provisions were not in direct conflict and could be read in harmony to provide alternate methods of filling vacancies.[60] The court held that a writ of mandamus was inappropriate and that the trial court correctly declined to issue a writ calling for a special election.[61]

In *Federal Home Loan Mortgage Corp. v. City of Atlanta*,[62] the supreme court held that the City of Atlanta navigated the statutory strait of O.C.G.A. § 36-60-17[63] with some success.[64] Following the 1993 court of appeals decision in *Druid Associates, Ltd. v. National Income Realty Trust*,[65] which upheld the survival of liens for unpaid water, sewer, and other utility charges after foreclosure,[66] the General

58. City of Willacoochee Charter Amended, 1980 Ga. Laws 3941, 3942 (emphasis added), *quoted in Concerned Citizens of Willacoochee*, 285 Ga. at 626, 680 S.E.2d at 847.

59. *Concerned Citizens of Willacoochee*, 285 Ga. at 625, 680 S.E.2d at 847.

60. *Id.* at 626, 680 S.E.2d at 847.

61. *Id.* at 627, 680 S.E.2d at 848.

62. 285 Ga. 189, 674 S.E.2d 905 (2009).

63. O.C.G.A. § 36-60-17 (2006). The complete statute provides as follows:

> (a) No public or private water supplier shall refuse to supply water to any single or multifamily residential property to which water has been furnished through the use of a separate water meter for each residential unit on application of the owner or new resident tenant of the premises because of the indebtedness of a prior owner, prior occupant, or prior lessee to the water supplier for water previously furnished to such premises.
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> (b) For each new or current account to supply water to any premises or property, the public or private water supplier shall maintain a record of identifying information on the user of the water service and shall seek reimbursement of unpaid charges for water service furnished initially from the person who incurred the charges.
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> (c) A public or private water supplier shall not impose a lien against real property to secure unpaid charges for water furnished unless the owner of such real property is the person who incurred the charges.
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> (d) A public or private supplier of gas, sewerage service, or electricity shall not impose a lien against real property to secure unpaid charges for gas, sewerage service, or electricity unless the owner of such real property is the person who incurred the charges.

Id. § 36-60-17(a)–(d).

64. *See Federal Home Loan*, 285 Ga. at 193–94, 674 S.E.2d at 909.

65. 210 Ga. App. 684, 436 S.E.2d 721 (1993).

66. *Id.* at 686, 436 S.E.2d at 723.

Assembly adopted the statute in question[67] to invalidate the decision.[68]

At issue in *Federal Home Loan* was the validity of an Atlanta ordinance creating a lien for unpaid utilities incurred by a property owner.[69] The ordinance provides that "[s]ubject to O.C.G.A. § 36-60-17, the delinquent bill or charge shall be a lien on the property where the bill or charge was incurred."[70] Federal Home Loan acquired through foreclosure a property to which the city attached a lien of $11,117.90 for unpaid water charges incurred by the previous owner. Contending that the city ordinance was preempted by the state statute, Federal Home Loan brought an action in United States District Court for the Northern District of Georgia seeking declaratory and injunctive relief.[71]

In responding to questions certified to it by the federal court, the Georgia Supreme Court held that the city ordinance properly created a "heightened-status" lien because the charges in question were incurred by an owner.[72] The ordinance, however, did not authorize the city to refuse service for unpaid charges by a previous owner; refusal of service is prohibited by state law.[73] By specific reference in its ordinance to the state statute, the city was allowed to create a lien that survived foreclosure.[74]

V. GOVERNMENT EMPLOYEES DO NOT FARE WELL AS PLAINTIFFS

While government employees were often protected from liability by the courts during the survey period when asserting claims *against* the government, their success was a mixed bag. In *DeKalb County v. Bull*,[75] a terminated law enforcement officer sought reinstatement through the process of certiorari. Evan Bull was terminated by his employer for use of excessive force and appealed that decision to a county hearing officer, who upheld the decision. After filing a petition for writ of certiorari to the superior court, Bull was afforded a bench trial. Evidence submitted to the superior court included events that occurred after his case was heard by the county's hearing officer,

67. 1994 Ga. Laws 1957, 1958–59.
68. *See Federal Home Loan*, 285 Ga. at 192–93, 674 S.E.2d at 908.
69. *Id.* at 189, 674 S.E.2d at 906.
70. ATLANTA, GA., CODE OF ORDINANCES § 154-120(1) (Municode through Aug. 25, 2009).
71. *Federal Home Loan*, 285 Ga. at 189–90, 674 S.E.2d at 906.
72. *Id.* at 193–94, 674 S.E.2d at 908–09.
73. *Id.*
74. *See id.*
75. 295 Ga. App. 551, 672 S.E.2d 500 (2009).

including information that he had, after his termination, been acquitted of criminal charges related to the incident in question.[76]

Overturning the superior court's order to reinstate Bull with back pay, the court of appeals reiterated the "any evidence" rule in certiorari—the statutory requirement that a decision be upheld if there is *substantial* evidence in the record from below.[77] This rule has been interpreted by the Georgia appellate courts to require simply that *any* evidence in support of the decision below mandates that the decision be affirmed.[78]

Similarly, in *Glass v. City of Atlanta*,[79] an officer with the Atlanta Police Department was unsuccessful in having his termination reversed.[80] Glass was terminated and asserted his right to appeal the termination. The city's civil service board upheld the termination, albeit nearly three years later. Glass's certiorari petition, due to a series of missteps, was not reviewed by the superior court for nearly twelve years, when it was dismissed.[81]

Again reviewing the evidence required in a petition for writ of certiorari, the court of appeals noted that "'[e]ven evidence which barely meets the any evidence standard is sufficient, and the presence of conflicting evidence nonetheless meets that standard.'"[82] More interesting, perhaps, was this statement by the court:

> Although we ultimately affirm the decisions of the Board and the superior court, we would be remiss in our responsibilities as an appellate court if we failed to express our disapproval with the manner in which this matter was handled by both the Board and the superior court once appellant petitioned for writ of certiorari. The right to petition for writ of certiorari so that the superior court can review a decision of the Civil Service Board necessarily includes the requirement that such a petition be reasonably heard.[83]

The issue of incorrect advice on pension matters arose in *Mullis v. Bibb County*.[84] Richard Mullis contended that he was given bad information on his county retirement benefits, alleging that he was told by the human resources office that his benefits would begin earlier than

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76. *Id.* at 551–52, 672 S.E.2d at 501.
77. *Id.* at 552 & n.2, 672 S.E.2d at 501 & n.2 (citing O.C.G.A. § 5-4-12(b) (1995)).
78. *See id.*
79. 293 Ga. App. 11, 666 S.E.2d 406 (2008).
80. *Id.* at 11–12, 666 S.E.2d at 407.
81. *Id.* at 13, 666 S.E.2d at 408.
82. *Id.* at 14, 666 S.E.2d at 409 (internal quotation marks omitted) (quoting Dep't of Cmty. Health v. Pruitt Corp., 284 Ga. App. 888, 890, 645 S.E.2d 13, 15 (2007), *rev'd*, 284 Ga. 158, 664 S.E.2d 233 (2008)).
83. *Id.* at 18, 666 S.E.2d at 411.
84. 294 Ga. App. 721, 669 S.E.2d 716 (2008).

the date provided by the county's plan.[85] Mullis challenged the county's later correction of the error on the basis of promissory estoppel,[86] but under the litany of case law interpreting O.C.G.A. § 45-6-5,[87] he was unsuccessful.[88] When the plan administrator erroneously told Mullis that his pension benefits would begin on a date prior to the correct date, she exceeded her authority.[89]

And finally, an unpaid position on the Meriwether County Industrial Development Authority was the subject of the dispute in *Murphy v. Pearson*.[90] In October 2005 Karey Murphy was appointed to fill the remainder of a term on the county authority under the mistaken belief that the term to which she had been appointed expired in January 2006. In fact, the term expired in January 2007. But the county board of commissioners appointed Murphy to a four-year term in January 2006. A new county board of commissioners appointed Arthur Pearson to serve the correct four-year term in January 2007. Murphy challenged Pearson's appointment and later appealed the trial court's determination that Pearson lawfully held the seat.[91]

Invoking the common law rule against binding subsequent administrations, the Georgia Supreme Court held that the county board was without power in 2006 to appoint Murphy to a term beginning in 2007, which was beyond the term of office for the incumbent commissioners.[92] "[T]he appointing authority may make a prospective appointment so long as the vacancy to be filled by the prospective appointment will exist at a time when the appointing authority is still in office."[93] Because two of the terms of office for the county commissioners in power in January 2006 were set to expire before January 2007,[94] those commissioners could not appoint Murphy to the authority prospectively.[95]

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85. *Id.* at 721, 669 S.E.2d at 717.

86. *Id.* at 725, 669 S.E.2d at 719.

87. O.C.G.A. § 45-6-5 (2002) (stating that "[t]he public may not be estopped by the acts of any officer done in the exercise of an unconferred power").

88. *Mullis*, 294 Ga. App. at 725, 669 S.E.2d at 720.

89. *Id.*

90. 284 Ga. 296, 667 S.E.2d 83 (2008).

91. *Id.* at 296–97, 667 S.E.2d at 84–85.

92. *Id.* at 297–98, 667 S.E.2d at 85.

93. *Id.* at 297, 667 S.E.2d at 85.

94. Interestingly, the board consisted of five members, and thus, less than a majority of the commissioners were replaced in 2006. *See* Meriwether County Georgia: Commissioners Section, http://www.meriwethercountyga.org/commissioners/ (last visited Oct. 21, 2009). Therefore, a majority of the commissioners that appointed Murphy in 2006 were still sitting on the board in 2007.

95. *Murphy*, 284 Ga. at 297–98, 667 S.E.2d at 85.