

# THE OFFICE OF LEGISLATIVE COUNSEL

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Legislative Counsel

Throughout most of our state's history, the General Assembly of Georgia operated without a full-time legal staff to assist the members of the Senate and the House of Representatives. In 1948, in response to requests for assistance in drafting bills and resolutions, the late Attorney General Eugene Cook created the Bill Drafting Unit on an unofficial basis within the State Law Department. The Bill Drafting Unit met with approval, and in 1951 the General Assembly passed an Act creating the Bill Drafting Unit as an official part of the State Law Department. The Bill Drafting Unit drafted bills for members of the General Assembly and worked with some legislative committees. However, between sessions, the personnel of the Bill Drafting Unit performed other duties connected with the Attorney General's office and did very little work for the legislative branch of government. In 1959, the General Assembly decided it wanted its own staff to be a part of the legislative branch of government as opposed to a staff which was a part of the executive branch of government. Consequently, the Bill Drafting Unit was abolished and the Office of Legislative Counsel was created.

The 1959 Act creating the Office of Legislative Counsel also created the Joint Committee on Operations of the General Assembly and authorized the committee to recommend to the General Assembly methods and procedures to operate the General Assembly and each branch thereof more efficiently, to provide for the revision and codification of the laws of the state, and to provide services and facilities that would be equally available to each and every member of both branches of the General Assembly, including, but not limited to: legislative counseling, bill drafting, and the provision of legislative reference material. A 1961 Act

changed the name of the committee to the Legislative Services Committee. The Legislative Services Committee is composed of 14 ex officio members with the Speaker of the House of Representatives serving as chairman and the Secretary of the Senate serving as secretary.

## Staffing and Procedure

The Legislative Counsel is elected by the Legislative Services Committee subject to the approval of the Senate and the House of Representatives meeting in joint session. The Legislative Counsel's staff includes both attorneys and nonlegal specialists. The Office of Legislative Counsel serves all members of the General Assembly as well as its officers and committees. The staff is strictly impartial and nonpolitical, and all employees are employed on the basis of ability and merit. It should be emphasized that in an office of this type it would be fatal to let politics enter into the personnel selection process and legislators are very much aware of this. All employees are instructed to stay out of politics and to perform work on an impartial basis. Years ago, the Legislative Services Committee officially adopted a policy of not employing anyone who was related to a member of the General Assembly or who was closely identified with any particular political faction. This policy has been reconfirmed as the chairmanship of the committee has changed. Senators and Representatives understand this policy; and the relationship between legislators and staff has been and is excellent. No undue pressure has ever been exerted in an attempt to have a person employed for purely political reasons.

Staff members have an attorney-client relationship with legislators, and bill requests are treated in confidence. No attempt by the staff is made to influence legislation. The function of the staff is to draft the

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bills which are requested by the members of the General Assembly regardless of the personal feelings of the staff as to the merit of any proposed legislation. Policy decisions are the prerogative of the elected Senators and Representatives. Of course, if a legislator requests a staff member to express a personal opinion on the merits of a particular proposal, it will generally be given.

## Duties

As mentioned before, the Office of Legislative Counsel has many duties but bill drafting is still considered the most important function of the office. This probably stems from historical precedent since this was practically the only service legislators received from the original Bill Drafting Unit. Bill drafting is still the service which is most sought by the legislators and is a service which is utilized more each year. During the first session the Bill Drafting Unit was in existence (the January, 1949, session), slightly more than 100 bills were drafted, whereas for the 1986 session 4,574 bills, resolutions, and amendments were drafted by the 13 staff members of the Office of Legislative Counsel.

A substantial portion of the General Assembly's work is performed in committee. There are 24 standing

committees in the Senate and 28 standing committees in the House of Representatives. All legislation is assigned to a standing committee in the Senate and a standing committee in the House of Representatives for study prior to enactment. These standing committees are authorized to meet on a year-round basis. They study not only the legislation which has been assigned to them but also study any number of subjects within the areas to which they have been assigned. In addition to the standing committees, there are several overview committees which have been created by statute to oversee the operation of particular projects. An example of such an overview committee is the Metropolitan Atlanta Rapid Transit Overview Committee or MARTOC. The General Assembly also creates interim study committees for the purpose of undertaking studies of particular problems. The interim committees meet between sessions of the General Assembly, are typically created for one interim period, and report their findings to the following regular session of the General Assembly. The Office of Legislative Counsel provides staff services for all standing, overview, and interim committees of the General Assembly. The office assists in arranging meetings and public hearings, in providing legal assistance, in providing research assistance, in providing secretarial and editorial services, in drafting committee reports, and in drafting legislation proposed by these committees.

The Office of Legislative Counsel serves as the in-house law firm to the General Assembly and its members and officers. The office prepares opinions on questions of law at the request of members of the General Assembly, advises members on legislative procedure, represents the General Assembly in litigation, and drafts legal documents for the General Assembly. The office performs research, both legal and nonlegal, for members and committees of both the Senate and the House of Representatives.

In 1978, the state began the process of revising its code and producing what has become the Official Code of Georgia Annotated. The resolutions creating the Code Revision Commission provided that the Of-

fice of Legislative Counsel would serve as staff for the commission. In connection with this work, our staff reviewed the memoranda from the Michie Company, worked with the Code Revision Commission in formulating answers to the questions presented, proofread the page proofs, and performed many other duties in connection with the original codification and enactment of the Official Code of Georgia Annotated. The staff continues to work with the commission and the Michie Company on the pocket parts and revised volumes of the Code and prepares the annual Code reviser's bills for introduction.

The State of Georgia is a member of several interstate organizations, such as the National Conference of State Legislatures and the Council of State Governments. The Office of Legislative Counsel serves as the contact for these organizations and assists in the exchange of information among the states.

Under the Georgia Administrative Procedure Act, proposed rules and regulations of various departments and agencies of state government are submitted to committees of the Senate and the House of Representatives for review prior to final adoption. The Office of Legislative Counsel serves as the distribution agency for these rules and regulations. When proposed rules are received, the office distributes them to the appropriate committees as directed by the President of the Senate and the Speaker of the House of Representatives; and, upon request, members of the staff work with the committees in performing the actual review of such proposed rules and regulations.

As a service to the State Bar of Georgia and the public, the office prepares a summary of general statutes enacted at each session of the General Assembly of Georgia. These summaries are mailed to each active member of the bar as well as to state and local officials and members of the public.

Under the provisions of Article X, Section I, Paragraph II of the Constitution of the State of Georgia of 1983, a summary of each proposed amendment to the Constitution is prepared by the Attorney General, the Legislative Counsel, and the Sec-

retary of State and is published in the official legal organ of each county. These summaries are for the purpose of educating the public on the amendments which will appear on the general election ballot.

The Office of Legislative Counsel performs various public information and education functions. The staff answers numerous questions from state and local officials, the public, and our counterparts in other states concerning the laws of Georgia, the status of legislation which has been introduced, and other topics of general concern. Members of our staff have also appeared as speakers on numerous programs sponsored by the Institute of Continuing Legal Education, local bar associations, civic clubs, and other organizations.

Following the November general election each two years, the Lieutenant Governor, the Speaker of the House of Representatives, the Carl Vinson Institute of Government of the University of Georgia, and the Georgia Center for Continuing Education cosponsor the Institute for Legislators. This institute provides new legislators with a chance to learn the intricacies of legislative procedure, to become familiar with the rules of the Senate and the House of Representatives, and to participate in discussions of topical issues which will face the General Assembly. The Legislative Counsel speaks to the newly elected members of the General Assembly and explains the functions of the Office of Legislative Counsel. He gives advice to the new members on the procedures for requesting and handling bill requests and on other matters which will aid the new legislators in adapting to their legislative duties. In addition, the newly elected legislators are divided into groups and staff members of the Office of Legislative Counsel are assigned to each group for the purpose of explaining "The Law-making Process; From Inspiration to Implementation."

Under the provisions of Article XI, Section I, Paragraph IV of the Constitution of the State of Georgia of 1983, numerous local constitutional amendments were continued in force and effect until July 1, 1987, at which time such amendments will stand repealed and shall be deleted

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## ARBITRATION LAW

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against it and to receive adequate notice and an opportunity to be heard is safeguarded.

### The Benefits

The benefits of the proposed act are considerable. For parties to commercial transactions, arbitration would be a viable alternative without the uncertainties which presently surround its enforcement. For the state, a modern arbitration statute would signal an increasingly sophisticated expansion in service infrastructure attractive to international and domestic commerce alike. A favorable legal environment for arbitration should encourage investment in Georgia. Increased arbitration in the state results in more money spent in the state. And eventually, the availability of arbitration may shift some of the burden off the overcrowded court dockets. For Georgia attorneys, arbitration represents an additional opportunity. Not only do attorneys often represent parties in arbitrations but attorneys are commonly used as arbitrators. In addition, a more favorable arbitral environment will bring more arbitration to the State thus engaging more attorneys and providing an opportunity to increase the existing client base.

Changes in the arbitration laws of Georgia have received widespread support from the business community and the Bar. The legislative proposal endorsed by the Board of Governors represents a reasoned solution to the problems inherent in the present arbitration law.

### Footnotes

1. See generally Note, *Commercial Arbitration in Georgia*, 12 GA. L. REV. 323 (1978).
2. O.C.G.A. §§9-9-110 through 133 on the arbitration of medical malpractice claims is not affected by the proposed legislation.
3. O.C.G.A. §§9-9-1 through 11. 1861 Ga. Laws 28, enacting Ga. Code §2824.
4. O.C.G.A. §§9-9-30 through 70. 1856 Ga. Laws 222.
5. Whether particular activities fall within the definition of "construction" has been the subject of litigation. See *Camp v. Columbus*, 252 Ga. 120, 311 S.E.2d 834 (1984). This is not a problem with the arbitration statutes of most states which apply to all types of commercial agreements, not just construction.
6. The common law attitude toward arbitration is reflected in the court's statement in *Parsons v. Ambros*, 121 Ga. 98, 48 S.E. 696 (1904):

The mere executory agreement to submit [to arbitration] is generally revocable. Otherwise nothing would be easier than for the

more astute party to oust the court of jurisdiction.

*Id.* at 101, 48 S.E. at 697.

7. See *Sasser & Co. v. Griffin*, 210 S.E.2d 34 (Ga. App. 1974); *Wright v. Cecil A. Mason Const. Co.*, 115 Ga. App. 729 (1967). For a related discussion of the problems of statutory interpretation in this regard, see *Sentell, Of Courts and Statutes and Sanitary Landfills*, 21 GA ST B.J. 72 (1984).

8. See generally G. WILNER, *DOMKE ON COMMERCIAL ARBITRATION* (1984 & Supp.).

9. This legislative proposal had been approved by the Board of Governors last year and had been introduced and passed in the Senate. The bill, however, did not receive consideration in the House before the end of the legislative session. Under the new Standing Board Policy on Legislation, SBP 100, the proposal had to be reintroduced and reapplied in order to receive Bar endorsement for this biannual session.

10. Arbitration is the preferred method of dispute resolution in international commerce for several reasons. First, the parties can entrust the resolution of their dispute to judges of their own choice. Such arbitrators may have expertise in the disputed area. In addition, the parties live in different countries, which may find their laws on legal concepts having different traditional and cultural backgrounds; therefore, they may not be inclined to go to the national courts and submit themselves to an unfamiliar and formal process. Second, businessmen prefer finality. An arbitration award, in principle, is final while a court case may take months or years to be heard and appealed. Third, arbitration is private and not open to the public, which in sensitive matters, is a distinct advantage. Finally, international conventions facilitate the recognition and enforcement of foreign arbitral awards, thereby rendering their international execution relatively easy. C. SCHMITTHOFF, *EXPORT TRADE: THE LAW AND PRACTICE OF INTERNATIONAL TRADE* (1986 8th edition).

11. Most of the United States have a modern arbitration act usually based on the Uniform Arbitration Act. In the Southeast, only Georgia, Alabama, and Mississippi do not have modern acts and Alabama is presently considering the enactment of one.

12. In addition to modern arbitration acts, Florida and British Columbia have enacted completely independent and separate international arbitration acts which apply to arbitration in international contexts. Both acts were developed for the express purpose of promoting Miami (for Latin American transactions) and Vancouver (for Pacific Basin transactions) as international arbitration centers, thereby increasing international commerce, as well as the demand for legal services, in that state and province. For a discussion of the Florida act, see Loumiet, O'Naghten, and Swan, *Proposed Florida International Arbitration Act*, 16 INTER-AMERICAN L. REV. 591 (1985). For information concerning the British Columbia act, see British Columbia International Commercial Arbitration Center, *International Commercial Arbitration: The Canadian Advantage* (1986).

13. This reflects concerns over consumer protection. It is interesting to note, however, that few states have this exception and that the arbitration of consumer complaints has received favorable reviews in Fulton County's court-operated arbitration program and in the resolution of car buyers' complaints. See *Arbitration paying off in Fulton County*, Atlanta Constitution, 7/11/86, 22A; *Arbitration the answer to many car problems*, Atlanta Constitution, 8/28/86, 6D.

14. The United States Arbitration Act, 9 U.S.C. chs. 1 & 2, supercedes state law in maritime, interstate, or foreign commerce. See *Southland Corp. v. Keating*, 104 S.Ct. 852 (1984).

## Legislative Counsel

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as a part of the Constitution unless the amendments have been specifically continued in force and effect prior to July 1, 1987. The Office of Legislative Counsel has prepared a summary of each of these local constitutional amendments and has distributed this summary to all members of the General Assembly, municipal and county officials, municipal and county attorneys, boards of education, and others for their review. In preparing this publication, each local constitutional amendment has been reviewed and summarized by the staff. We hope that the preparation and distribution of this book has been of use to local officials and members of the General Assembly in determining whether local legislation should be introduced at the 1987 session to continue these local amendments in effect.

As most lawyers are aware, computers are playing an increasingly important function in the practice of law. This is particularly true in the Office of Legislative Counsel where computers have been utilized since 1970 in the bill-drafting process. The workload has increased to such degree that it would be impossible to draft the large number of bills, resolutions, and amendments each session without computers. This is particularly true in view of the fact that legislative sessions in Georgia are comparatively short. Within the last five years a statutory retrieval system has been installed primarily for the purpose of assisting in the drafting of legislation. This has been a tremendous help because it shortens the time it takes to draft a bill. This system also has given the office an added benefit since it allows searches of the Official Code of Georgia Annotated.

It is hoped that this article has given readers an insight into the operation of the Office of Legislative Counsel. We look forward to our continued pleasant association with the members of the State Bar.

Nevertheless, disputes involving interstate or foreign commerce may be litigated in the state courts and possibly be subject to the vagaries of state law.

15. This is in contrast to Florida and British Columbia in which an entirely independent set of provisions apply in the international context.